

FORT CHAFFEE REDEVELOPMENT AUTHORITY

INDENTURE OF TRUST

by and between

SEBASTIAN COUNTY, ARKANSAS

AS SETTLOR, GRANTOR, AND TRUSTOR

and

KENT BLOCHBERGER, ERNEST R. COLEMAN, SR.,  
JANE ENGLISH, KAY HARRISON,  
ROBERT E. MILLER, KEN COLLEY, LINDA HOBBS,  
JACK WHITE, AND CRAIG SMITH, D.V.M.

AS TRUSTEES

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## ARTICLE I

### CREATION, DECLARATION, AND COVENANT

1.1. The undersigned, as Settlor and Trustees, do hereby create, establish, and constitute this Public Trust (hereinafter referred to as the "Trust" and/or the "Authority"), pursuant to the provisions of the laws of the State of Arkansas, including specifically Title 28, Chapter 72, Subchapter 2 of the Arkansas Code of 1987 Annotated (hereinafter referred to as the "Act").

1.2. The undersigned Settlor hereby contracts with the undersigned Trustees, and the Trustees do hereby declare and covenant, between themselves and unto the Settlor, the City of Fort Barling, the City of Greenwood, and the City of Fort Smith as beneficiaries of this Trust (hereinafter, Sebastian County, Arkansas, and the Cities of Barling, Greenwood, and Fort Smith being referred to collectively in the singular tense as the "Beneficiary"), that they and their successors do and will hold, receive, and administer the Trust Estate as hereinafter set forth, as Trustees of a Public Trust under and pursuant to the Act, solely for the use and benefit of said Beneficiary for the purpose of aiding and furthering, and the providing of funds for the aiding and furthering, of a proper function of the Beneficiary, as hereinafter set forth. This Trust is created by virtue of the execution of this Indenture of Trust (hereinafter referred to as the "Indenture") by the Beneficiary and individuals signing the same as the Settlor and initial Trustees hereunder. Neither the acceptance of the beneficial interest hereunder nor the endorsement hereon of such acceptance, for and on behalf of any designated Beneficiary as provided by law, shall be deemed or construed to be the creation of a Public Trust by any one or more Beneficiary.

1.3. The provisions hereof shall be binding upon the undersigned, their successors and assigns. The Settlor does hereby grant and deliver to the Trustees, in trust, the sum of \$1,000, to constitute the initial corpus and assets of this Trust, and the Trustees, by their signatures hereto, acknowledge receipt of such sum, accept the Trust herein created and provided for and agree to carry out the provisions of this Indenture.

1.4. The Settlor hereby declares that the intent and public purposes of this Trust shall be as follows:

The closure and redevelopment of a portion of Fort Chaffee Military Base (hereinafter referred to as the "Base") is a matter of great concern for the Beneficiary, including particularly the impact on the economies, environment, and quality of life of the Cities of Fort Smith, Barling, Greenwood, and Lavaca as well as Sebastian County.

A comprehensive study of all issues related to the closure and redevelopment of the Base is necessary to ensure proper planning and optimal use of the property embodied therein.

A comprehensive redevelopment plan must be developed and implemented in order to ensure the orderly conversion of the Base to civilian use.

After conversion of such portions of the Base as the Department of Defense deems unnecessary to its overall military mission, it should be managed, owned, and operated so as to yield the maximum benefit to the residents of affected counties and communities in the State of Arkansas.

The goals set forth above cannot be achieved solely through the operation of private enterprise or efforts by individual communities, or by Sebastian County acting alone but can be achieved through the creation of a public trust under the provisions of the Act to promote, oversee, and integrate the development of the Base for the benefit of the affected communities, Sebastian County, and the State of Arkansas and for the improvement of their welfare and prosperity, including the creation of employment and other business opportunities. Creation of such a public trust to implement all aspects of a conversion and redevelopment plan subject to the provisions of this Indenture, including, without limitation, taking title to any or all of the Base, is essential to achieving the foregoing goals and is in the public interest.

The public trust created by this Indenture shall prepare or cause to be prepared a comprehensive study of all issues related to the closure and redevelopment of the Base, shall prepare or cause to be prepared a comprehensive conversion and redevelopment plan for the Base, shall in conformity with such plan accept title from the United States of America to any and all real and personal property and improvements included in the Base, shall investigate and obtain all assistance available from the United States government and all other sources, and shall utilize such property and such assistance to replace and enhance the economic benefits generated by the Base with diversified activities, including, but not limited to, activities which will foster creation of new jobs, economic development, industry, commerce, aviation, and transportation within the affected communities.

Such activities are in the public interest and serve a public purpose and can best be accomplished by the creation of a public trust vested with the powers and duties specified in this Indenture.

