IN THE SUPERIOR COURT OF MORGAN COUNTY
STATE OF GEORGIA

STATE OF GEORGIA, Plaintiff, v. JOINT DEVELOPMENT AUTHORITY OF JASPER COUNTY, MORGAN COUNTY, NEWTON COUNTY AND WALTON COUNTY and RIVIAN HORIZON, LLC Defendants.	)	CIVIL ACTION FILE NO. 2022-SU-CA-128 BOND VALIDATION

PROPOSED INTERVENORS
BRIEF IN OPPOSITION TO BOND VALIDATION

COME NOW, Jeffrey v. McKenzie, Neal S. Fitzgerald, Virginia McFaddin, Jennifer V. DeRoche, Valle S. Ashley, JoEllen Artz and Richard Haynes ("Intervenors"), and in support of their Objection to Plaintiff's Bond Validation, show the Court as follows:

INTRODUCTION

This action involves a determination which will irrevocably change the character and charm of Morgan County. In this action, Plaintiff and Defendants jointly seek the validation of more than $15 billion of revenue anticipation bonds based upon a proposed heavy industrial project to be developed by an automotive start up, Rivian Horizon, LLC ("Rivian"), under the auspices of certain agreements negotiated between Rivian and the Joint Development Authority of Jasper County, Morgan County, Newton County, and

Walton County (the "JDA"). As part of its Petition and Complaint ("Petition") to validate the bonds, the State of Georgia expressly requests that the Court make numerous findings and conclusions that are both not supported by the evidence, and which are in fact contrary to the evidence. While touting the theoretical benefits of a car plant in a rural, agricultural area and touting the theoretical prospect of 7,500 high paying jobs, the Plaintiff and the Defendants completely ignore the magnitude of the risk being assumed on a $15 billion gamble with a company that has suffered tremendous losses in a highly competitive industry and the long term economic this gamble will have on the economic well-being of the citizens of the State of Georgia who reside in the effected counties even if the plant is successful.

First,[1] Intervenors show that the burden of proof is upon the Plaintiff to establish a prima facie case for all aspects of the bond validation proceeding. This includes the obligation to establish that the proposed project for which the bonds are to be issued is "sound feasible and reasonable." *Greene County Dev. Auth. v. State*, 296 Ga. 725 (2015). Here, plaintiff has not offered any evidence in the Petition which would establish this required finding.

Second, several of the critical contractual components upon which Plaintiff relies have not been executed by the underlying parties and as a result no legal obligations exist

[1] The reasons set out are not exhaustive of all of the reasons why the Bonds should not be validated.

to support the bonds sought to be validated. Until such legal obligations have been executed and are enforceable, this bond validation action is premature.

Third, the Petitioner requests a finding that "the Rental Agreement will create in the Company a usufruct in property comprising part of the Project" and that such interest is "not subject to ad valorem property taxes." (Pet. at 14; *see also* Pet. at 7 (same); Pet. at 13 (requesting that the Court confirm and validate the terms of the Rental Agreement).)[2] Despite the Petition's claims to the contrary, Rivian's interest under the Rental Agreement constitutes an estate for years subject to taxation.

Fourth, the Equipment is not being provided to Rivian as a "bailment for hire", but Rivian will have full legal and equitable title in the Equipment.

Fifth, pursuant to the terms of the Bond Purchase Agreement and Security Deed, Rivian will acquire all of the Bonds proposed to be issued by the JDA, and as the Holder of such Bonds will be granted legal title to the Property and Equipment. In addition, pursuant to the Rental Agreement, Rivian will be granted full use of the Property and Equipment. As such, Rivian will have full control and dominion, both legally and equitably, of the Property and the Equipment, thereby subjecting Rivian's interests thereunder to taxation.

