



**CITY COUNCIL MEETING  
APRIL 22, 2019- 7:00 PM  
109 SOUTH KING STREET  
DEPOT COMMUNITY ROOM**

**MINUTES**

**PRESENT:** James F. Palmer, Mayor  
George R. Crowley, Mayor Pro Tem  
Ray Mitchell Denmon, Councilman  
Al Edwards, Councilman  
Jackie Palazzolo, Councilwoman

**ALSO:** Eddie Peterson, City Administrator; Larry Vickery, Utilities Administrator; Paul Worley, Assistant City Administrator; Sharon Nelson, City Clerk; George Govignon, City Attorney; Jeff Defoor, Director of Electric Utilities; Tony Pyle, Police Chief; Lenny Nesbitt, Fire Chief; Jerry Crawford, Director of Water & Wastewater; Suzanne Roberts, Downtown Development Authority Director; Brad Carrick, Telecommunications Director; and Don Colburn, Special Operations.

**1. Council Meeting Called to Order**

**Welcome**

Mayor Palmer called the meeting to order and welcomed everyone in attendance.

**Invocation**

Mayor Palmer gave the invocation.

**2. Pledge of Allegiance**

Mayor Palmer led the group in the Pledge of Allegiance to the United States Flag.

**3. Amendment or Approval of Proposed Agenda**

Councilman Edwards made a motion to approve the April 22, 2019 agenda as presented. Councilwoman Palazzolo gave a second with all voting aye. Motion approved.

**4. Amendment or Approval of Minutes**

Mayor Pro Tem Crowley made a motion to approve the minutes of the City Council meeting of April 8, 2019. Councilman Denmon gave a second with all voting aye. Motion approved.

**5. Mayor's Comments**

A. Mayor Palmer announced that a work session for the fiscal year July 1, 2019 through June 30, 2020 Annual Operating Budget and Capital Plan will be held immediately

following tonight's Council meeting. The first public hearing will be held on May 13<sup>th</sup> at 7:00 p.m. during the regular scheduled meeting of the City Council.

- B. Mayor Palmer announced that a work session for the Calhoun City Schools Board of Education fiscal year July 1, 2019 through June 30, 2020 Annual Operating Budget and Capital Plan will be held on May 13<sup>th</sup> at the City Annex located at 700 West Line Street, at 12:00 p.m. The first public hearing will be held on May 13<sup>th</sup> at 7:00 p.m. during the regular scheduled meeting of the City Council.

6. **Council Comments**

None

7. **Public Hearing and Comments**

None

8. **New Business**

- A. Mayor Palmer gave the first reading of the updated 2019 City of Calhoun Zoning Map. The first eligible date for a public hearing is May 13<sup>th</sup> to allow for proper zoning procedure and advertising. Councilman Denmon made a motion to set the public hearing for May 13<sup>th</sup>. Mayor Pro Tem Crowley gave a second with all voting aye. Motion approved.
- B. Mayor Palmer stated a motion was needed to move the second Council meeting in May to the 20<sup>th</sup> due to the Memorial Day holiday on the 27<sup>th</sup>. Councilman Edwards made the motion. Councilwoman Palazzolo gave a second with all voting aye. Motion approved.
- C. Mayor Palmer stated a motion was needed to approve or deny provisions of the Pilot Agreement by and among the Development Authority of Gordon County, Dews Pond, LLC, Gordon County, Georgia, City of Calhoun, Board of Tax Assessors of Gordon County, and the Tax Commissioner of Gordon County. He stated that this project was the Food City project on Dews Pond Road. Bill Thompson of the Gordon County Development Authority was in attendance at the work session today and reviewed the parameters of the agreement as he was unable to attend tonight's meeting. Mayor Palmer gave a recap of Mr. Thompson's report stating that this type of commercial project was new to the Development Authority. In order to engage in these types of commercial transactions the Authority adopted a minimum set of requirements including capital investment, job creation, wage rates and infrastructure improvements. He noted that the PILOT Agreement contains a 5-year graded abatement with the first two years being at 100%, the second two years being at 50% and the final year being at 25%. The current Project meets all of the Authority's preset requirements and will result in \$11,000,000.00 of capital investment, along with the creation of 50 full-time jobs with wage rates in excess of the average in the community. The Project will also include a minimum of \$500,000.00 in infrastructure improvements to include a lift station and road improvements in the area, and will also provide part-time employment opportunities. Mayor Pro Tem Crowley made a motion to approve the provisions of the PILOT Agreement as presented. Councilwoman Palazzolo gave a second with all voting aye. Motion approved.
- D. Mayor Palmer stated that he had received a letter from the Development Authority of Gordon County pertaining to the reappointment of Larry Vickery to the Board. Mayor Pro Tem Crowley made a motion to recommend the reappointment to the Gordon County

Commissioners. Councilman Denmon gave a second with all voting aye. Motion approved.

