

This Instrument prepared by:  
And when filed return to:  
Jack Nelson Jones & Bryant, P.A.  
2800 Cantrell Road, Suite 500  
Little Rock, Arkansas 72202  
Attention: John S. Bryant

**FIRST AMENDMENT TO**

**CITY OF JONESBORO, ARKANSAS**

**TO**

**REGIONS BANK  
as Trustee**

**TRUST INDENTURE**

**With respect to:**

**CITY OF JONESBORO, ARKANSAS  
\$7,040,000 Tax Increment Financing Revenue Redevelopment Bonds  
(Turtle Creek Redevelopment District Project)  
Series 2006**

**Dated December \_\_\_, 2012**

## FIRST AMENDMENT TO TRUST INDENTURE

**THIS FIRST AMENDMENT TO TRUST INDENTURE** (this “First Amendment”) is effective as of December \_\_, 2012, and amends that certain Trust Indenture dated as of January 31, 2006 (the “Original Indenture”), between the **City of Jonesboro, Arkansas**, a city of the first class organized and existing under the laws of the State of Arkansas (the “City”), **Regions Bank**, an Alabama banking corporation organized under and existing under the laws of the State of Alabama and authorized to exercise corporate trust powers in the State of Arkansas, and its successors, as trustee (the “Trustee”), and **Turtle Creek Partners, LLC**, an Arkansas limited liability company and property owner within the City (the “Developer”). All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Original Indenture.

### WITNESSETH:

**WHEREAS**, the City, pursuant to Amendment No. 78 to the Constitution of the State of Arkansas and the enacting provisions of Arkansas Code Annotated Sections 14-168-301 *et seq.* as amended (collectively, the “Authorizing Legislation”) and several ordinances and resolutions of the City, created the “Turtle Creek Redevelopment District of the City of Jonesboro, Arkansas #1” and issued its redevelopment bonds designated as the City of Jonesboro, Arkansas Tax Increment Financing Revenue Redevelopment Bonds (Turtle Creek Redevelopment District Project) Series 2006 in the principal amount of \$7,040,000 (the “Bonds”);

**WHEREAS**, the Bonds were issued pursuant to the Original Indenture, as described in the preamble, and are payable from and secured by the Pledged Revenues, which is defined in the Original Indenture to include the Pledged Increment, the Developer PILOT Agreement, the Unconditional Guaranty of Payment and Performance and the Major Anchors PILOT Agreement;

**WHEREAS**, subsequent to the issuance of the Bonds, the Arkansas Supreme Court entered a ruling in the case of *City of Fayetteville v. Washington County*, 369 Ark. 455 (2007), which substantially limited the amount of Pledged Increment available to pay debt service on the Bonds, which resulted in the Bonds falling into default (which has been waived by owners of the Bonds);

**WHEREAS**, the Issuer and the Developer, as owner of all of the Bonds Outstanding upon completion of the transactions contemplated hereby, have agreed that the financing structure of the Bonds, as set forth in the Original Indenture, should be substantially restructured in order to reduce the outstanding principal amount of the Bonds so that the current legally available Pledged Increment will be sufficient to pay the debt service on the restructured Bonds;

**WHEREAS**, simultaneously herewith, the Developer has entered into a purchase and sale agreement (the “Purchase Agreement”) with Rouse Properties, Inc. (“Rouse”) to sell the Mall at Turtle Creek and Turtle Creek Crossing (collectively, the “Shopping Center”) which benefited from the Project;

**WHEREAS**, in connection with the sale of the Shopping Center, the Developer will purchase all of the outstanding Bonds;

**WHEREAS**, as a condition precedent to the sale of the Shopping Center, the Purchase Agreement requires the termination of the Developer PILOT Agreement, the Major Anchors PILOT Agreement and the Unconditional Guaranty of Payment and Performance, which terminations have been agreed to by the City, the Developer and the respective parties to the above-referenced agreements;

**WHEREAS**, Section 9.02 of the Original Indenture permits the amendment of the Original Indenture with prior notice and the consent of all of the holders of the Bonds then Outstanding (the "Holders") and the Developer; and