Finally, the proposed Bonds are not in fact issued for the purposes of providing financing for the Project but are rather being issued solely for the purpose of creating a

[2] For ease of reference, all capitalized terms herein shall have the same meaning as the capitalized terms contained in the Petition.

fiction to seek to have the interests of Rivian in the Property and Equipment found to be tax exempt. Because the Bonds will be sold exclusively to Rivian (or the tenant under the Rental Agreement), there is no actual financing being provided by the Bonds. Rather, all funds to develop the Property and purchase the Equipment will be provided by Rivian itself, with such funds merely being "washed" through the fiction of the Bonds. Rivian will pay all funds to be included in the Project Fund and will thereafter receive from such Project Fund all costs to develop the Project (assuming the parties do not elect to collapse the transaction into merely bookkeeping entries). This is therefore not a true financing project but rather a tax avoidance scheme.

ARGUMENT AND CITATION TO AUTHORITY

I. Plaintiff must Establish a Prima Facie Case to Support this Bond Validation Action, including Establishing that the Project is Sound, Feasible and Reasonable.

The burden of proof is upon the Plaintiff to establish its prima facie case to support is request for validation of the Bonds in this action. *See*, *Dade County v. State*, 77 Ga. App. 139 (1948); and *Harrell v. Town of Whigham*, 141 Ga. 322 (1914) Intervenors have tendered an answer which denies many of the material allegations necessary to support the bond validation request, and as such Plaintiff is obligated to establish these facts at trial.

Included in the Plaintiff's obligation is to establish that the Project is "sound, feasible and reasonable." *Greene County*, *supra*. As such, Plaintiff must establish the economic feasibility of the project, as well as the reasonableness of the likelihood that Rivian will both complete the Project and repay the Bonds.

II. Critical Legal Obligations do not Exist and therefore Validation of the Subject Bonds is Premature

The entire scheme upon which the repayment of the Bonds relies is the terms of the Rental Agreement, and by extension, the Intergovernmental Lease Agreement. However, the Plaintiff has not provided executed copies of either document to this Court. It is impossible to conclude that the Project and the likely repayment of the Bonds is "sound, feasible and reasonable" when the contractual agreements necessary for the method of repayment have not yet been executed.

Because both the Rental Agreement and the Intergovernmental Lease Agreement are contracts related to land, such agreements must be in writing and signed by the parties to be charged therewith. O.C.G.A. § 13-5-30 Further, the references to the Rental Agreement in the Joint Development Agreement indicate that the form of the Rental Agreement shall be "***substantially*** in the form set forth as Exhibit C to a Bond Resolution adopted by the Authority on April 26, 2022..." Therefore, it is clear that the parties have not yet reached agreement to the final form of the Rental Agreement, and as such this Court is without power to pass on the terms of a contract which has not yet been made. To pass on the terms of a non-existent contract would be to render an advisory opinion, which this Court is without power to do. *See, Fulton County v. City of Atlanta*, 299 Ga. 676 (2016)

This is especially true where, as here, the Plaintiff seeks to have this Court render a declaration that "the Rental Agreement will create in the Company a usufruct in the real property comprising part of the Project and a bailment for hire as to the personal property comprising part of the project, which interest are not subject to *ad valorem* property taxes."

(Petition, Section II, ¶ 9) It is axiomatic that this Court cannot render such a declaration where the final form of the Rental Agreement is possibly not before the Court.

III. The Current form of the Rental Agreement creates an Estate for Years in the Company which is Subject to *Ad Valorem* Taxation.

Georgia law expressly provides that "[a]ll real property, including, but not limited to, leaseholds, interests less than a fee, and all personal property shall be liable to taxation and shall be taxed, except as otherwise provided by law." O.C.G.A. § 48-5-3. While an estate for years is subject to taxation, a usufruct is not. *Compare Jekyll Dev. Assoc., L.P. v. Glynn Cnty. Bd. of Tax Assessors*, 240 Ga. App. 273, 274 (1999) ("an estate for years . . . constitutes a taxable interest in land"), *with Diversified Golf, LLC v. Hart Cnty. Bd. of Tax Assessors*, 267 Ga. App. 8, 10 (2004) ("a usufruct is not considered an interest in land and therefore is not subject to ad valorem taxation").

