
LEASE

by and between

COWETA COUNTY DEVELOPMENT AUTHORITY

and

HITACHI CONSTRUCTION MACHINERY AMERICAS INC.

Dated as of August 1, 2023

This document was prepared by:

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LEASE

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THIS LEASE is dated as of August 1, 2023 (this “Lease”) and is entered into by and between the COWETA COUNTY DEVELOPMENT AUTHORITY (the “Issuer”) and HITACHI CONSTRUCTION MACHINERY AMERICAS INC. (the “Company”).

W I T N E S S E T H:

WHEREAS, the Coweta County Development Authority (the “Issuer”) was duly created and is validly existing pursuant to local constitutional amendment (Ga. Laws 1966, p. 1101 *et seq.* continued by Ga. Laws 1985, p. 4173) (the “Act”); and

WHEREAS, the Issuer has been created for the purpose of promoting and expanding for the public good and welfare of Coweta County (the “County”) and its citizens, industry, agriculture, trade, commerce and recreation within the County; and

WHEREAS, the Act empowers the Issuer to (a) sell, lease or mortgage land, buildings and real and personal property of all kinds within the County, (b) lease any of its property to private persons and corporations operating or proposing to operate any industrial plan or establishment within the County, (c) issue bonds for the purpose of paying all or any part of the cost of any “project” (as defined in the Act) and (d) pledge and assign any and all of its funds, property and income as security for its bonds; and

WHEREAS, the Issuer has determined that it is in furtherance of its purposes that the Issuer assist in the acquisition and construction of the Project Site and the Improvements (each as defined herein) in the County (the “Project”); and

WHEREAS, the Issuer has further determined that the most feasible method of financing the Project is to issue its Taxable Revenue Bond (Hitachi Construction Machinery Americas Inc. Project), Series 2023 in the principal amount of \$33,000,000 (the “Bond”); and

WHEREAS, the Bond will be issued pursuant to a resolution adopted by the Issuer on August 3, 2023; and

WHEREAS, the Issuer and the Company are entering into this Lease, pursuant to which the Issuer will agree to, among other things, issue the Bond and lease the Project to the Company, and the Company will agree to, among other things, acquire and construct the Project and lease the Project from the Issuer; and

WHEREAS, under the terms of this Lease, the Company will pay the Issuer Lease Payments (as defined herein) in amounts sufficient to enable the Issuer to pay the principal of and interest on the Bond as the same become due; and

WHEREAS, as additional security for the Bond, the Company will execute a Guaranty, dated as of August 1, 2023, in favor of the owner of the Bond.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuer and the Company agree as follows:

ARTICLE I.

DEFINITIONS

All capitalized, undefined terms used in this Lease shall have the meanings ascribed to them in the Resolution and the Memorandum of Understanding. The following words and terms used in this Lease shall have the following meanings:

“Default” and “Event of Default” mean, with respect to any Default or Event of Default under this Lease, any occurrence or event specified and defined by Section 8.1 hereof.

“Guaranty” means the Guaranty, dated as of August 1, 2023, executed by the Company in favor of the owner of the Bond, as amended from time to time.

“Improvements” mean the real property improvements described in the site plan attached hereto as Exhibit B.

“Lease Payments” means the payments made under Section 4.2(a) of this Lease.

“Maturity Date” means December 1, 2034, the day the Bond matures.

“Net Proceeds,” when used with respect to any insurance proceeds from policies required by Section 6.11 hereof, means the amount remaining after deducting all expenses (including reasonable attorneys’ fees) incurred in the collection of such proceeds from the gross proceeds thereof.

“Project” means the means the Improvements and the Project Site.

“Project Site” means the real property on which the Improvements will be located and more fully described in Exhibit A hereto.

“Resolution” means the resolution of the Issuer adopted on August 3, 2023 pursuant to which the Bond is authorized to be issued, including any resolution supplemental thereto.

“State” means the State of Georgia.

“Term” means the duration of this Lease as specified in Section 4.1 hereof.

ARTICLE II.

REPRESENTATIONS

Section 2.1. Representations of Issuer.

The Issuer represents as follows:

(a) The Issuer is a public body corporate and politic duly created and organized under the Constitution and laws of the State. Under the provisions of the Act, the Issuer is authorized to (i) adopt the Resolution and perform its obligations thereunder, (ii) issue, execute, deliver and perform its obligations under the Bond, (iii) execute, deliver and perform its obligations under this Lease and the Memorandum of Understanding (the "Issuer Documents") (iv) carry out the transactions contemplated on its part by the Resolution, the Bond and the Issuer Documents.