1.6. The Settlor has heretofore paid or incurred various costs and expenses in connection with the establishment of this Trust and matters related thereto each of which constitute a "Cost" as defined herein. The Trustees are hereby authorized to reimburse the Settlor or pay for such costs directly upon an itemization thereof immediately upon availability of funding.

## ARTICLE II

### NAME

2.1. The name of this Trust shall be, and the Trustees thereof in their collective fiduciary capacity shall be designated as,

FORT CHAFFEE REDEVELOPMENT AUTHORITY

(hereinafter referred to as the "Authority"). Under that name, the Trustees shall, so far as practicable, conduct all business and execute all instruments in writing, and otherwise perform their duties and functions, in execution of this Trust as created, established, and constituted by this Indenture.

## ARTICLE III

### DEFINITIONS

3.1. When used in this Indenture, unless the context requires a different meaning, the following terms shall have the following meanings:

"Act" means Title 28, Chapter 72, Subchapter 2 of the Arkansas Code of 1987 Annotated, as amended and enacted from time to time.

"Authority" or "Trust" means the Fort Chaffee Redevelopment Authority created by this Indenture and any successor to its functions.

"Base" means all land, easements, buildings, improvements, structures, appurtenances, and rights relating thereto, as well as all personal property (including contract rights and other general intangibles) comprising or related to the installation known as Fort Chaffee Military Base, owned or controlled by the United States Department of Defense in the municipalities of Fort Smith and Barling, Sebastian County, and Crawford County, Arkansas and which the said Department of Defense has indicated its desire to abandon or dispose of.

"Beneficiary" shall be deemed to be a collective reference, even though made in the singular tense, to Sebastian County, Arkansas, the City of Barling, the City of Fort Smith, and the City of Greenwood.

"Board" means the Board of Trustees established in Section 7.1 hereof.

"Bonds" means bonds, notes, interim certificates, bond anticipation notes, or other evidences of indebtedness of the Authority, issued pursuant to this Trust and the Act, including refunding bonds.

"Cost" as applied to the activities authorized by this Indenture means and includes any and all costs of such activities and, without limiting the generality of the foregoing, shall include the following:

- (i) all costs and expenses associated with the acquisition, construction, reconstruction, repair, restoration, reconditioning, refinancing, or installation of any Property and all costs or expenses incident or related thereto;
- (ii) the cost of any and all architectural, engineering, legal and related services; the cost of the preparation of plans, specifications, studies, surveys and estimates of cost and of revenue; and all other expenses necessary or incident to planning, providing or determining the need for or the feasibility and practicability of such activities;
- (iii) the cost of financing charges, including premiums or prepayment penalties, if any, and interest accrued prior to the acquisition, construction and installation, or refinancing of such activities and for a maximum of two years after such acquisition, construction and installation, or refinancing and start-up costs related to such activities;
- (iv) any and all costs paid or incurred in connection with the financing of any Property, including out-of-pocket expenses, the cost of financing, legal, accounting, financial advisory, and consulting fees, expenses and disbursements; the cost of any policy of insurance; the cost of printing, engraving and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent; and
- (v) all direct or indirect costs and expenses of the Authority, incurred in connection with providing such activities, including, without limitation, reasonable sums to reimburse the Authority for time spent by its agents or employees with respect to such activities and the financing thereof.

"County" means Sebastian County, Arkansas.

"Ex-officio Member" or "Ex-officio Members" shall mean the Mayor of Barling, the Mayor of Fort Smith, and the Sebastian County Judge, or their designee(s).

"Property" means all real property, all tangible and intangible personal property, and any and all rights related thereto, including, but not limited to, all facilities comprising or relating to the Base or otherwise belonging to the Authority and any real or personal property conveyed, assigned, or transferred to the Authority, and any and all general intangibles, development rights and/or contract rights associated therewith.

"Revenues" means the gifts, contributions, and appropriations from any source and the rents, profits, fees, charges, receipts, and other income derived or to be derived by the Authority from the purchase, sale, leasing, or development of the Base or the Property and the operation of related facilities located thereon and all rights to receive the same, including investment earnings and the proceeds of any borrowing hereunder or of any sale or disposition or insurance on any Property of the Authority.

"State" means the State of Arkansas.

The use of a singular term herein shall also include the plural of such term and the use of a plural term herein shall also include the singular of such term unless the context clearly requires a different connotation.