In addressing the differences between an usufruct and an estate for years, the Georgia Court of Appeals has explained that:

> A usufruct is created when the owner of real estate grants to another person the right to simply possess and enjoy the use of such real estate either for a fixed time or at the will of the grantor. In such case, no state passes out of the landlord and the usufruct may not be conveyed except by the landlord's consent, nor is it subject to levy and sale. A usufruct has been referred to as merely a license in real property, which is defined as authority to do particular act or series of acts on land of another without possessing any estate or interest therein. By way of contrast, an estate for years, which does not involve the landlord-tenant relationship, carries with it the right to use the property in as absolute manner as may be done with a greater estate and is subject to ad valorem taxation.

Chatham Cnty. Bd. of Assessors v. Jay Lalaji, Inc., Airport Hotels, 357 Ga. App. 34, 35 (2020) (citations omitted).

a. A Rebuttable Presumption Exists in Favor of an Estate for Years.

Importantly, "[w]here the term of a lease is for a period greater than five years, a rebuttable presumption arises that the parties intended to create an estate for years rather than a usufruct." *Id*.

Here, the term of the Rental Agreement is effectively twenty-five (25) years, with only an option for Rivian to terminate the agreement earlier if it so desires. For instance, Section 5.1 of the Rental Agreement provides that the initial term will continue through December 1, 2027, and then provides for four additional "options" whereby Rivian may unilaterally extend the lease for an additional twenty (20) years. These "options" are automatically exercised unless Rivian takes affirmative action to provide written notice of its intent not to extend the lease at least sixty (60) days prior to the end of the then existing term. These therefore are not true options to extend, but rather constitute options to terminate running in favor of Rivian. Put differently, the true term of the Rental Agreement is twenty-five (25) years. Thus, a rebuttable presumption exists that the Rental Agreement constitutes an estate for years subject to taxation, and the burden is on the JDA and Rivian to prove otherwise.

Further, a review of the Economic Development Agreement makes clear that the intent of the parties is to create a term of twenty-five (25) years, and that the designation of five (5) year renewal terms is mere subterfuge. Section 3.6(g) of the Economic Development Agreement states that "[t]he Rental Agreement shall have a term ending on

the maturity date of the Project Bonds.[3]" We know from the Bond Resolution that the maturity date of the Bonds is December 1, 2047 – NOT December 1, 2027. There can be no doubt, therefore, that a presumption must be found that the Rental Agreement creates an estate for years rather than a usufruct.

b. The JDA and Rivian Cannot Overcome the Presumption in Favor of an Estate for Years.

To determine whether the JDA and Rivian can overcome the presumption in favor of an estate for years, the Court should examine the following five factors:

> Factors to considered in determining whether the parties intended to create a usufruct include: (i) the terms used in the instrument of conveyance to describe the grantee's rights; (ii) any provisions in the instrument addressing the parties' understanding as to liability for ad valorem taxes; (iii) the grantor's retention of dominion or control over the leased property; (iv) which party has retained the duties to keep and maintain the premises and appurtenances; and (v) whether the grantee may assign the lease or allow any part of the leased premises to be used by others without the grantor's consent.

Id. at 35–36. Applying these five factors to the instant case establishes that Rivian's interest under the Rental Agreement constitutes a taxable estate for years.

i. The Parties' Statement of Intent is Nothing More than Self-Serving and Conclusory Language

Beginning with the first factor, the drafters of the Rental Agreement included self-serving language asserting that Rivian's interest under the agreement should be construed as a usufruct. (*See, e.g.*, Section 3.1 ("It is the intention of the parties that the interest of

[3] This provision actually goes on to state that the JDA is obligated to enter into an additional new lease agreement for an additional twenty-five (25) year term at the demand of Rivian.