- E. Mayor Palmer read a request by Echota Baptist Church to block the road beginning at the mailbox by the front steps of the church, College Circle, to the stop sign behind the church at Short North Wall Street from 5:00pm to 9:00pm on Sunday, June 23<sup>rd</sup> through Friday, June 28<sup>th</sup> for Vacation Bible School. Councilman Edwards made a motion to approve the request. Councilwoman Palazzolo gave a second with all voting aye. Motion approved.
- F. Mayor Palmer read an annual late taxi business license renewal for Taxi Max. Mayor Pro Tem Crowley made a motion to approve the renewal. Councilman Denmon gave a second with all voting aye. Motion approved.

9. **Other Written Items Not on the Agenda**

10. **Work reports:**

- A. Eddie Peterson, City Administrator gave the March, 2019 General Government Cash Report stating that the total operating revenues are the best he has seen in many years at \$5.385 million.
- B. Larry Vickery, Utilities Administrator gave the March, 2019 Utilities Cash Report stating that Utilities were in as good of shape as they have ever been in. Total operating revenue was \$4.818 million and total savings and reserves were \$7.992 million. Councilman Edwards made a motion to approve the March, 2019 cash reports as presented. Councilwoman Palazzolo gave a second with all voting aye. Motion approved.
- C. George Govignon, City Attorney had nothing to report.
- D. Suzanne Roberts, DDA Director stated that the 7<sup>th</sup> annual BBQ Boogie & Blues event will be held on April 26<sup>th</sup> and 27<sup>th</sup> and will include a nationally sanctioned BBQ competition. Festivities include live entertainment, food and arts and crafts vendors, a kid's zone, Amazing Race, and much more. She noted this year's event is the biggest to date with 34 pro-teams and 21 back-yard teams competing. More than 70 vendors will also participate in the event.

11. **Motion to move to Executive Session, if needed**

12. **Motion to return to General Session**

13. **Motion to Adjourn**

There being no further business to come before the Council Councilwoman Palazzolo made a motion to adjourn. Councilman Edwards gave a second with all voting aye. The motion was approved and the meeting adjourned at 7:12 p.m.

Approved:

  
James F. Palmer, Mayor

Submitted:

  
Sharon Nelson, City Clerk

## PILOT AGREEMENT

**THIS PILOT AGREEMENT** (this “**Agreement**”), dated as of March 1, 2019, but effective on the date the Bond referred to below is issued (the “**Effective Date**”), by and among the **DEVELOPMENT AUTHORITY OF GORDON COUNTY** (the “**Issuer**”), a development authority and public body corporate and politic duly created by the Development Authorities Law, O.G.C.A. §36-62-1, *et seq.* (the “**Act**”), **DEWS POND, LLC**, a Tennessee limited liability company (the “**Company**”) (the Issuer and the Company, each a “**Party**,” or collectively, the “**Parties**”). **GORDON COUNTY, GEORGIA** (the “**County**”), the **CITY OF CALHOUN, GEORGIA** (the “**City**”), the **BOARD OF TAX ASSESSORS OF GORDON COUNTY** (the “**Board of Assessors**”) and the **TAX COMMISSIONER OF GORDON COUNTY** (the “**Tax Commissioner**”) are each executing an Acknowledgment hereof attached to this Agreement in order to acknowledge their respective agreements to the provisions hereof which are applicable to them, but they are not considered to be Parties.

### WITNESSETH:

#### **Section 1. The Lease and the Site.**

(a) The Lease. On the Effective Date, the Issuer is issuing its Taxable Economic Development Revenue Bond (Dews Pond, LLC Project), Series 2019 in the maximum principal amount of \$11,000,000 (the “**Bond**”) to finance the acquisition of a capital project located or to be located in the County on Dews Pond Road, Calhoun, Georgia, consisting of land, buildings, improvements to be constructed thereon or therein, building fixtures, and other personal property installed or to be installed thereat (the “**Project**”). The Project is being leased by the Issuer to the Company under a Lease Agreement, dated as of March 1, 2019 (the “**Lease**”). Legal title to the Project will be vested in the Issuer while the Lease is in effect. The Lease is to expire on March 1, 2025. All capitalized terms used herein that are defined in the Lease, but are not defined herein, shall have the same meaning as in the Lease. In consideration of the execution of the Lease by the Issuer and the Company and in further consideration of the Issuer’s issuance of the Bonds, the parties have entered into this Agreement.