(b) The Resolution has been duly adopted and has not been modified or repealed. The Issuer has duly authorized the (i) issuance, execution, delivery and performance of its obligations under the Bond, (ii) the execution, delivery and performance of its obligations under the Issuer Documents and (iii) carrying out of the transactions contemplated on its part by the Resolution, the Bond and the Issuer Documents. The Resolution, the Bond and the Issuer Documents are valid, binding and enforceable obligations of the Issuer. The Resolution creates a first lien on the Lease and the Pledged Revenues.

(c) No approval or other action by any governmental authority or agency or other person is required to be obtained by the Issuer as of the date hereof in connection with the (i) adoption of the Resolution and the performance of its obligations thereunder, (ii) issuance, execution, delivery and performance of its obligations under the Bond, (iii) execution, delivery and performance of its obligations under the Issuer Documents or (iv) carrying out of the transactions contemplated on its part by the Resolution, the Bond and the Issuer Documents, except as shall have been obtained.

(d) The adoption of the Resolution and the performance of its obligations thereunder, the issuance, execution, delivery and performance of its obligations under the Bond, the execution, delivery and performance of its obligations under the Issuer Documents and the carrying out of the transactions contemplated on its part by the Resolution, the Bond and the Issuer Documents do not (i) violate the Act, the Issuer's bylaws or any laws, court orders, administrative regulations or other legal decrees to which the Issuer or its property is bound or (ii) constitute a breach of or a default under any agreement, indenture, mortgage, lease, note or other instrument to which the Issuer is a party or by which the Issuer or its property it is bound.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the Issuer, threatened against or affecting the Issuer (or, to the knowledge of the Issuer, any meritorious basis therefor) (i) attempting to limit, enjoin or otherwise restrict or prevent

the Issuer from issuing the Bond, (ii) contesting or questioning the existence of the Issuer or the titles of the present officers of the Issuer to their offices or (iii) wherein an unfavorable decision, ruling or finding would adversely affect the enforceability of the Bond, the Resolution or the Issuer Documents or the transactions contemplated by the Resolution, the Bond or the Issuer Documents.

(f) The Issuer is not in violation of the Act, its bylaws, or the laws or Constitution of the State and is not in default under any existing court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it or its property is bound which violation or default would adversely affect the enforceability of the Resolution, the Bond or the Issuer Documents or the transactions contemplated by the Resolution, the Bond and Issuer Documents.

The Issuer makes no representation or warranty with respect to the Project, except as set forth above. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE CONDITION OR WORKMANSHIP OF ANY PART OF THE PROJECT OR ITS SUITABILITY FOR THE COMPANY'S PURPOSES.

The Issuer makes no representation as to the financial position or business condition of the Company and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Company in connection with the sale of the Bond, or as to the correctness, completeness or accuracy of such statements.

Section 2.2. Representations of the Company.

The Company represents as follows:

(a) The Company is a corporation duly created, validly existing and in good standing under the laws of the State. The Company is authorized to (i) acquire and construct the Project, (ii) execute, deliver and perform its obligations under this Lease, the Guaranty and the Memorandum of Understanding (collectively, the "Company Documents") and (iii) carry out the transactions contemplated on its part by the Company Documents.

(b) The Company has duly authorized the (i) acquisition and construction of the Project, (ii) execution, delivery and performance of its obligations under the Company Documents and (ii) carrying out of the transactions contemplated on its part by the Company Documents. The Company Documents are the valid, binding and enforceable obligations of the Company.

(c) No approval or other action by any governmental authority or agency or other person is required to be obtained by the Company as of the date hereof in connection with the (i) acquisition and construction of the Project, (ii) execution, delivery and performance of its obligations under the Company Documents or (iii) carrying out of

the transactions contemplated on its part by the Company Documents, except as shall have been obtained.