Company hereunder shall be a usufruct . . . and not an estate for years.").) This self-serving language is not dispositive of Rivian's interest under the Rental Agreement and the Court should afford it little weight. *See Jekyll Dev. Assoc., L.P.*, 240 Ga. App. at 274–75 (explaining that the party's statement of intent is not controlling and "all provisions of the lease must be scrutinized objectively to determine whether the legal effect of the agreement is to grant an estate in the property or merely a right of use").

ii. Rivian is Responsible for Payment of *Ad Valorem* Tax

The second factor—the parties' understanding as to liability for *ad valorem* taxes—supports the conclusion that this is an estate for years. Specifically, Section 6.3 of the Rental Agreement contemplates that Rivian will be responsible for the payment of *ad valorem* tax in the event that such tax is levied against its interest in the property: "in the event that *ad valorem* taxes are levied on the Project, then the Company will receive a credit against its obligations to make PILOT Payments to the extent of such ad valorem taxes paid." Section 6.3 further provides that the JDA "cannot and does not warrant, guaranty or promise any particular *ad valorem* tax treatment resulting from" the agreement. The express language of Section 6.3 demonstrates that Rivian's interest under the Rental Agreement could be subject to *ad valorem* tax and that the company would be responsible for paying such tax. In other words, the parties had a clear understanding of which entity would face liability for the payment of *ad valorem* tax in the event that the Rental Agreement's self-serving language failed—Rivian.

iii. The JDA Retains Little Actual Control Over the Property

The third factor— JDA's retention of dominion and control over the property—also weighs in favor of an estate for years. While certain provisions of the Rental Agreement purport to provide the JDA with some level of control over the property, a fair review of those provisions reveals that true control resides with Rivian.

Section 3.1(i) recites that there are limitations on Rivian's use of the property, which are apparently located in Section 4.5 thereof. However those limitations are merely a description of the entire business of Rivian and are broadly worded to permit the use of the property for any purpose remotely linked to Rivian's business: "The Project may only be used for the limited purpose of developing and operating vehicle manufacturing and research, development, testing, sales and/or service facilities, including potential battery manufacturing facilities, and related facilities, or for other limited purposes permitted by the Act and approved by the Issuer in writing." Given that this clause describes the full business of Rivian, it is difficult to see how this demonstrates the retention of dominion and control over the property by JDA. Further, this type of limitation is common of many leases and does not establish that Rivian's interest under the Rental Agreement creates a usufruct. Moreover, Section 4.5 is a limitation in name only because it effectively functions as an acknowledgment of Rivian's business purpose.

Section 3.1(iii) similarly states that the JDA (as Issuer) has a right to enforce compliance with applicable laws. Once again, the actual language of how this is to be enforced in the Rental Agreement undercut any asserted level of control. For example, the second paragraph of Section 6.5 provides that the JDA shall NOT have the right to exercise its enforcement rights so long as Rivian contests any allegation that it is not in compliance

with applicable laws, rules and regulations. In fact, Rivian has the right to pursue such challenges in the name of the JDA itself. This shows that the JDA has no enforcement rights that extend beyond the power of the applicable government agency to enforce applicable laws.

While Section 6.1 of the Rental Agreement conditions Rivian's demolishing and replacing of existing buildings on the JDA's consent, such limitation is merely a formality as it goes on to state that such consent "shall not be unreasonably withheld, conditioned or delayed . . . ." Far from placing a limitation on Rivian, the reasonable consent language in Section 6.1 actually places a restriction on the JDA. *See Parkwood Indus., Inc. v. John Galt Assoc.*, 219 Ga. App. 527, 529 (1995) (explaining that "reasonable consent" language "is a covenant upon the landlord'); *Stern's Gallery of Gifts, Inc. v. Corporate Property Inv., Inc.*, 176 Ga. App. 586 (1985)

. Additionally, the JDA's limited right of review does not permit it to review any alteration to the design or location of the replacement buildings. Further, the JDA's limited right of approval exists solely in regard to the demolition and replacement of existing buildings, and the first sentence of Section 6.1 makes absolutely clear that such right of approval does not extend to the construction of new buildings, or even the complete redesign of the Project before construction begins. Indeed, Section 6.2 even goes so far as to require the JDA to quitclaim any piece of equipment that Rivian desires to remove from the property—with no right of review or approval. Likewise, Section 6.6 grants the JDA a right to inspect the property, but the JDA has a very limited ability to complain or require Rivian to make changes to the property unless an issue is uncovered which violates the terms of the Rental

Agreement. This is standard for any lease agreement, including both usufructs and estates for years.