#### **Section 2. Taxes and Payments in Lieu of Taxes.**

(a) Taxes on Non-Project Property. Property titled to the Company on January 1 of each year is subject to *ad valorem* property taxes in such year. The Company shall file returns and pay *ad valorem* property taxes in accordance with law, with respect to taxable property in the County to which the Company holds title (and, hence, which is not a part of the Project on such January 1).

(b) No Actual Taxes on Project While Owned by Issuer. Under the Act, the Issuer’s ownership in the Project is exempt from *ad valorem* property taxes. Under the terms of the Lease, the Company’s interest in the Project is treated as a usufruct and/or bailment for hire, both of which are intended to be nontaxable for purposes of *ad valorem* property taxes. Thus, the Company shall not be required to pay actual *ad valorem* property taxes on the Project while the same is owned by the Issuer and leased to the Company under the Lease. If, on account of the expiration or termination of the Lease, the exercise by the Company of its option to purchase the

Project (in whole or in part) or otherwise, the Project (or any portion thereof) is no longer owned by the Issuer, then actual taxes rather than payments in lieu of taxes shall be paid with respect to the Project (or the applicable portion thereof).

(c) Payments in Lieu of Taxes. In order to prevent the local taxing authorities from being totally deprived of revenues relating to the Project during the periods in which title thereto is in the Issuer which would be occasioned by total tax abatement on account of the Issuer's interest and the Company's interest therein under the Lease being exempt from *ad valorem* property taxes, the Issuer and the Company agree that, as additional consideration for the Issuer's leasing the Project to the Company, the Company shall, so long as the Lease is in effect, make payments in lieu of taxes to the Tax Commissioner as provided in this subsection (c).

(i) Valuation and Calculation of Normal Taxes and Procedural Matters. Not later than March 1 of each year commencing in the year 2020 (such year, "Year 1", for all purposes of this Agreement), the Company shall file with the Issuer, and the Issuer shall then file with the Board of Assessors, a return (the "Annual Return") in which the Project shall be valued as of January 1 of such year at "Full Value," as follows: real property shall be valued at fair market value in accordance with standard valuation methods, including depreciation of improvements, using customary useful life tables and other considerations, and trade fixtures, machinery, equipment and other tangible personal property shall be valued at cost less depreciation (as per guidelines set forth in Georgia Department of Revenue Rule 560-11-10-.08). The Full Value of the Project is subject to confirmation by the Board of Assessors, which shall also multiply such Full Value by forty percent (40%) to determine the "Assessed Value" of the Project, and provide written notice of its valuation to the Issuer and the Company. The Company shall have forty-five (45) days after receipt of such notice to challenge each such valuation in accordance with the normal procedures of the Board of Assessors. In each year, not later than thirty (30) days before the date on which *ad valorem* taxes are due in the County, the Tax Commissioner shall calculate the "Normal Taxes" on the Project that would be payable to the State of Georgia, the County, the City and each other applicable taxing authority by multiplying the Assessed Value by each taxing authority's millage rate and shall bill the Company for the payments that are due as contemplated in this Agreement.

(ii) Payments in Lieu of Taxes on the Project. Following receipt of the tax bills referenced in clause (i) above, the Company shall pay to the Tax Commissioner at the time normal *ad valorem* taxes are due (or if the above-mentioned tax bill(s) has not then been received, then upon receipt), as payments in lieu of taxes, an amount equal to the applicable percentage for such year (stated below) of Normal Taxes that the Company would pay on the Project if the Company were the owner of the Project on January 1 of such year. Such amount paid to the County shall be paid over by the Tax Commissioner to the applicable taxing authorities in proportion to their respective millage rates. The applicable percentage for the assets comprising the Project shall be as follows in the following years. For any such asset, "Year 1" shall be determined as provided in (iii), below.