(d) The acquisition and construction of the Project, the execution, delivery and performance of its obligations under the Company Documents and the carrying out of the transactions contemplated on its part by the Company Documents do not (i) violate any laws, consent orders, administrative regulations or other legal decrees to which the Company or its property is bound or (ii) violate or constitute a breach of or a default under its articles of incorporation or its by-laws or any agreement, indenture, mortgage, lease, note or other instrument to which the Company is a party or by which the Company or its property is bound.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the Company, threatened against or affecting the Company (or, to the knowledge of the Company, any meritorious basis therefor) (i) attempting to limit, enjoin or otherwise restrict or prevent the Company from acquiring and constructing the Project, (ii) contesting or questioning the existence of the Company or the titles of the present officers of the Company to their offices or (iii) wherein an unfavorable decision, ruling or finding would adversely affect the (i) enforceability of the Company Documents, (ii) financial condition or results of operations of the Company or (iii) transactions contemplated by the Company Documents.

(f) The Company is not in violation of the laws or Constitution of the State and is not in default under any existing court order, administrative regulation, or other legal decree, its articles of incorporation or by-laws or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it or its property is bound which violation or default would adversely affect the (i) enforceability of the Company Documents, (ii) financial condition or results of operations of the Company or (iii) transactions contemplated by the Company Documents.

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ARTICLE III.

ISSUANCE OF THE BOND; ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 3.1. Agreement to Issue the Bond; Application of Bond Proceeds.

The Issuer agrees that it will issue the Bond. The proceeds from the sale of the Bond shall be applied as provided in the Resolution, and the Company hereby approves the issuance of the Bond. The Issuer shall deliver a certified copy of the Resolution to the Company promptly upon adoption thereof.

Section 3.2. Agreement to Acquire and Construct the Project.

If and to the extent that the acquisition and construction of the Project has not been completed, the provision of this Section 3.2 shall apply. The Issuer hereby appoints the Company as its sole agent for purposes of acquiring and constructing the Project. Such appointment is irrevocable and is coupled with an interest. The Company hereby agrees that it will proceed with acquiring and constructing the Project. The Company shall use its best efforts to obtain or cause to be obtained all necessary approvals from any and all governmental agencies requisite to undertaking the acquisition and construction of the Project. The Project shall be acquired and constructed in compliance with all federal, state and local laws, ordinances and regulations applicable thereto. The Company will take or cause to be taken such action and institute or cause to be instituted such proceedings as it shall deem appropriate to cause and require all contractors and suppliers of materials to complete their contracts, including the correcting of any defective work.

The Company will prepare a budget, will cause plans and specifications to be prepared by an architect or engineer and will negotiate and procure a construction contract with a reputable contractor. The contractor shall provide builder's risk insurance (including casualty and general liability insurance). The Issuer shall be named as an additional insured on all general liability insurance.

The Company shall use its best efforts to cause the acquisition and construction of the Project to be completed as soon as may be practical, delays incident to strikes, riots, acts of God or the public enemy, or other acts beyond the reasonable control of the Company excepted; but if for any reason such acquisition and construction is not completed by any specified date, there shall be no resulting liability on the part of the Company.

The moneys credited to the Project Fund from the sale of the Bond shall be used and applied for the purpose of paying the Costs of the Project and the costs of issuing the Bond as provided in the Resolution. If the moneys in the Project Fund should not be sufficient to complete the acquisition and construction of the Project, the Company agrees to pay directly (or at its option to deposit moneys in the Project Fund for the payment of) such costs of completing the acquisition and construction of the Project. THE ISSUER DOES NOT MAKE ANY WARRANTY OR REPRESENTATION (EITHER EXPRESS OR IMPLIED) THAT THE

MONEYS DEPOSITED INTO THE PROJECT FUND WILL BE SUFFICIENT TO PAY ALL OF THE COSTS OF THE PROJECT.

All payments from the Project Fund shall be made upon the terms and conditions set forth in the Resolution. The Company shall prepare the requisitions and certificates required by the Resolution.

The Project shall be titled in the name of the Issuer until such time as the Company exercises its purchase option or the Project is otherwise released pursuant to the terms of this Lease.

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ARTICLE IV.

EFFECTIVE DATE OF THIS LEASE; DURATION OF TERM; LEASE PAYMENT PROVISIONS; LEASE OF PROJECT

Section 4.1. Effective Date of this Lease; Duration of Term.

This Lease shall be effective upon its execution and delivery and shall remain in full force and effect to and including the Maturity Date, or until such time the Bond and the fees and expenses of the Issuer and the Fiscal Agents shall have been fully paid or at the option of the Company, provision made for such payment.

Section 4.2. Lease Payments.

(a) The Company agrees to pay to the Issuer amounts sufficient to pay the principal of and interest on the Bond as the same become due and payable. The Company further agrees to pay to the Issuer on or before the date of any prepayment of the Bond required or permitted under the Resolution, the amount which, together with any other available funds, is necessary to pay the principal of and interest on the Bond that is due and payable on the prepayment date.