## ARTICLE IV

### PURPOSES AND POWERS

4.1. The purposes and powers of the Authority shall be to implement the public purposes set forth in Section 1.4 and exercise the following purposes and powers in the public interest:

- (a) Adopt, amend, and repeal bylaws regulating the governance and conduct of the Board and this Authority so as to regulate its affairs and to carry into effect the powers and purposes of the Authority concerning the conduct of its business;
- (b) Adopt, amend, and repeal rules and regulations, restrictive covenants, land use regulations and restrictions, development and use of signage and advertising on the Property, and development and use regulations for the Property not inconsistent with this Indenture or the Act;
- (c) Sue and be sued in its own name;
- (d) Have an official seal and alter it at will;

- (e) Maintain an office at such place or places within the State as it may designate;
- (f) Make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this Indenture and the Act;
- (g) Employ attorneys, accountants, engineers, land use planners, architects, and financial experts, and such other advisors, consultants, and agents, with or without bidding, as may be necessary in its judgment, and to fix their compensation;
- (h) Procure insurance against any loss in connection with its Property and other assets as well as insurance to protect and indemnify the Trustees in connection with their actions on behalf of the Authority, with or without bidding, in such amounts and from such insurers as it may deem advisable, including the power to pay premiums on any such insurance;
- (i) Receive and accept, from any source, aid or contributions of money, property, labor, or other things of value to be held, used and applied to carry out the purposes of this Indenture and the Act subject to the conditions upon which the grants or contributions are made, including but not limited to gifts or grants from any department, agency, or instrumentality of the United States of America, the State, or any political subdivision of the State for any purpose consistent with the provisions of this Indenture and the Act;
- (j) To lease as lessor any item of Property for such rentals and upon such terms and conditions as the Authority may deem advisable, at public or private sale, with or without bidding, and as are not in conflict with the provisions of this Indenture and the Act;
- (k) To sell any item of Property, at public or private sale, with or without bidding, and to convey all or any part of any item of Property for such price and upon such terms and conditions as the Authority may deem advisable and as are not in conflict with the provisions of this Indenture and the Act;
- (l) To make contracts and incur liabilities, borrow money at such rates of interest as the Authority may determine, issue its Bonds in accordance with the provisions of this Indenture and the Act, and secure any of its bonds or obligations by mortgage or pledge of all or any of its property, franchises, and income or as otherwise provided in this Indenture and the Act;



- (m) To invest and reinvest its funds and to take and hold property as security for the investment of such funds as provided in this Indenture and the Act;
- (n) To purchase, receive, lease (as lessee or lessor), or otherwise acquire, own, hold, develop, subdivide, improve, use, or otherwise deal in and with, any and all Property or any interest(s) therein, wherever situated, as the purposes of the Authority shall require;
- (o) To sell, develop, subdivide, convey, mortgage, pledge, assign, lease, exchange, transfer, and otherwise dispose of all or any part of its Property or proceeds therefrom, whether at public or private sale, and with or without bidding, notwithstanding any other provision or term in this Indenture which may appear to be to the contrary;
- (p) To the extent permitted under its contract with the holders of Bonds of the Authority, consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease, or agreement of any kind to which the Authority is a party;
- (q) To invest any funds not needed for immediate disbursement, including any funds held in reserve, in such obligations, investments, and banking arrangements as may be authorized by the Trustees;
- (r) To collect fees and charges, as the Authority determines to be reasonable, in connection with the operation, use, or development of any Property;
- (s) To cooperate with and exchange services, personnel and information with any Federal, State, or local government agency; and
- (t) To do any act necessary or convenient to the exercise of the powers granted by this Indenture or the Act.

This Indenture shall be given a liberal construction with regard to effectuating such powers and accomplishing the purposes hereof.

4.2. The Authority is hereby authorized to issue, sell, and deliver its Bonds, in accordance with the terms of this Indenture and the Act, for the purpose of financing or refinancing of all or any part of the Cost of the activities authorized hereby or any other purposes authorized by this Indenture.

4.3. Bonds issued by the Authority shall be dated, shall bear interest at such rate or rates (fixed, adjustable, or variable), shall mature at such time or times not exceeding 40 years from their date, and may be made redeemable prior to maturity at such price

or prices and upon such terms and conditions as may be determined by the Authority. The Bonds shall be in such form and denomination or denominations and payable at such place or places, and may be executed or authenticated in such manner, as the Authority may determine. In cases in which any Trustee whose signature or a facsimile of whose signature shall appear on any Bonds shall cease to be such Trustee before the delivery of and payment for such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if such Trustee had remained in office until such delivery and payment. The Bonds shall be issued in fully registered form.

The principal of, redemption premium, if any, and interest on such Bonds shall be payable solely from and may be secured by a pledge of all or any part of the proceeds of Bonds, Revenues derived from operating the Base or any part thereof, or from one or more letters of credit or other banking arrangements, or from insurance obtained in respect of any such Bonds, any one or more.

The Authority may sell the Bonds at such price or prices as it shall determine, at public or private sale.

4.4. The proceeds of the Bonds of each issue shall be used for the payment of all or part of the Cost of the Property for which such bonds have been authorized and, at the option of the Authority, for deposit in a reserve fund or sinking fund for the Bonds. Bond proceeds shall be disbursed in such manner and under such restrictions as may be determined by the Authority.