Payment Schedule

<u>Year</u>	<u>Payment Percentage</u>
1	0%
2	0%
3	50%
4	50%
5	75%
6 and thereafter	100%

(iii) Year 1. For purposes of the Payment Schedule in (ii), above, “Year 1” shall be 2020 with respect to the investments in the Project made in and before 2019, provided however, that with respect to the investments in the Project made in 2020 and 2021 financed through additional draws on the Bond, the calendar year following the calendar year in which such investment is made is deemed to be Year 1 for those assets. That is to say, every new bond financed investment in Project assets at the Facilities, during 2020 and 2021 will receive a separate ten year Payment Schedule beginning with its respective Year 1. Investments in the Project made after 2021 will not be financed through the Bond and titled to the Issuer and so will not benefit from the Payment Schedule, but shall be counted part of the Project for purposes of counting jobs and investment at the Project.

(iv) Policies and Procedures. Should the Company fail to make payments in lieu of taxes required by this Agreement at the times and in the manner provided for in this Agreement, and such delinquency is not cured within thirty (30) days of the Company’s receipt of written notice, the Company shall be obligated to pay to the Tax Commissioner, in addition to such payment in lieu of taxes an amount that shall be equal to the penalties and interest that would be assessed against the Company if such payment in lieu of taxes were delinquent *ad valorem* taxes. The Tax Commissioner shall notify the Company in writing of any such penalties and interest, with copy to the Issuer. The Board of Assessors and the Tax Commissioner shall have all of the rights and remedies related to payments in lieu of taxes, interest and penalties, as they would have in the case of delinquent *ad valorem* taxes. Likewise, the Company shall have all of the same rights and remedies as it would have in the case of a dispute over *ad valorem* property taxes, including, without limitation, the right to dispute the valuation used by the Board of Assessors. Without limitation, the Issuer, the Board of Assessors and the Company agree that the Company shall have the right of arbitration provided in O.C.G.A. Sec. 48-5-311(f) and the right of appeal to the Superior Court provided in O.C.G.A. Sec. 48-5-311(g). The obligation to make payments in lieu of taxes, and any related interest and penalties, shall be obligations to the Tax Commissioner, who upon receipt shall disburse them as though they were payments of normal taxes, or any related interest and penalties, as appropriate.

(d) Goals and Recovery Provisions.

(i) Job and Investment Goals. The Issuer has communicated the importance of the Company's creation of employment at the Project and the Company acknowledges the importance of this matter to the Issuer. The payments in lieu of taxes provided for in the Payment Schedule are based on the assumptions that: (A) on January 1, 2021, the capital investment in the Project will amount to at least \$11,000,000, inclusive of property paid for with proceeds of the Bond (the "**Investment Goal**"), (B) on January 1, 2021, at least 50 full-time jobs will be created at the Project (the "**Jobs Goal**"), and (C) the wage rate for the full-time employees at the Project will be above the community average and hence on average exceed \$28,000 per year in direct compensation plus benefits. Schedule 2 attached hereto determines how the number of full-time jobs shall be calculated and provides rules that shall apply to satisfying the Investment Goal.

(A) If, on or by January 1, 2021, or any January 1 of any year thereafter while the Lease is in effect (each a tax-year), the aggregate investment at the Project has not reached the applicable Investment Goal, the amount of actual investment as of such January 1 shall be subtracted from the Investment Goal to determine the "**Investment Shortfall**" for such tax year. The Investment Shortfall for such tax-year shall be divided by such Investment Goal and the result shall be the "**Investment Shortfall Percentage**" for such tax-year. If there is no shortfall, such percentage shall be zero percent (0%).

(B) Jobs Shortfall. If, on or by January 1, 2021, or any January 1 of any year thereafter while the Lease is in effect (each a tax-year), the aggregate number of new or retained full-time jobs at the Project has not reached the applicable Jobs Goal, the amount of actual new or retained full-time jobs as of such January 1 shall be subtracted from such Jobs Goal to determine the "**Jobs Shortfall**" for such tax year. The Jobs Shortfall for such tax-year shall be divided by the Jobs Goal and the result shall be the "**Jobs Shortfall Percentage**" for such tax-year. If there is no shortfall, such percentage shall be zero percent (0%).