It is understood and agreed that all payments payable under this Section 4.2(a) by the Company have been pledged and assigned by the Issuer for the benefit of the owner of the Bond. The Company assents to such pledge and assignment. All such payments shall be made to the Sinking Fund Custodian unless the Home Office Payment Agreement is in effect.

It is the intention of the parties hereto that the Lease Payments be sufficient to pay the Issuer for all payments on the Bond. To that end, on the Maturity Date, the Company shall pay the Issuer any and all amounts that the Issuer paid on the Bond that have not previously been paid as Lease Payments.

(b) The Company will also pay the reasonable fees and expenses of the Fiscal Agents and of their successors and assigns as provided by Section 702 of the Resolution, such reasonable fees and expenses to be paid directly to the party to whom the payment is due when such reasonable fees and expenses become due and payable.

(c) The Company will also pay any costs payable for transfers and exchanges of the Bond and the expenses for printing any Bond. Without limiting the generality of the foregoing, the Company shall pay the Issuer its customary fee for the transfer of the Bond plus the reasonable fees and expenses of the Issuer's counsel.

(d) In the event the Company should fail to make any of the payments required in this Section 4.2, the item or installment so in Default shall continue as an obligation of the Company until the amount in Default shall have been fully paid, and the Company agrees to pay the same with interest thereon at the rate borne by the Bond, to the extent permitted by law, from the date thereof.

Section 4.3. Obligations of the Company Hereunder Unconditional.

The obligations of the Company to make the payments required in Section 4.2 and other sections hereof shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach by the Issuer of any obligation to the Company, whether hereunder or otherwise, or out of any indebtedness or liability at any time owing to the Company by the Issuer. Until such time as the principal of and interest on the Bond shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Resolution, the Company (a) will not suspend or discontinue any payments provided for in Section 4.2 hereof, and (b) will not terminate this Lease for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either thereof or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease. Nothing contained in this Section shall be construed to release the Issuer from the performance of any of the agreements on its part herein contained, and in the event the Issuer should fail to perform any such agreement on its part, the Company may institute such action against the Issuer as the Company may deem necessary to compel performance so long as such action does not abrogate the obligations of the Company contained in the first sentence of this Section.

Section 4.4. Lease of Project; Creation of Estate for Years.

The Issuer hereby leases to the Company, and the Company hereby leases from the Issuer, the Project at the rental set forth in Section 4.2 hereof and in accordance with the provisions of this Lease.

The Issuer agrees that it shall upon request of the Company join in any proceeding to protect and defend the Issuer's or the Company's title in and to the Project, provided that the Company shall pay the entire cost of any such proceeding or reimburse the Issuer therefor and indemnify and hold harmless the Issuer from any cost or liability whatsoever.

The Issuer warrants and covenants that it will not interfere with or interrupt in the quiet enjoyment and peaceable possession, use and operation of the Project and all appurtenances thereunto belonging, free from all claims of all persons whomsoever acting by, through or under the Issuer, throughout the Term of this Lease.

In addition to the foregoing warranty, the Issuer agrees that it will not take or cause another party to take any action to interfere with the Company's peaceful and quiet enjoyment of the Project. The Issuer agrees that in the event the peaceful and quiet enjoyment of the Project shall otherwise be denied to the Company or contested by anyone, the Issuer shall upon request of the Company join in any proceeding to protect and defend the quiet enjoyment of the Company, provided that, unless such denial or contest shall result from the willful misconduct of the Issuer or any violation by the Issuer of its warranties or covenants contained herein, the Company shall pay the entire cost of any such proceeding or reimburse the Issuer

therefor and indemnify and hold harmless the Issuer from any cost or liability whatsoever, including, without limitation, reasonable attorneys' fees.

The parties hereto acknowledge and agree that this Lease creates and estate for years in the Company.

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ARTICLE V.

DAMAGE AND DESTRUCTION; USE OF NET PROCEEDS

Section 5.1. Damage, Destruction and Condemnation.

If prior to full payment of the Bond (or provisions for payment thereof in accordance with the provisions of the Resolution) (a) the Project or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to or any interest in, or the temporary use of, the Project or any part thereof shall be taken under the exercise of the power of eminent domain, the Company shall be obligated to continue to pay the amounts specified in Section 4.2 hereof. The Company will be responsible for negotiating all claims under or relating to any applicable (a) insurance policy or (b) taking or eminent domain proceeding.