4.5. The Bonds may be secured by a trust indenture by and between the Authority and a corporate trustee which may be any bank or other entity having trust powers, located within or without the State. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the exercise of its powers and the custody, safekeeping, and application of all money. The Authority may provide in the trust indenture for the payment of the proceeds of the Bonds and the revenue to the trustee under the trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as the Authority may determine.

4.6. Any bond resolution or related trust agreement, trust indenture, indenture of mortgage, or deed of trust may contain provisions, which shall be a part of the contract with the holders of the Bonds to be authorized, as to: (i) pledging or assigning all or part of the Revenues of the Authority; (ii) the rentals, fees, interest, and other amounts to be charged by the Authority, the schedule of principal payments and the sums to be raised in each year thereby, and the use, investment, and disposition of such sums; (iii) setting aside any reserves or sinking funds, and the regulation, investment, and disposition thereof; (iv) limitations on the purpose to which or the investments in which

the proceeds of sale of any issue of Bonds then or thereafter to be issued may be applied; (v) limitations on the issuance of additional Bonds, the terms upon which additional Bonds may be issued and secured and the terms upon which additional Bonds may rank on a parity with, or be subordinate or superior to, other Bonds; (vi) the refunding of outstanding Bonds; (vii) the procedure, if any, by which the terms of any contract with bondholders may be amended, the amounts of bonds the holders of which must consent thereto, the manner in which such consent may be given and restrictions on the individual rights of action by bondholders; (viii) acts or omissions which shall constitute a default in the duties of the Authority to holders of its bonds and providing the rights and remedies of such holders in the event of default; and (ix) any other matters relating to the Bonds which the Authority deems desirable.

4.7. Except as may otherwise be expressly provided by the Authority, every issue of its Bonds shall be special obligations only of the Authority payable solely out of any Revenues of the Authority, subject only to any agreements with the holders of particular Bonds pledging any particular revenues. The Bonds may be additionally secured by a pledge of any grant, contribution, or guarantee from the Federal government or any corporation, association, institution, or person or a pledge of any money, income, or revenue of the Authority from any source.

4.8. No Bonds issued by the Authority under this Indenture and the Act shall ever constitute a debt, general or special, liability, or moral or other obligation of any Beneficiary within the meaning of any constitution or statutory limitation whatsoever, or a pledge of the faith and credit of any Beneficiary, or of any Beneficiary's revenues, but shall be payable solely as provided by Section 4.7 of this Indenture. Each Bond issued under this Indenture and the Act shall contain on the face thereof a statement that neither the faith and credit nor the taxing power, nor any revenues of the State, or any political subdivision thereof, is pledged to the payment of the principal of or the interest on such Bond. No Trustee shall ever be personally liable on the Bonds or on any contracts whatsoever of the Authority unless it shall be shown that such Trustee has acted with a corrupt intent.

4.9. Any pledge made by the Authority shall be valid and binding from the time when the pledge is made. The revenue, money, or properties so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority, irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

4.10. Each Beneficiary does hereby pledge to and agree with the holder of any Bonds issued under this Indenture, by their acceptance of the beneficial interest under this Indenture, that they will not limit or alter the rights vested in the Authority to fulfill the terms of any agreements made with the holders thereof or in any way impair the rights

or remedies of the holders until the Bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The Authority is authorized to include this pledge and agreement of each Beneficiary in any agreement with the holders of the Bonds.

4.11. All expenses incurred by the Authority in carrying out the provisions of this Indenture shall be payable solely from funds provided under this Indenture, and the Authority shall never incur any indebtedness or liability whatsoever on behalf of or payable by the State or any political subdivision of it.

4.12. The Authority shall, following the close of each fiscal year, submit an annual report of its programs and activities for the preceding year to the Mayors of the Cities of Fort Smith, Barling, and Greenwood, to the County Judge of Sebastian County, and to the Governor and the Secretary of State of the State. Each annual report shall set forth a complete operating and financial statement for the Authority's general funds during the fiscal year it covers. Upon the prior written request of any Beneficiary or the Governor of the State, such annual report shall be prepared by an independent auditor who shall be appointed or approved by the Board.

4.13. The Authority is not created or organized for profit, and furthermore, no part of the net earnings derived from the operation of the Authority shall inure to the benefit of any private person.

## ARTICLE V

### DURATION OF TRUST

5.1. The Authority and its existence shall continue:

- (a) until such time as each Beneficiary ceases to exist; or
- (b) until such time as the purposes set forth in Article IV hereof shall have been fully executed and fulfilled, and no Bonds of the Authority shall be then outstanding; or
- (c) until it shall be terminated as provided in Article X hereof, whichever shall first occur.