**WHEREAS**, pursuant to a Bondholder Consent Form and Direction to Trustee dated December \_\_, 2012, and effective as of \_\_\_\_\_, 2012 (the "Bondholder Consent and Direction"), attached hereto as Attachment 2, executed and delivered by each of the Holders, the Holders have agreed to amend the Original Indenture on the basis set forth herein;

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THIS INDENTURE WITNESSETH:**

**Section 101.** The foregoing recitals are hereby incorporated into the body of this First Amendment as if fully rewritten and restated herein. Except as the Original Indenture is amended by this First Amendment, the Original Indenture is hereby ratified and confirmed in all respects. The amendments made by this First Amendment are intended to be given broad and liberal construction to amend and supersede any portions of the Original Indenture in conflict with the express terms hereof. Where a term or provision has been deleted, any other provision containing a reference thereto shall be construed as broadly as possible to give effect to such provision in the absence of the applicable reference.

**Section 102.** The currently outstanding principal amount of the Bonds is \$\_\_\_\_\_. In order to reduce the outstanding principal amount of the Bonds so that the current legally available Pledged Increment is sufficient to pay the debt service on the restructured Bonds, the principal amount of the Bonds is hereby reduced to \$700,000 (the "Amended Principal Amount") and all references to the principal amount of the Bonds are hereby amended and replaced with \$700,000. The amounts representing the difference between the currently outstanding principal amount of the Bonds and the Amended Principal Amount are hereby waived, forgiven and released. Additionally, all previously due and unpaid interest on the Bonds is hereby waived, forgiven and released through December 31, 2012. The amended debt service schedule with respect to the Bonds, reflecting the Amended Principal Amount, is attached hereto as Attachment 1. Interest on the Bonds, as amended, shall accrue from January 1, 2013, with interest payable on each February 1 and August 1 commencing August 1, 2013 and principal payable on each February 1 commencing February 1, 2014. In order to effectuate the amendments provided for herein, the Bonds shall be reissued in substantially the form attached hereto as Attachment 2.

**Section 103.** Section 5.01(b)(ii) is hereby amended by deleting the mandatory sinking fund redemption chart in its entirety and replacing it with the following:

<b>Year</b>	<b>Principal Amount (\$)</b>
2014	25,000
2015	30,000
2016	30,000
2017	35,000
2018	35,000
2019	35,000
2020	40,000
2021	40,000
2022	45,000
2023	45,000
2024	50,000
2025	50,000
2026	55,000
2027	60,000
2028	60,000
2029*	65,000

\*Final Maturity

**Section 104.** Section 5.01(b) of the Indenture is hereby amended by adding the following subsection (iv) at the end of Section 5.01(b):

(iv) Mandatory Redemption from Excess Funds. The Bonds shall be mandatorily redeemed prior to maturity, in whole or in part, on each February 1, commencing February 1, 2014, in inverse order of maturity and by lot in such manner as the Trustee shall determine within a maturity, at a redemption price equal to 100% of the principal amount being redeemed, plus accrued interest to the date of redemption, from excess funds deposited in the Debt Service Fund from the Special Fund pursuant to Section 4.01(e) hereof.

**Section 105.** The following sections, subsections or paragraphs of the Indenture are hereby deleted in their entirety:

Section 2.12
Subsection 3.01(g)
Subsection 3.01(h)
Subsection 3.01(i)
Subsection 4.01(d)
The last paragraph of Section 4.01

**Section 106.** Exhibit F of the Indenture, the form of Investor Letter is hereby deleted in its entirety and replaced with the amended form of Investor Letter attached hereto as Attachment

3. Additionally, Section 2.06 of the Indenture is hereby amended by deleting the first sentence of the second paragraph of 2.06 in its entirety and replacing it with the following:

Bonds may be transferred on the books of registration kept by the Trustee by the Registered Owner in person or by the Owner's duly authorized attorney, upon surrender thereof, together with a written instrument of transfer duly executed by the Registered Owner or the Owner's duly authorized attorney, and an investor letter, in the form attached hereto as Exhibit F, signed by the transferee of the Bonds.

**Section 107.** Simultaneously herewith, the Developer, the Affiliated Entities and the City are executing an Agreement to Terminate the Unconditional Guaranty of Payment and Performance dated December \_\_, 2012, (the "Guaranty Termination") terminating the Unconditional Guaranty of Payment and Performance. All references to the Unconditional Guaranty of Payment and Performance in the Original Indenture shall be and hereby are deleted.

