

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO AUTHORIZE THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY; TO AUTHORIZE THE SALE OF THE BONDS AND THE APPROVAL OF A BOND PURCHASE AGREEMENT AND PAYMENT IN LIEU OF TAXES AGREEMENTS IN CONNECTION THEREWITH; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE BONDS; TO AUTHORIZE AND PRESCRIBE CERTAIN MATTERS PERTAINING TO THE PROJECT, THE ACQUISITION, CONSTRUCTION, AND EQUIPPING THEREOF, AND THE FINANCING THEREOF; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT RELATING TO THE PROJECT; TO DECLARE AND EMERGENCY; AND FOR OTHER PURPOSES.**

**WHEREAS,** Jefferson County, Arkansas (the "County") 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**, Highland Pellets, LLC (“Highland” or the “Company”) has evidenced its interest in acquiring, constructing, and equipping an industrial facility in the County if permanent financing can be provided through the issuance of bonds under the authority of the Act; and

**WHEREAS**, as first evidenced by Resolution No. 2018-97 adopted by the Jefferson County Quorum Court on December 10, 2018, the County has agreed to cooperate with the Company in the acquisition, construction, and equipping of an industrial facility in the County and to finance the acquisition of land and/or leasehold rights, construction of buildings, infrastructure and improvements, and acquisition and installation of equipment for the manufacture, preparation, processing, packaging and storage of sustainable wood pellets to be located at 5601 Industrial Drive North, Pine Bluff, AR 71602 in Jefferson County, Arkansas (the “Project”) relating to the operations of the Company; 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 County will issue its taxable industrial development revenue bonds, in one or more series, under the provisions of the Act designated “Jefferson County, Arkansas Taxable Industrial Development Revenue Bonds (Highland Pellets Project), Series 20\_\_,” in the principal amount of not to exceed \$300,000,000.00 (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 County and a trustee (the “Trustee”) to be selected upon the mutual agreement of the County and the Company; and

**WHEREAS**, the County and Highland intend to enter into a Lease Agreement (the "Lease Agreement") relating to the Project including personal property, real property, leasehold interests, infrastructure and improvements, which contemplates that the Project will be leased to Highland, 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 County to proceed with the issuance of the Bonds for the purpose indicated, which will inure to the benefit of Highland, the County and Highland will enter into a Payment in Lieu of Taxes Agreement (the "PILOT Agreement") in substantially the form presented at this meeting; and

**WHEREAS**, the County and the Company caused a form of a notice of public hearing to be published on January 30, 2020; and

**WHEREAS**, an open public hearing on the question of the issuance of the Bonds was held before representatives of the Quorum Court on February 10, 2020 and having heard all persons desiring to be heard in the matter, the County has taken under advisement the comments and statements of such persons, and declared the public hearing duly closed; and

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

**WHEREAS**, Highland obtained 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;

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

**WHEREAS**, the completion of the Project will maintain existing employment opportunities and/or furnish additional employment and other benefits to and be in the best interest of the County and its residents.

**NOW, THEREFORE, BE IT ORDAINED BY THE QUORUM COURT OF JEFFERSON COUNTY, ARKANSAS:**

**Section 1.** 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 \$300,000,000.00, 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 County Judge and County Clerk on behalf of the County, 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. Executed copies of the PILOT Agreement shall be filed in the County Clerk's office.

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

**Section 2.** The issuance of the Bonds in the total principal amount of not to exceed \$300,000,000.00 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.

That to further prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the County Judge is hereby authorized and directed (when requested to do so by Highland) to execute and acknowledge the Trust Indenture, and the County Clerk is hereby authorized and directed to execute and acknowledge the Trust Indenture and to affix the seal of the County thereto, and the County Judge and County 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 a copy of such Trust Indenture is on file with the County Clerk and available for inspection by any interested person), and the County Judge 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 3.** There be, and there is hereby, authorized and directed the execution and delivery of the Lease Agreement, and the County Judge and County Clerk are hereby authorized to execute, acknowledge, and deliver the Lease Agreement for and on behalf of the County. The Lease Agreement are hereby approved in substantially the forms submitted to this meeting (and a copy of such Lease Agreement is on file with the County Clerk and available for inspection by any interested person), and the County Judge is hereby authorized to confer with Highland, 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 4.** There be, and there is hereby, authorized and directed the execution and delivery of the Bond Purchase Agreement, and the County Judge and County Clerk are hereby authorized to execute, acknowledge, and deliver the Bond Purchase Agreement for and on behalf of the County. The Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Bond Purchase Agreement is on file with the County Clerk and available for inspection by any interested person), and the County Judge 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 5.** There be, and there is hereby, authorized and directed the execution and delivery of one or more RNA Agreements if Highland determines that such agreements are required by its lenders. The County Judge and County Clerk are hereby authorized to execute, acknowledge, and deliver the RNA Agreement for and on behalf of the County. The RNA

Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such RNA Agreement is on file with the County Clerk and available for inspection by any interested person), and the County Judge is hereby authorized to confer with Highland and lenders of Highland (or such lenders' agents) in order to complete the RNA Agreements 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.** The County Judge and County Clerk, for and on behalf of the County, 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 County's obligations under the Lease Agreement, (iii) the execution and delivery of the Trust Indenture, (v) the performance of all obligations of the County under and pursuant to the Trust Indenture, (vi) the execution and delivery of the Bonds, (vii) the execution and delivery of the PILOT Agreement, (viii) the performance of the County's obligations under the PILOT Agreement, (ix) the execution and delivery of the Bond Purchase Agreement, (x) the performance of the County's obligations under the Bond Purchase Agreement, (xi) the execution and delivery of RNA Agreements, (xii) the performance of the County's obligations under the RNA Agreements, and (xiii) the performance of all other acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The County Judge and the County Clerk are further authorized and directed, for and on behalf of the County, 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 of one or more Home Office Payment Agreements, Memorandums of Lease, Delivery Instructions, modifications, amendments and supplements to the documents authorized in this Ordinance pursuant to the terms of such documents, and other closing certificates.

**Section 7.** The Project involves the acquisition, constructing, and equipping of a complex industrial 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 Quorum Court that competitive bidding be, and the same is hereby, waived as to this particular industrial project. This action is taken by the Quorum Court pursuant to applicable laws of the State of Arkansas, including particularly the Act.

**Section 8.** All actions heretofore taken by the County, Highland, 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 9. *Severability.*** 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 10. *Repealer.*** All ordinances or resolutions of the County in conflict herewith are hereby repealed to the extent of such conflict.

**Section 11.** There is hereby found and declared to be an immediate need for the securing and developing of substantial industrial operations in order to provide additional employment, alleviate unemployment, and otherwise benefit the public health, safety, and welfare of the County and the inhabitants thereof, and the issuance of the Bonds authorized



hereby and the taking of the other action authorized herein are immediately necessary in connection with the securing and developing of substantial industrial operations and deriving the public benefits referred to above. It is therefore, declared that an emergency exists and this Ordinance, being necessary for the immediate preservation of the public health, safety, and welfare, shall be in force and take effect immediately upon and after its passage.

**PASSED: February 10, 2020**

**ATTEST:**

**APPROVED:**

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**Shawndra Taggart, County Clerk**

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**Gerald Robinson, County Judge**