## ARTICLE VI

### THE TRUST ESTATE

6.1. The Trust Estate shall consist of the Property as well as:

- (a) The funds and property presently in the hands of the Trustees donated for the Authority's purposes by the Settlor or any other entity, or to be acquired by the Trustees and dedicated by the Settlor and others to be used for the Authority's purposes; and
- (b) Any and all money, property (real, personal, movable, immovable, tangible, intangible, and/or mixed), rights, choses in action, contracts, leases, privileges, immunities, licenses, franchises, benefits, mortgages, bonds, notes, proceeds, and all other things of value coming into the possession of the Trustees pursuant to the provisions of this Indenture.

6.2. The instruments executed for the issuance of the Authority's bonds, notes, or other evidences of indebtedness, may set out the specific property of the Trust Estate exclusively pledged and mortgaged for the payment of such indebtedness.

## ARTICLE VII

### THE TRUSTEES

7.1. The affairs of the Authority shall be conducted by a Board of Trustees consisting of nine (9) Trustees who shall be residents of the State. In addition, the Sebastian County Judge, the Mayor of Barling, and the Mayor of Fort Smith, or their designee(s) shall serve as ex-officio, non-voting members of the Board. Each Trustee, except for the initial trustees set forth and named in Section 7.2, shall serve for a term of five (5) years. The initial Trustees shall serve staggered terms in accordance with the dates set forth in Section 7.2. The Trustees serving in positions 2, 3, 4, 5, 6, 7, 8 and 9, as set forth below shall also be residents of the County. Not less than one Trustee, preferably position 1, shall be a person who is employed by a State agency involved with encouraging economic development in the State of Arkansas, which person shall serve as Trustee so long as he or she holds such State position.

7.2. The initial Trustees shall be the nine (9) persons undersigned. Each such Trustee shall serve in the position and for a term commencing on the date on which he or she qualified as a Trustee hereunder in accordance with the provisions of Section 7.12 hereof and ending at 12:01 A.M. on the dates specified below. A Trustee may be reappointed to serve for full successive terms following expiration of the term set forth next to his or her name. The Trustees shall fill all vacancies which may occur, including

position 1, by a majority vote of the then remaining Trustees, with the concurrence of the Sebastian County Quorum Court. The initial Trustees and their terms shall be as follows:

<u>Position</u>	<u>Name</u>	<u>Term Ends</u>
1	Jane English	January 1, 1999
2	Jack White	January 1, 1999
3	R. Kent Blochberger	January 1, 2000
4	Robert E. Miller	January 1, 2000
5	Kay Harrison	January 1, 2001
6	Ernest R. Coleman, Sr.	January 1, 2001
7	Ken Colley	January 1, 2002
8	Craig Smith	January 1, 2002
9	Linda Hobbs	January 1, 2002

7.3. At the end of the term of a Trustee, including position 1, a successor Trustee shall be appointed by the majority vote of the then remaining Trustees. Each successor in office shall become a Trustee of this Authority and become fully vested with all the estate, properties, rights, powers, duties, and obligations of his or her predecessor hereunder with like effect as if originally named as a Trustee herein. A Trustee shall continue in office until his or her successor has been duly appointed and qualified, and the Sebastian County Quorum Court has concurred in such appointment. A Trustee shall be eligible for reappointment for additional terms.

7.4. As soon as practicable after any vacancy in the membership of the Board occurs by reason of any Trustee of the Authority resigning, dying, being removed from office, becoming incapable of acting as Trustee, no longer meeting the qualifications to serve in position 1, or otherwise, a successor to such Trustee shall be appointed, in the manner set forth in Section 7.3 above, to serve for the remainder of his or her predecessor's term of office.

7.5. Any Trustee who (i) misses more than one half of the Board's meetings, regular and special, in any calendar year (or, in the case of a partial year, computed from the date on which he or she qualified as a Trustee hereunder in accordance with the

provisions of Section 7.12 hereof), or (ii) is convicted in a court of law of a felony, or (iii) removes his or her residence from the County, except for position 1. In the case of a vacancy due to the absenteeism of a Trustee, the position of such Trustee shall be declared vacant as of the first day of the next succeeding year; provided, however, the position of any Ex-officio member shall not be declared vacant by reason of absenteeism. In the case of a vacancy due to the felony conviction of a Trustee, the position of such Trustee shall be vacant as of the date of such conviction, disregarding any subsequent appeal thereof to a higher court. In the case of a vacancy due to the removal of residence, the position of such Trustee shall be vacant as of the date of such removal by the then remaining Trustees.

7.6. The Trustees are authorized to contract, in connection with the incurrence of any indebtedness secured by the Trust Estate, by the Revenues or Property of the Authority, or by any part of either or both, that in the event of a default in the fulfillment of any contract obligation undertaken on behalf of the Authority or in the payment of any indebtedness incurred on behalf of the Authority, a receiver shall be appointed to succeed to the rights, powers and duties of the Trustees then in office. Any such contract shall set forth the terms and conditions under which such Receiver shall be appointed, shall operate the Authority and shall be compensated, and under the appointment of such Receiver shall be vacated and the Trustees reinstated.