(ii) Force Majeure. Notwithstanding the foregoing, the Jobs Goal in any year is subject to the effect of *force majeure* as provided below, if the Company certifies to the Issuer in writing the dates of the commencement and, if the event of *force majeure* has abated, the date of the abatement, of such event of *force majeure*. For purposes hereof, "*force majeure*" means any unexpected event (including, without limitation, any event or act of god, war, civil commotion, flood, fire, explosion, earthquake or other natural disaster, any strikes, walkouts or other labor unrest and terrorist acts) which prevents the Company from attaining the Jobs Goal in such year, which act or event is (i) beyond the reasonable control and not arising out of the fault of the Company, (ii) the Company has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, exclusive of the expenditure of unbudgeted sums of money, and (iii) has a material adverse effect on the employment at the Project; provided, however, notwithstanding anything contained herein, the Company shall not be obligated to negotiate, settle or otherwise take any actions to end any strike, walkout or other labor unrest if it deems such to be in the best interest of the Company. The effect of *force*

*majeure* shall be that, for any year in which the Company claims the benefit of such provision, the Jobs Goal for such year shall be reduced by the number of full-time jobs that the Company shall demonstrate were not filled as a result of such *force majeure*.

(iii) Annual Certification. Not later than March 1, 2021, and not later than March 1 of each year thereafter (to and including the March 1 of the year following the last year in which the Company realizes any tax savings hereunder), the Company shall provide to the Issuer and the Tax Commissioner a certificate of an authorized officer of the Company (the “**Annual Certification**”) stating (1) the cumulative investment in the Project as of January 1 of the immediately preceding calendar year, and (2) the average number of full-time jobs at the Project during the immediately preceding calendar year. The Company shall provide such other supporting documentation as the Issuer or the Tax Commissioner may from time to time reasonably request. The Issuer and the Tax Commissioner shall have the right to inspect the investment and payroll records (consistent with the privacy rights of its employees) of the Company relating to the Project to verify the correctness of the Annual Certification and may make adjustments in the jobs information if an error is found.

(e) Tax Savings Recovery Payments. If the Annual Certification (or an adjustment thereto) shows that the average number of full-time jobs at the Project in the immediately preceding year was less than the Jobs Goal, then the Job Shortfall Percentage shall be calculated and if there is no Jobs Shortfall, the Jobs Shortfall Percentage shall be zero percent (0%). If the Annual Certification (or an adjustment thereto) shows that there was an Investment Shortfall, then the Investment Shortfall Percentage shall be calculated and if there is no Investment Shortfall, the Investment Shortfall Percentage shall be zero percent (0%). The Investment Shortfall Percentage and the Jobs Shortfall Percentage shall be totaled and divided by two (2); the result shall be the “**Project Shortfall Percentage**”. If the Project Shortfall Percentage exceeds 0%, then the Company shall pay a tax savings recovery payments (“**Tax Savings Recovery Payments**”), which shall be calculated as follows: the Project Shortfall Percentage shall be multiplied by the *ad valorem* tax savings received by the Company during the immediately preceding calendar year as a result of the tax savings provided hereby (such savings being the difference between normal taxes and the payment in lieu of taxes paid in the prior year (excluding any additional payment in lieu of taxes made in the immediately preceding year on account of any Tax Savings Recovery Payments made in the preceding year). If the Project Shortfall Percentage is thirty percent (30%) or less, there shall be no Tax Savings Recovery Payment due.

(i) Separate calculations shall be made for the savings of the Company in City, County and State taxes in the immediately preceding year and of the amount of Tax Savings Recovery Payments that are due. Tax Savings Recovery Payments shall constitute additional payments in lieu of taxes which are payable to the City, the County and the State, as calculated above, and shall be paid by the Company by separate checks that are payable to the County, the City and the State, and shall be delivered by the Company to the Tax Commissioner within thirty (30) days following the date of the Annual Certification. Checks received by the Tax Commissioner pursuant to this paragraph shall be delivered by the Tax Commissioner to the County, the City and the State, respectively.

(ii) Trigger Event. The Company further acknowledges and agrees that, upon the occurrence of a Trigger Event (as hereinafter defined), the Issuer shall have the right, at its option, to increase the Payment Percentages under the Payment Schedule to one hundred percent (100%) for each subsequent year in which the Trigger Event continues to exist. Each of the following shall be a “**Trigger Event**” under this Agreement:

(A) “**Project Closing.**” A Project Closing is defined as the permanent or temporary shutdown of the Project, if the shutdown results in an “**employment loss**” during any one hundred eighty (180)-day period at the Project for twenty-five (25) or more employees, excluding any part-time employees, but only if such employment loss results in the number of employment at the Project going below the Jobs Goal. The term “**employment loss**” means (1) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (2) a layoff exceeding six (6) months, or (3) a reduction in hours of work of individual employees (other than for cause) of more than fifty percent (50%) during each month of any six (6)-month period. An employment action that results in the effective cessation of production of the work performed at the Project, even if a few employees remain, is a shutdown. A “**temporary shutdown**” is a Trigger Event only if there are a sufficient number of terminations, layoffs exceeding six (6) months, or reductions in hours of work as specified under the definition of “**employment loss.**”