Section 5.2. Application of Net Proceeds.

The Issuer and the Company will cause the Net Proceeds of any insurance proceeds or condemnation award resulting from any events described in Section 5.1 hereof to be paid to the Company and such Net Proceeds shall be applied in the manner as follows:

- (a) promptly to repair, rebuild, or replace the property damaged or destroyed;
- or
- (b) to provide for the payment of the Bond.

Any application of Net Proceeds under Paragraphs (a) or (b) above shall not affect the Company's obligation under Section 4.2 hereof. Any surplus Net Proceeds will be promptly paid to the Company.

Section 5.3. Cooperation of the Issuer.

The Issuer shall cooperate fully with the Company, at the expense of the Company, in filing any proof of loss with respect to any insurance policy covering the casualties described in Section 5.1 hereof and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Project or any part thereof or any property of the Company in connection with which the Project is used and will, to the extent it may lawfully do so, permit the Company to litigate in any proceeding resulting therefrom in the name and on behalf of the Issuer. In no event will the Issuer voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Project or any part thereof without the written consent of the Company.

ARTICLE VI.

SPECIAL COVENANTS

Section 6.1. Sale or Encumbrance of Project by Issuer.

Except as provided in Section 6.20, the Issuer shall not sell, assign, transfer, convey mortgage or otherwise encumber its interest in the Project or any portion thereof or any interest therein, unless requested to do so by the Company and consented to by the owner of the Bond.

Section 6.2. Assignment of Lease by Issuer.

The Issuer has assigned its interest in this Lease as security for the Bond pursuant to the Resolution. The Company hereby consents to such assignment. The Issuer shall not further assign its interest in this Lease, unless requested to do so by the Company and consented to by the owner of the Bond.

Section 6.3. Sale or Encumbrance of Project by Company.

The Company shall not sell, assign, transfer, convey mortgage or otherwise encumber its interest in the Project or any portion thereof or any interest therein, unless (a) consented to by the owner of the Bond and the Issuer, (b) such sale, assignment, transfer or conveyance is in whole to an Affiliate (as defined in the Memorandum of Understanding) or (c) such encumbrance is a bona fide leasehold mortgage (the "Leasehold Mortgage") in favor of a lender of the Company (a "Lender").

Section 6.4. Assignment of Lease and Subleasing by Company.

The Company shall not assign its interest in this Lease unless (a) consented to by the owner of the Bond and the Issuer or (b) such assignment is (i) in whole to an Affiliate or (i) to a Lender pursuant to a Leasehold Mortgage. The Company shall not sublease all or any portion of the Project unless (a) consented to by the owner of the Bond and the Issuer or (b) such sublease is for a portion of the Project and (i) such sublease is in the ordinary course of the Company's business, (ii) such sublease is expressly made subject and subordinate to this Lease and (iii) the Company is not released from its obligations under this Lease under the terms of such sublease.

Section 6.5. Lender's Rights.

The Company acknowledges and agrees that the ad valorem tax abatement shall not transfer to the Lender or to any other entity taking possession of the Project by virtue of the Leasehold Mortgage or any other security document without the consent of the Issuer.

Section 6.6. Merger, Consolidation or Sale of Assets; Transfer of Equity Interests.

The Company shall not merge or consolidate with another entity unless (a) consented to by the owner of the Bond and the Issuer or (b) the Company is the surviving entity. The Company shall not sell all or substantially all of its assets to another entity unless (a) consented to by the owner of the Bond and the Issuer or (b) the purchaser is an Affiliate. The Company shall not transfer a majority (whether through one conveyance or a series of conveyances) of its equity interest to another entity unless consented to by the owner of the Bond and the Issuer.

Section 6.7. Access to the Project.

Upon reasonable prior written notice to the Company, the Issuer and its duly authorized agents shall have such rights of access to the Project during normal business hours as may be reasonably necessary to ensure that the Company is performing its obligations hereunder.

Section 6.8. Further Assurances and Corrective Instruments.

The Issuer and the Company shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Lease.

Section 6.9. Issuer and Company Representatives.

Whenever under the provisions of this Lease the approval of the Issuer or the Company is required or the Issuer or the Company is required to take some action at the request of the other, such approval or such request shall be given for the Issuer by its designated representative and for the Company by its designated representative.