7.7. The Trustees shall organize themselves so as to carry out their duties under this Indenture and to fulfill the purposes of the Authority. Accordingly, the Trustees are authorized to take the following actions:

- (a) Elect one of their number to be Chairman, who shall preside at all meetings and perform other duties designated by the Trustees;
- (b) Elect one of their number to be Vice Chairman, who shall act in the place of the Chairman during the latter's absence or incapacity to act;
- (c) Elect one of their number to be Secretary-Treasurer, who shall keep or cause to be kept minutes of all meetings of the Trustees and shall maintain or cause to be maintained complete and accurate records of all of their financial transactions and all such minutes, books and records shall be kept on file in the office of the Authority;
- (d) Appoint or reappoint an executive director who shall not be a member of the Trustees and who shall serve at the pleasure of the Trustees and receive such compensation as shall be fixed by the Trustees; and
- (e) Appoint or employ such other officers, agents, consultants, professionals, and employees as they may deem advisable.

The Trustees may adopt bylaws and other rules from time to time by a majority vote of the Trustees to govern the date and time of elections of officers and such other procedures as they deem necessary to govern their meetings and deliberations.

7.8. The Trustees shall not be charged personally with any liability whatsoever by reason of any act or omission committed or suffered in good faith by any Trustee or agent, officer, or employee of the Authority, or in the exercise of their honest discretion in the performance of their duties hereunder or in the operation of the Trust Estate; but any act or liability for any omission or obligation of any Trustee or any agent, officer or employee of the Authority in the performance of their duties hereunder, or in the operation of the Trust Estate, shall extend to the whole of the Trust Estate or so much thereof as may be necessary to discharge such liability or obligation.

7.9. Notwithstanding any other provisions of this Indenture which may appear to provide otherwise, no Trustee acting individually shall have the power or authority to bind or obligate the Authority or any individual Trustee.

7.10. All instruments creating legal rights and duties shall be executed in the name of the Authority by its Chairman or Vice Chairman and attested by its Secretary-Treasurer or Assistant Secretary, with the seal of the Authority affixed thereto. It shall not be necessary for all Trustees to execute such instrument, even though their names, as Trustees, may appear therein.

7.11. The Trustees shall serve without compensation, except for reimbursement for travel and other direct expenses incurred in the course of official business of the Authority or in the performance of their duties as Trustees, which reimbursement shall be approved by the Board.

7.12. All Trustees shall be deemed to have qualified to serve as Trustees of the Authority and to have accepted all of the terms of this Indenture by their execution of this Indenture. In the case of successor Trustees, they shall be deemed to have qualified to serve as Trustees of the Authority and to have accepted all of the terms of this Indenture by their written acceptance thereof, duly acknowledged, and filed in the permanent records of the Authority.

7.13. All Trustees shall be considered to be public appointees as that term is defined under Ark. Code Ann. 21-8-402, and all Trustees shall be governed by the provisions of Chapter 8 of Section 21 of the Arkansas Code entitled "Ethics and Conflicts of Interest" as if the said Trustees were public officials; provided, however, the Trustees shall be required to file financial disclosure statements with the Sebastian County Clerk.

7.14. The Trustees may appoint an administrator for the Trust Estate, or managers for any position thereof, and may employ such other clerical, professional, legal, and technical assistance as may be deemed necessary in the discretion of the Trustees to



properly operate the business of the Authority, and may fix their duties, terms of employment, and compensation. In the event an administrator for the Authority is appointed by the Trustees, the administrator shall administer the business of the Authority as directed from time to time by the Trustees.

7.15. A majority of the Trustees qualified and serving under this Indenture at any time shall constitute a quorum at any meeting. Action may be taken and resolutions adopted by the Trustees at any meeting thereof by the affirmative vote of a majority of such quorum. Trustees may communicate by telephone or other means in respect of any such action. No vacancy in membership of the Trustees shall impair the right of a quorum of the Trustees to exercise all of the powers and perform all of the duties of the Authority.

7.16. Special meetings of the Trustees may be called by the Chairman or Vice-Chairman, or by request of two or more Trustees. Each Trustee shall be given not less than forty-eight (48) hours notice of such special meeting, whether in person or by other means. Any Trustee may waive such notice by entry of such waiver into the minutes of the meeting. A majority of the then serving Trustees shall constitute a quorum for purposes of transacting business at any special or regular meeting of the Trustees.

7.17. The Trustees are further authorized to exercise any and all powers necessary to implement the purposes and powers of the Authority as set out in Article IV hereof and to effectuate the intent of this Trust.