The provisions which purport to grant the JDA control of project do not operate to impose "sufficient conditions and limitations upon the use of the premises to negate the conveyance of an estate for years." *Chatham Cnty. Bd. of Assessors*, 357 Ga. App. at 36.; *see also Jekyll Dev. Assoc., L.P.*, 240 Ga. App. at 275 ("An estate for years may be encumbered or somewhat limited without being reduced to a usufruct.").

iv. Rivian Maintains the Duty to Keep and Maintain the Premises

Numerous provisions of the Rental Agreement establish that Rivian maintains a duty to keep and maintain the property:

- First, Section 6.7 provides that Rivian "agrees, at its own expense, to keep the Project in a safe condition and to repair and maintain the Project in accordance with standard practice in its industry, normal wear and tear excepted." Indeed, the JDA "shall not be under any obligation to renew, repair or maintain any portion of the Project or to remove and replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary portion thereof." This provision alone—which imposes upon Rivian the sole responsibility to repair and maintain the property—strongly supports a finding that Rivian's interest under the Rental Agreement constitutes an estate for years. *See Jekyll Dev. Assoc., L.P.*, 240 Ga. App. at 276 (explaining that provisions obligating a lessee to repair and maintain the property at issue indicates an estate for years).

- Second, Section 6.5 provides that Rivian—not the State of Georgia nor the JDA—is obligated to "maintain the Project in all material respects in compliance with all applicable life and safety codes and all legally enforceable health, environmental, and safety ordinances and laws . . . ."
- Third, Section 6.4 requires Rivian—not the State of Georgia nor the JDA—to maintain insurance for the property and the project. Not only is Rivian obligated to maintain numerous lines of insurance as outlined in this provision but is also obligated to name the JDA as an additional insured. This seriously undermines the notion that Rivian's interest under the Rental Agreement qualifies as a usufruct. *See id.* (explaining that a requirement for the "lessee to provide broad insurance coverage for the premises and facilities" indicates an estate for years); *Buoy v. Chatham Cnty. Bd. of Tax Assessors*, 142 Ga. App. 172, 173 (same).
- Fourth, Section 6.1 grants Rivian the right to "make additions, modifications, or improvements to the Project, including without limiting the generality of the foregoing the installation of machinery, Equipment and related property or the construction of additional Buildings and structures on the Land, desirable for its business purposes . . . ." Neither the JDA nor the State of Georgia retain any right to review or approve the additions or modifications of Rivian, with merely a notification being required to be delivered to the JDA.
- Fifth, Section 6.2 requires the JDA to provide a quitclaim bill of sale to Rivian at any time in the event that Rivian desires to remove any of its equipment from the property for any reason.

- Sixth, Section 4.2 provides that Rivian is responsible for all construction of the Project, and that the JDA is only obligated to provide the bond proceeds to Rivian. Rivian retains the full right to make changes to the property.
- Seventh, Section 7.2 of the Rental Agreement provides that in the event of a condemnation of all or any portion of the property, the JDA will only receive that portion of the award attributable to the "portion of the Land which has not been materially improved by the Company . . . ." This language illustrates that any compensation associated with the portion of the Land that has been improved by Rivian will be paid to Rivian, not the JDA.