**Section 108.** Simultaneously herewith, the Developer, the Trustee, the Craighead County Tax Assessor (the "Tax Assessor") and the City are executing an Agreement to Terminate the Agreement to Make Payments in Lieu of Taxes dated December \_\_, 2012, (the "Developer PILOT Termination Agreement") terminating the Developer PILOT Agreement. All references to the Developer PILOT Agreement in the Original Indenture shall be and hereby are deleted.

**Section 109.** Pursuant to the terms of the Major Anchor PILOT Agreement, the Major Anchor PILOT Agreement terminates upon termination of the Developer PILOT Agreement. Accordingly, upon execution of the Developer PILOT Termination Agreement, all references to the Major Anchor PILOT Agreement in the Original Indenture shall be and hereby are deleted.

**Section 110.** The last paragraph of Section 7.01 of the Trust Indenture shall be deleted in its entirety and replaced with the following:

"So long as no more than five (5) Persons are Owners of the Bonds, in the event of (a) through (e) above, Trustee shall provide notice to such Owner or Owners that unless otherwise notified in writing to the contrary by such Owner or Owners, such default shall be deemed waived pursuant to the Investor Letter delivered by the initial Owner dated January 31, 2006. At such time as the Bonds are owned by more than five (5) Owners, a default under (c) above is not an Event of Default until Trustee or the Owners of at least a majority in principal amount of the Bonds give the City a notice specifying the default, demanding that it be remedied and stating that the notice is a "Notice of Default," and that if the City does not cure the default within thirty (30) calendar days after receipt of the notice, or within such longer period as set forth in the notice, not to exceed one hundred-twenty (120) days."

**Section 111.** For the benefit of the Trustee and the Holders of the Bonds, the Issuer hereby incorporates by reference those covenants, representations and warranties of the Issuer set forth in the Original Indenture into the First Amendment, and hereby affirms, restates and

covenants, as of the date of this First Amendment, that it shall comply with all such covenants, and all representations and warranties contained therein are true and accurate.

**Section 112.** In the event that any provision of this First Amendment shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall be confined to the provision determined to be invalid or unenforceable and shall not invalidate or render unenforceable any other provisions of this First Amendment.

**Section 113.** This First Amendment may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original and such counterparts, added together, shall constitute and be one and the same instrument.

**Section 114.** This First Amendment shall be governed by and construed in accordance with the substantive laws of the State of Arkansas without regard to any laws, rules or regulations concerning conflict of laws that might result in the application of the laws of any other jurisdiction.

**Section 115.** The foregoing First Amendment has been consented to and approved by the Holders pursuant to the Bondholder Consent and Direction, attached hereto as Attachment 4, executed and delivered by each of the Holders of the Bonds.

**Section 116.** All terms and conditions of the Original Indenture in express and direct conflict with the provisions of Section 101 through Section 114 of this Supplemental Indenture are hereby superseded, amended and modified to the extent necessary to be consistent with Sections 101 through Section 114 above. All other terms and conditions of the Original Indenture are hereby otherwise expressly ratified, confirmed and agreed to.

[Signature pages follow.]

IN WITNESS WHEREOF, the City has caused these presents to be signed in its name and behalf by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk and, to evidence its acceptance of the trust hereby created, Trustee has caused these presents to be signed in its behalf by its duly authorized officers and its corporate seal to be hereto affixed.

**THE CITY OF JONESBORO, ARKANSAS, as Issuer**

By: \_\_\_\_\_  
Harold Perrin, Mayor

ATTEST \_\_\_\_\_  
Donna Jackson, City Clerk

(SEAL)

**ACKNOWLEDGMENT**

STATE OF ARKANSAS )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

Before me a Notary Public, duly commissioned, qualified and acting within and for the State and county aforesaid, appeared in person the within named \_\_\_\_\_ and \_\_\_\_\_ respectively, the Mayor and City Clerk of the City of Jonesboro, Arkansas, to me personally known, who stated that they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name of Issuer, and further stated and acknowledged that they had signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of December, 2012.