## ARTICLE VIII

### BENEFICIARY OF TRUST

8.1. The term "Beneficiary" shall be deemed to mean Sebastian County, Arkansas, the City of Barling, the City of Fort Smith, and the City of Greenwood, collectively. To the extent distributions are made to the above-referenced beneficiaries from time to time or following termination of this Trust in accordance with Article IX, each distribution (whether final or otherwise) shall be made by the Board to each Beneficiary in such proportions or amounts as the beneficiaries shall then agree on and designate to the Board. Notwithstanding the foregoing, each Beneficiary acknowledges by executing the acceptance of beneficial interest set out at the conclusion of this Indenture that there is no assurance or certainty that there will be assets or other property of the Trust Estate to distribute to a Beneficiary or from which to make distributions.

8.2. A Beneficiary shall have no legal title, claim, or right to the Trust Estate, its income, or to any part hereof, or to demand or to require any partition or distribution thereof. Neither shall any Beneficiary have any authority, power, or right whatsoever, to do or transact any business for, or on behalf of, or binding upon the Trustees or upon

the Authority or the Property, nor the right to control or direct the actions of the Trustees. Each Beneficiary shall be entitled solely to the benefits of this Trust, as administered by the Trustees hereunder; and at the termination of the Trust, as provided hereinafter, and then only, each Beneficiary shall receive only the residue of the Property of the Authority to which it is entitled.

8.3. The acceptances of the beneficial interests in this Trust by the County Judge of the County on behalf of the County and the mayors of Barling, Fort Smith, and Greenwood are made pursuant to the express powers granted by the Act. Neither the acceptance of such beneficial interest, nor any other act whatsoever by any Beneficiary, shall ever be deemed to create any liability or responsibility of any type of any Beneficiary for the payment of principal of or interest on any bonds of the Authority, or for the performance of any pledge, mortgage, obligation, or agreement of any contracts and other instruments executed by the Authority wherein it is the obligor shall include a specific recital to such effect. In conformity with Section 28-72-201 of the Act, no funds of the Beneficiary (derived other than from this Trust) shall be charged with or expended in the execution of such Trust except by express lawful action of the Beneficiary.

## ARTICLE IX

### AMENDMENT

9.1. This Indenture may be altered, amended, revised, or modified in any particular hereafter, pursuant to the Act and by the joint action of the Settlor, Trustees and each Beneficiary, subject to any agreements with any bondholders or noteholders of the Authority; provided, however that this Indenture shall not be subject to alteration, amendment, revision, or modification from and after the date of any indebtedness is incurred by the Trustees if such change or changes would adversely affect the security of said outstanding indebtedness.

## ARTICLE X

### TERMINATION OF TRUST

10.1. This Trust shall be irrevocable by the Settlor and shall terminate:

- (a) Upon the occurrence of an event set forth in Article V of this Indenture; or
- (b) When the purposes set forth in Article IV of this Indenture shall have been fully executed and fulfilled; or

- (c) In the event of the happening of any event or circumstances that would prevent said purposes from being executed and fulfilled and all of the Trustees and the Governor of the State shall agree that such event or circumstance has taken place; or
- (d) In the event an agency of the State duly agrees to fulfill the purposes hereof, or a regional agency has been duly created under State law for the purpose of fulfilling the purposes hereof, and all of the Trustees, the Settlor, and each Beneficiary shall agree; or
- (e) In the manner provided by the Act;

provided, however, that this Trust shall not be terminated by voluntary action if there be outstanding funded indebtedness or obligations of the Trust unless all owners of such indebtedness or obligations, or one authorized by them so to do, shall have consented in writing to such termination.

10.2. Upon the termination of this Trust, the Trustees shall proceed to wind up the affairs of the Authority, and after payment of all debts and obligations out of the Trust Estate, to the extent thereof, shall distribute the residue of the Trust Estate to the Beneficiary hereunder; provided, however, that upon the termination of this Trust pursuant to paragraph (d) of Section 10.1 hereof, the residue of the Trust Estate shall be transferred to the State or regional agency referred to therein. Upon the final distribution as aforesaid, the powers, duties, and authority of the Trustees hereunder shall cease.

## ARTICLE XI

### MISCELLANEOUS

11.1. All records and proceedings of the Authority shall be subject to the Freedom of Information Act of 1967 (Title 25, Chapter 19 of the Arkansas Code of 1987 Annotated).

11.2. The invalidity or ineffectiveness for any reason of any one or more words, phrases, clauses, sentences, paragraphs, sub-sections, or sections shall not affect the remaining portions thereof which may be given effect without such invalid or ineffective provisions. Any such invalid or ineffective portion was inserted conditionally upon it being valid and effective and this Indenture shall be construed as if such invalid or ineffective portion had not been inserted herein.

11.3. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Indenture.

