O-22-02

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS; AUTHORIZING THE SALE OF THE BONDS AND THE APPROVAL OF A BOND PURCHASE AGREEMENT AND PAYMENT IN LIEU OF TAXES AGREEMENT; AUTHORIZING A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING AND PRESCRIBING CERTAIN MATTERS PERTAINING THERETO; AUTHORIZING A LEASE AGREEMENT RELATING TO THE PROJECT; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock, Arkansas (the "City") is authorized under the provisions of Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* and Ark. Code Ann. §§ 14-164-701 *et seq.*, each as amended from time to time (collectively, the "Act"), to own, acquire, construct, equip, and lease facilities to secure and develop industry and to assist in the financing thereof by the issuance of bonds payable from the revenues derived from such facilities; and

WHEREAS, Dolgencorp, LLC or its affiliate (the "Company") has evidenced its interest in acquiring, constructing, and equipping a facility useful in securing and developing industry in the City if permanent financing can be provided through the issuance of bonds under the authority of the Act; and

WHEREAS, the City has agreed to cooperate with the Company in the acquisition, construction, and equipping of a facility in the City and to finance the acquisition of land, construction and renovation of buildings, infrastructure and improvements, and acquisition and installation of equipment for the warehousing and distribution of dry goods and fresh products located on an approximately 152 acre site known as Lot 4 of the Tulip Farms Addition that is east of the Galloway exit on Interstate 40 East and south of Barton Road and north of State Highway 70 relating to the operations of the Company (the "Project"); and

WHEREAS, to provide permanent financing of the Project costs, necessary costs and expenditures incidental thereto, and the cost of the issuance of bonds, the City will issue its taxable industrial development revenue bonds under the provisions of the Act designated "City of North Little Rock, Arkansas Taxable Industrial Development Revenue Bonds (Dolgencorp Project), Series 2022," or such other series as are otherwise designated, in the principal amount of not to exceed $140,000,000.00 (the "Bonds"); and

WHEREAS, the Bonds will be issued pursuant to the provisions of a Trust Indenture (the "Trust Indenture") to be entered into between the City and a trustee (the "Trustee") to be selected upon the mutual agreement of the City and the Company; and

WHEREAS, the City and the Company intend to enter into a Lease Agreement (the "Lease Agreement") relating to the Project including personal property, real property, infrastructure and

improvements, which contemplates that the Project will be leased to the Company, with an option to purchase for a nominal price, and the rental payments therefor together with other moneys available shall be sufficient to pay debt service on the Bonds and all related costs; and

WHEREAS, to induce the City to proceed with the issuance of the Bonds for the purpose indicated, which will inure to the benefit of the Company, the City and the Company will enter into a Payment in Lieu of Taxes Agreement (the "PILOT Agreement") in substantially the form presented at this meeting which provides 65% ad valorem tax abatement for a period of 30 years; and

WHEREAS, the City and the Company caused a form of a notice of public hearing to be published on December 26, 2021 in the *Arkansas Democrat-Gazette*; and

WHEREAS, an open public hearing on the question of the issuance of the Bonds was held before the City Council on January 10, 2022 and having heard all persons desiring to be heard in the matter, the City has taken under advisement the comments and statements of such persons, and declared the public hearing duly closed; and

WHEREAS, the City proposes to sell the Bonds to an affiliate of the Company (the "Purchaser") pursuant to a Bond Purchase Agreement by and between the City and the Purchaser; and

WHEREAS, the Company may obtain independent loans from one or more lenders secured by liens on, or security interests in, title to all or part of the Project granted pursuant to various agreements, instruments and documents; and

WHEREAS, the City acknowledges and consents to all liens and encumbrances on, security interests in and rights to, the title to the Project granted by the Company, and acknowledges that the Company's interests in the Project will be transferred to the City subject to the such liens, encumbrances and security interests, if any, and such acknowledgement and consent may be evidenced through the execution of a Recognition of Prior Interests, Nondisturbance and Attornment Agreement between the City, the Company, and the lenders of Company (or such lenders' agents) benefitting from such lien, encumbrance or security interest (the "RNA Agreement "); and

WHEREAS, copies of the herein described Bond Purchase Agreement, Indenture, Lease Agreement, RNA Agreement, and PILOT Agreement have been presented to and are before this meeting and a copy of each are on file with the City Clerk and available for inspection by any interested person; and

WHEREAS, the City believes the completion of the Project may be useful in providing additional employment opportunities and will provide other benefits to and be in the best interest of the City and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That there be, and there is hereby, authorized and directed the following:

(a) The Bonds shall be issued in one or more series in an aggregate principal amount of not to exceed $140,000,000.00, and the Bonds shall be sold to the Purchaser for a price of par plus the costs of issuance upon the terms and conditions set forth in the Bond Purchase Agreement.