Taken together, the foregoing sections of the Rental Agreement compel a finding that Rivian possesses primary control of the property, and the JDA is not merely permitting Rivian to occupy it. Hence, Rivian's interest in the property constitutes an estate for years subject to *ad valorem* tax.

v. The Rental Agreement Grants Rivian the Right to Allow Others to Use the Property Only Subject to the JDA's Reasonable Consent

The fifth and final factor—whether Rivian may allow any portion of the property to be used by others without the JDA's consent—also supports a finding that an estate for years has been created. Specifically, Section 9.2 of the Rental Agreement grants Rivian the right to sublet all or a portion of the property to any supplier of Rivian. While the agreement recites that such sublease is subject to the JDA's consent, it also provides that in the event of Rivian's subleasing to any such supplier, the JDA shall not unreasonably withhold consent. As explained above, this "reasonable consent" language actually imposes a

restriction on the JDA, not Rivian. *See, Parkwood Indus., Inc.*, 219 Ga. App. at 529 (explaining that "reasonable consent" language "is a covenant upon the landlord"). In other words, Section 9.2 functions to allow Rivian to permit others (*i.e.*, its suppliers) to use the property, and only requires a formal approval by the JDA, which may not be unreasonably withheld.

The terms of the Rental Agreement demand a finding that an estate for years, rather than a usufruct has been created. Even the JDA's attorney acknowledges "that the Rental Agreement contains certain provisions indicatie of an estate for years." (JDA Answer, Ex. B., Memorandum, pp. 188 – 195 of JDA Answer as filed) The only factor in support of the conclusion that a usufruct has been created is the self-serving language included by the attorneys, while all of the practical factors support the conclusion that an estate for years has been created.

IV. The Rental Agreement does not Create a Bailment for Hire of the Personal Property included as part of the Project

Plaintiff further seeks to have this Court find that the Equipment to be purchased with the Bond proceeds as part of the Project constitutes the Equipment of the JDA that is merely being leased to Rivian. While that may the fiction sought to be portrayed by the parties to this action, the truth is that Rivian will have full dominion and control over the Equipment – including what Equipment to purchase, how to utilize such equipment, and whether to sell or convey the Equipment.

Pursuant to Section 4.4 of the Rental Agreement, Rivian will elect what Equipment to purchase, and may do so directly (without consultation with JDA or the State). Pursuant

to Section 6.2, JDA has no obligation or the repair or replacement of any Equipment, it being the sole obligation of Rivian. Further, Rivian shall have the full right to "transfer, sell, trade-in, exchange or otherwise dispose of [the Equipment] (as a whole or in part)..." JDA is further obligated under this provision to grant Rivian a quitclaim deed for any Equipment upon the request of Rivian.

These provisions make clear that Rivian is not utilizing Equipment of the State or JDA, but rather Rivian possesses all right, title and interest in the Equipment, including the right to possess and utilize the Equipment and the right to acquire or sell the Equipment. This does not constitute a bailment for hire.

V. Rivian's Acquisition of Legal Title to the Property and Equipment will Render its Interests Subject to *Ad Valorem* Taxation

Pursuant to the terms of the Bond Purchase Agreement, Rivian shall be the sole and exclusive purchase of the proposed Bonds. As such, Rivian shall become the Grantee of the Deed to Secure Debt and Security Agreement securing repayment of the Bonds to be granted by the JDA. As grantee under that Deed to Secure Debt and Security Agreement, Rivian will acquire legal title to the Property, Improvement and Equipment. *See, West Lumber Co. v. Schnuk,* 204 Ga. 827 (1949) (deed to secure debt passes legal title to grantee and is an absolute conveyance until the debt is paid); *Metro Atlanta Task Force for the Homeless, Inc. v. Ichthus Cmty. Trust*, 298 Ga. 221, 235 (2015) (explaining that deed to

secure debt passes legal title to grantee); *Pindar, Georgia Real Estate Law and Procedure*, § 21.42.

While it is true that a grantor under a security deed generally retains equitable title to the property, that equitable interest is generally defined by the right of possession of the property. *Pindar, Georgia Real Estate Law and Procedure*, § 21.15 However, in this instance, the right of possession of both the Property, the Improvements and the Equipment will also be passed to Rivian pursuant to the Rental Agreement. The JDA does not have the right to utilize the Property, nor does it have the right to utilize any Improvements or Equipment. All such rights are vested in Rivian.