11.4. This Indenture shall be governed exclusively by the applicable laws of the State, including specifically the Act.

**[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.]**

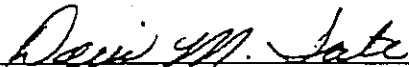
IN WITNESS WHEREOF, the Settlor and the Trustees have hereunto set their hands executing this instrument in multiple originals, each of which is one and the same instrument as the others, and deem the same to be effective as of the date the same is signed by Sebastian County, Arkansas as Settlor.

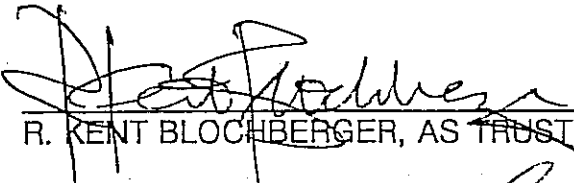
Date: February 19, 1997

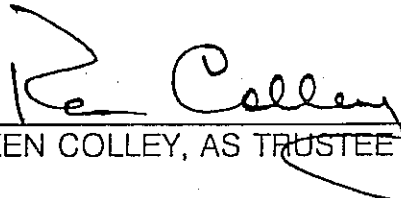
SEBASTIAN COUNTY, ARKANSAS  
AS SETTLOR

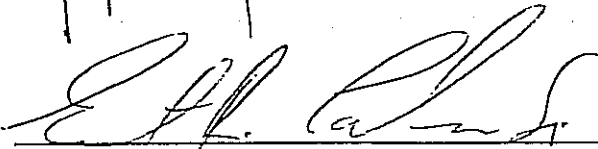
By:   
County Judge

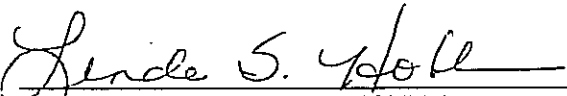
Attest:


  
Sebastian County Clerk

  
R. KENT BLOCHBERGER, AS TRUSTEE


  
KEN COLLEY, AS TRUSTEE


  
ERNEST R. COLEMAN, SR., AS TRUSTEE

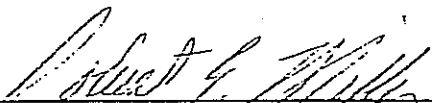
  
LINDA HOBBS, AS TRUSTEE

  
JANE ENGLISH, AS TRUSTEE

  
JACK WHITE, AS TRUSTEE

  
KAY HARRISON, AS TRUSTEE

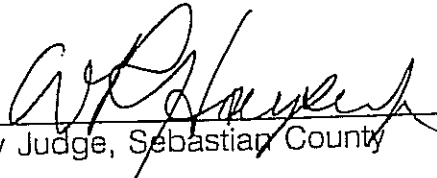
  
CRAIG SMITH, D.V.M., AS TRUSTEE

  
ROBERT E. MILLER, AS TRUSTEE

ACCEPTANCE OF BENEFICIAL INTEREST

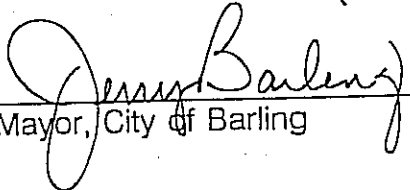
The beneficial interest in this Trust, as designated in Section 8.1, is hereby accepted on behalf of Sebastian County, Arkansas by virtue of my authority as Sebastian County, Judge, pursuant to the Constitution and laws of the State, including, without limitation, Section 28-72-202 of the Act.

Date: May 20, 1997.

  
\_\_\_\_\_  
County Judge, Sebastian County

The beneficial interest in this Trust, as designated in Section 8.1, is hereby accepted on behalf of the City of Barling, Arkansas by virtue of my authority as Mayor, pursuant to the Constitution and laws of the State, including, without limitation, Section 28-72-202 of the Act.

Date: March 25, 1997.

  
\_\_\_\_\_  
Mayor, City of Barling

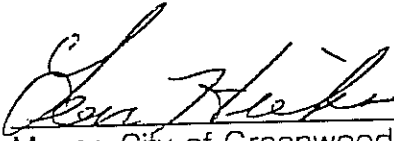
The beneficial interest in this Trust, as designated in Section 8.1, is hereby accepted on behalf of the City of Fort Smith, Arkansas by virtue of my authority as Mayor, pursuant to the Constitution and laws of the State, including, without limitation, Section 28-72-202 of the Act.

Date: April 15, 1997.

  
\_\_\_\_\_  
Mayor, City of Fort Smith

The beneficial interest in this Trust, as designated in Section 8.1, is hereby accepted on behalf of the City of Greenwood, Arkansas by virtue of my authority as Mayor, pursuant to the Constitution and laws of the State, including, without limitation, Section 28-72-202 of the Act.

Date: April 7, 1997.

  
\_\_\_\_\_  
Mayor, City of Greenwood