\_\_\_\_\_  
Notary Public

My Commission expires:  
\_\_\_\_\_  
(SEAL)

[SIGNATURE PAGE TO SUPPLEMENTAL TRUST INDENTURE]

**Regions Bank**, not in its individual capacity but solely as trustee under the Original Indenture dated as of January 31, 2006, as amended as of December \_\_, 2012, between Regions Bank and the City of Jonesboro, Arkansas.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF ARKANSAS      )  
  )ss.  
COUNTY OF PULASKI    )

Before me a Notary Public, duly commissioned, qualified and acting within and for the State and county aforesaid, appeared in person the within named \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and the \_\_\_\_\_, respectively, of Regions Bank, to me personally known, who stated that they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name of the bank, and further stated and acknowledged that they had signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of December, 2012.

\_\_\_\_\_  
Notary Public

My Commission expires

\_\_\_\_\_  
(SEAL)

[SIGNATURE PAGE TO SUPPLEMENTAL TRUST INDENTURE]





**Attachment 1 to  
First Amendment to Trust Indenture**

**MODIFIED DEBT SERVICE SCHEDULE**

<b>Date</b>	<b>Principal</b>	<b>Coupon</b>	<b>Interest</b>	<b>Total P+I</b>	<b>Net New D/S</b>
02/01/2013	-	-	-	-	-
08/01/2013	-	-	24,500.00	24,500.00	24,500.00
02/01/2014	25,000.00	6.000%	21,000.00	46,000.00	46,000.00
08/01/2014	-	-	20,250.00	20,250.00	20,250.00
02/01/2015	30,000.00	6.000%	20,250.00	50,250.00	50,250.00
08/01/2015	-	-	19,350.00	19,350.00	19,350.00
02/01/2016	30,000.00	6.000%	19,350.00	49,350.00	49,350.00
08/01/2016	-	-	18,450.00	18,450.00	18,450.00
02/01/2017	35,000.00	6.000%	18,450.00	53,450.00	53,450.00
08/01/2017	-	-	17,400.00	17,400.00	17,400.00
02/01/2018	35,000.00	6.000%	17,400.00	52,400.00	52,400.00
08/01/2018	-	-	16,350.00	16,350.00	16,350.00
02/01/2019	35,000.00	6.000%	16,350.00	51,350.00	51,350.00
08/01/2019	-	-	15,300.00	15,300.00	15,300.00
02/01/2020	40,000.00	6.000%	15,300.00	55,300.00	55,300.00
08/01/2020	-	-	14,100.00	14,100.00	14,100.00
02/01/2021	40,000.00	6.000%	14,100.00	54,100.00	54,100.00
08/01/2021	-	-	12,900.00	12,900.00	12,900.00
02/01/2022	45,000.00	6.000%	12,900.00	57,900.00	57,900.00
08/01/2022	-	-	11,550.00	11,550.00	11,550.00
02/01/2023	45,000.00	6.000%	11,550.00	56,550.00	56,550.00
08/01/2023	-	-	10,200.00	10,200.00	10,200.00
02/01/2024	50,000.00	6.000%	10,200.00	60,200.00	60,200.00
08/01/2024	-	-	8,700.00	8,700.00	8,700.00
02/01/2025	50,000.00	6.000%	8,700.00	58,700.00	58,700.00
08/01/2025	-	-	7,200.00	7,200.00	7,200.00
02/01/2026	55,000.00	6.000%	7,200.00	62,200.00	62,200.00
08/01/2026	-	-	5,550.00	5,550.00	5,550.00
02/01/2027	60,000.00	6.000%	5,550.00	65,550.00	65,550.00
08/01/2027	-	-	3,750.00	3,750.00	3,750.00
02/01/2028	60,000.00	6.000%	3,750.00	63,750.00	63,750.00
08/01/2028	-	-	1,950.00	1,950.00	1,950.00
02/01/2029	65,000.00	6.000%	1,950.00	66,950.00	66,950.00
<b>Total</b>	<b>\$700,000.00</b>	<b>-</b>	<b>\$411,500.00</b>	<b>\$1,111,500.00</b>	<b>\$1,111,500.00</b>

**Attachment 2 to  
First Amendment to Trust Indenture**

**FORM OF BOND**

**Attachment 3 to  
First Amendment to Trust Indenture**

**FORM OF INVESTOR LETTER**

**Attachment 4 to  
First Amendment to Trust Indenture**

**BONDHOLDER CONSENT**