In Georgia, "[t]he doctrine of merger applies where the legal and equitable interests in the property become merged in the same person. Unless there is an agreement to the contrary or it is the intention of the party in whom the equitable and legal estates unite that there be no merger, the merger results. The person contending that no such merger took place has the burden of proof." *Barron Buick, Inc. v. Kennesaw Finance Co.*, 105 Ga. App. 451, 454–55 (1962). Here, there is no evidence of any intent for the various interests not to merge, nor is there any written agreement to the contrary. The fact that Rivian will possess both legal title, coupled with the principal right of equitable title – possession of the property – establishes that Rivian will ultimately possess complete title to the Property, Improvements and Equipment. As such, there is no basis upon which such Property, Improvements and Equipment should be exempt from *ad valorem* taxation.

VI. <u>The Bonds do not Constitute a Valid Indebtedness and the Terms of the Bonds Violate State Law</u>.

The provisions of the "Bonds" are circular in nature, such that no debt is actually being extended by the virtue of the issuance of the Bonds, but rather it is a circular scheme solely designed to avoid taxation contrary to the terms and spirit of the law. As noted above, the Bonds will be issued by the JDA, but they shall be sold to Rivian – not to a third-party lender or fund. Where, as here, no debt is actually extended, the term "Bond" is a misnomer, as the only "promise" that is created is from Rivian to Rivian.

The Bond Resolution establishes two funds to be established by the issuance and sale of the Bonds: (1) the Bond Fund; and (2) the Project Fund. The Bond Fund is designed for the payment of the Bonds. The sole source of funds from the Bond Fund is the Basic Rent to be paid under the Rental Agreement. This Basic Rent will theoretically be paid to JDA by Rivian under the Rental Agreement, and then will be utilized by the JDA to pay Rivian the principal and interest which is due under the Bonds.

However, pursuant to the terms of the Bond Fund as set forth in Section 4.01 of the Bond Resolution, as well as Section 5.3(a) of the Rental Agreement, such Basic Rent need not actually be paid. Rather, JDA (as Issuer), the Paying Agent (who will be appointed by JDA, and may be Rivian) and Rivian (as Holder) may enter into a "home office payment agreement" whereby there is actually no payment made, but simply a ledger entry moving the "Basic Rent" from an obligation of Rivian to the receipt of "Interest" or "Principal" under the Bonds as an asset of Rivian.

The same holds true for the Project Fund, which is established by proceeds of the sale of the Bonds to Rivian. The Project Fund is intended to be utilized for the payment of

the costs of development of the Project, including the purchase of Equipment. Pursuant to Section 4.02(b) of the Bond Resolution, as well as Section 4.4 of the Rental Agreement, there is actually no need for Rivian to actually pay for the Bonds, nor shall the Project Fund actually exist. Rather, in accordance with Section 4.03 of the Bond Resolution, a "home office payment" arrangement may be established whereby the entire Project Fund is nothing more than accounting entries to be made by Rivian.

The inclusion of the "home office payment" provision is contrary to O.C.G.A. § 36-62-8(b), which requires that "[t]he proceeds derived from the sale of all bonds and bond anticipation notes issued by an authority *shall be held and used* for the ultimate purpose of paying, directly or indirectly as permitted in this chapter, all or part of the cost of any project..." The home office payment provision seeks to avoid the requirement that the proceeds from the sale of the Bonds be ***held***, but rather seeks to allow such funds to be retained by the purchaser of the Bonds – Rivian. Such provision is contrary to Georgia law and as such the Bonds should not be validated.

CONCLUSION

Having shown that the Bonds are not properly subject to validation in this action, Intervenors demand that the Plaintiff's prayers for relief be denied and the Bonds not be validated in this action.

This 27th day of July, 2022.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the **Intervenors Brief In Opposition to Bond Validation** by utilizing the electronic filing system of this Court and by also depositing a copy of same in the United States Mail in a properly addressed envelope, with adequate postage to the following:

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