(B) “**Mass Layoff.**” The term Mass Layoff means a reduction in work force which first, is not the result of a Project Closing, and second, results in an employment loss at the Project during any one hundred eighty (180)-day period for:

- (1) At least one-third (1/3) of the active employees, excluding part-time employees; and
- (2) At least twenty (20) employees, excluding part-time employees; but
- (3) only if such employment loss results in the number of employment at the Project going below the Jobs Goal.

(f) Company to Pay Other Amounts. The Company shall be responsible for all costs paid by the Issuer or the Tax Commissioner for the collection of the payments required herein, including but not limited to reasonable attorneys’ fees, administrative costs or other collection expenses.

**Section 3. “Freeport” Inventory Tax Exemption.** The Issuer, the County and the City hereby represent and warrant that the Board of Commissioners of the County, the Mayor and Council of the City and the voters of the County and the City have approved the granting of a “freeport” property taxation exemption applicable to (i) raw materials and goods in the process of manufacture, (ii) finished goods produced in Georgia manufactured within the previous twelve (12) months and (iii) finished goods stored in Georgia within the previous twelve (12) months and destined for shipment out of state, that the County and the City have established such

exemption at the level of eight percent (80%) in accordance with the provisions of O.C.G.A. § 48-5-48.2, and that said "freeport" inventory property tax exemption has no time limit. The Issuer, the County and the City agree that the Company will be entitled to such "freeport" inventory property tax exemption throughout the term of the Lease; provided, however, that if the "freeport" exemption percentage is hereafter increased by the County and the City, the higher percentage will apply for purposes of this Agreement.

**Section 4. Inducement.** The Company's agreement to locate the Project in the City and the County is based, in part, on the incentives being provided by the Issuer in connection with the Lease and this Agreement. Such incentives are being provided to induce the Company to locate the Project in the County, with attendant job creation and investment on the part of the Company, all of which constitutes valuable, non-cash consideration to the Issuer and the citizens of the City and the County and of the State. The Parties acknowledge that the incentives provided for in this Agreement serve a public purpose through the job creation and investment generation represented by the Project.

**Section 5. Safeguard.** If the Project (or any portion thereof) is judicially determined to be lawfully subject to *ad valorem* taxation for any tax year, or if the Company agrees in writing that the Project (or any portion thereof) is subject to such taxes in such tax year, then it shall pay, or cause to be paid, such lawful taxes in accordance with its covenants in the Lease, but it shall not be obligated to pay payments in lieu of taxes with respect to such portion of the Project, pursuant to Section 2, above, for any tax year for which actual *ad valorem* taxes are due with respect to the Project or such portion thereof. The Company shall receive a dollar-for-dollar credit against any such *ad valorem* tax obligation to the extent the Company has made payments in lieu of taxes with respect to the Project (or such portion thereof) for such calendar year.

**Section 6. Termination.** This Agreement shall terminate at such time as there are no further payments which may thereafter be required to be made hereunder.

**Section 7. Successors and Assigns.** This Agreement shall inure to the benefit of, and the obligations of the respective parties hereunder shall be binding upon, the successors and assigns of the respective parties hereto.

**Section 8. Severability.** In the event any clause, sentence, paragraph or provision of this Agreement shall be determined to be voidable, void or unenforceable, the voidableness, voidness, or unenforceability of such clause, sentence, paragraph shall not affect the validity or enforceability of any other clause, sentence, paragraph or provision hereof. Without in any way limiting the generality of the foregoing, if the agreements of the Issuer set forth herein should be determined to be voidable, void or unenforceable, the obligations of the Company shall not be deemed to be unenforceable for lack of consideration or lack of mutuality; the Company hereby agrees that the agreement of the Issuer to issue the Bond and to lease the Project to the Company under the Lease are sufficient and adequate consideration to support the Company's agreements and obligations hereunder.

**Section 9. Validation.** The parties hereto understand that this Agreement is to be one of the documents to be presented to the Superior Court of Gordon County in proceedings to validate the Bond and related documents.

**Section 10. Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by the law of the State of Georgia and shall be subject to enforcement in the appropriate court in Gordon County, Georgia.

[SIGNATURES BEGIN ON FOLLOWING PAGE]