(b) The execution and delivery of the PILOT Agreement by the Mayor and City Clerk on behalf of the City, in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the documents, their execution to constitute conclusive evidence of such approval, is hereby authorized and directed. An executed copy of the PILOT Agreement shall be filed in the City Clerk's office.

(c) The acquisition, construction, and equipping of the Project, and, in connection therewith, to the extent convenient or necessary, the execution of any necessary architectural, engineering, or construction contracts or the acceptance of an assignment of any such contracts previously executed by the Company for the construction and equipping of the Project on behalf of the City is hereby authorized and directed.

SECTION 2: That the issuance of the Bonds in the total principal amount of not to exceed $140,000,000.00 is hereby authorized. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall bear interest (at a rate or rates) and shall be subject to redemption prior to maturity, all upon the terms and conditions to be set forth in the Trust Indenture.

SECTION 3: That to further prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed (when requested to do so by the Company) to execute and acknowledge the Trust Indenture, and the City Clerk is hereby authorized and directed to execute and acknowledge the Trust Indenture and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Trust Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee and the Company in order to complete the Trust Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

SECTION 4: That there be, and there is hereby, authorized and directed the execution and delivery of the Lease Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Lease Agreement for and on behalf of the City. The Lease Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Company in order to complete the Lease Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

SECTION 5: That there be, and there is hereby, authorized and directed the execution and delivery of the Bond Purchase Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Bond Purchase Agreement for and on behalf of the City. The Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Purchaser in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

SECTION 6: That there be, and there is hereby, authorized and directed the execution and delivery of the RNA Agreement if the Company determines that such agreement is required by its lenders. The Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the RNA Agreement for and on behalf of the City. The RNA Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Company and lenders of the Company (or such lenders' agents) in order to complete the RNA Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval

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SECTION 7: That the Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect (i) the execution of the Lease Agreement, (ii) the performance of the City's obligations under the Lease Agreement, (iii) the execution and delivery of the Trust Indenture, (iv) the performance of all obligations of the City under and pursuant to the Trust Indenture, (v) the execution and delivery of the Bonds, (vi) the execution and delivery of the PILOT Agreement, (vii) the performance of the City's obligations under the PILOT Agreement, (viii) the execution and delivery of the Bond Purchase Agreement, (ix) the performance of the City's obligations under the Bond Purchase Agreement, (x) the execution and delivery of the RNA Agreement, (xi) the performance of the City's obligations under the RNA Agreement, and (xii) the performance of all other acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, in connection with the issuance of the Bonds and in connection with on-going rights and obligations that arise after issuance and prior to maturity of the Bonds, to execute all papers, documents, certificates, and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof, including, but not limited to, the execution a Home Office Payment Agreement, a Memorandum of Lease, Delivery Instructions, and/or other closing certificates.

SECTION 8: That the Project involves the acquisition, constructing, and equipping of a complex project, requiring highly specialized work and specialized types of machinery and equipment. In compliance with Ark. Code. Ann. § 14-164-204, it has been and is hereby determined by the City Council that competitive bidding be, and the same is hereby, waived as to this particular Project. This action is taken by the City Council pursuant to applicable laws of the State of Arkansas, including particularly the Act.

SECTION 9: That all actions heretofore taken by the City, the Company, and the Purchaser in connection with the issuance, offer and sale of the Bonds and the development and completion of the Project are hereby in all respects ratified and approved.

SECTION 10: In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

SECTION 11: All ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

PASSED:

APPROVED:

Mayor Terry C. Hartwick

SPONSOR:

Terry C Hartwick

Mayor Terry C. Hartwick

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields, City Attorney

FORMATTED BY THE OFFICE OF THE CITY ATTORNEY

FILED 10:27 A.M. _____ P.M.
By City Atty Amy Fields
DATE 1-4-22

Diane Whitbey, City Clerk and Collector
North Little Rock, Arkansas

RECEIVED BY K. Thomas