Section 6.10. Provisions Respecting Insurance.

The Company shall cause the Project to be insured against such risks as are consistent with its insurance practices from time to time; provided, however, the Company shall in all cases maintain property insurance in an amount equal to the full insurable value of the Project and the Company shall maintain general liability insurance. The Issuer shall be named as an additional insured on all general liability insurance policies. All general liability policies provided by the Company shall be primary, and the insurance company providing the same shall not seek contribution from any other insurance available to the Issuer. The Company shall obtain a written obligation on the part of each insurance company to notify the Issuer at least fifteen (15) days prior to cancellation of such insurance. If the Company should fail to comply with the foregoing requirements relating to insurance, the Issuer may obtain such insurance and the Company shall pay the Issuer on demand as additional rent hereunder the premium cost thereof plus interest at the rate born by the Bond from the date of payment by the Issuer until repaid by the Company.

Section 6.11. Taxes and Other Charges; Property Tax Abatement; PILOT Payments

(a) The Company shall pay, as the same become lawfully due and payable, (a) all taxes and governmental charges of any kind whatsoever upon or with respect to the interest held by the Company under this Lease, (b) all taxes and governmental charges of any kind whatsoever upon or with respect to the Project (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the income or profits of the Issuer from the Project) and (c) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project; provided, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated to pay only such installments as are required to be paid during the Term. To the extent the Issuer directly receives invoices or bills for any of the foregoing charges, the Issuer shall promptly provide same to the Company. The Company may, at its own expense and in its own name and behalf or in the name and behalf of the Issuer, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments and other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. The Issuer shall cooperate fully with the Company in any such contest at the Company's expense.

(b) The Issuer and the Company acknowledge that it is the practice of the tax assessor to list property that has been transferred to the Issuer as exempt and to tax the lessee of such property based upon the assessed value of its leasehold interest. The Issuer and the Company anticipate that the value of the Company's leasehold interest in the Project will be as set forth in the Memorandum of Understanding. The Issuer and the Company agree that this Lease shall be terminated, and the Bond shall be paid in full (or surrendered) when the property tax abatement ends.

(c) The Company agrees to pay the PILOT Payments and the Recovery Payments specified in the Memorandum of Understanding.

Section 6.12. Compliance with Laws.

The Company shall cause its business and affairs to be conducted in a proper, legal and businesslike manner and shall comply with all applicable laws, regulations and ordinances.

Section 6.13. Company's Obligation in the Resolution.

The Company shall perform all of its obligations (if any) under, and shall comply with and abide by all of the terms of, the Resolution.

Section 6.14. Operation and Maintenance of the Project; Modification of Project.

(a) The Company shall cause the Project to be operated and maintained in good repair, and the Company shall pay all costs of operating and maintaining the Project, including, but not limited to all utilities.

(b) The Company may, from time to time, in its sole discretion and at its own expense, make any additions, modifications or improvements to the Project, which it may deem desirable for its business purposes. All such additions, modifications and improvements shall be part of the Project and subject to this Lease.

(c) The Company will cause the Project to be maintained and operated as a “project” under the Act.

Section 6.15. Release and Indemnification Covenants.

(a) The Company hereby agrees to release the Issuer from and to indemnify the Issuer for any and all liabilities and claims against the Issuer arising from its ownership or condition of the Project, the conduct or management of the Project, or from any work or thing done on or with respect to the Project, or the financing of the Project, including without limitation, (i) any condition of the Project, (ii) any breach or Default on the part of the Company in the performance of any of its obligations under this Lease, (iii) any act or negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (iv) any act or negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, or (v) any alleged or actual “environmental contamination” related to the Project. Upon notice from the Issuer, the Company, at its expense shall timely defend the Issuer in any such action or proceeding. Should Company fail so to do, it shall pay the Issuer’s reasonable expenses for such defense (including, without limitation, reasonable attorneys’ fees). In addition, the Company agrees to release the Fiscal Agents from and to indemnify and hold them harmless against any loss, liability or other expense incurred against the Fiscal Agents arising out of or in connection with the acceptance or administration of the duties of the Fiscal Agents under the Resolution.

(b) Any one or more of the parties indemnified in this Section 6.15 shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such parties unless the employment of such counsel has been specifically authorized in writing by the Company.

(c) Notwithstanding the foregoing provisions of this Section 6.15, the Company shall not indemnify the Issuer or the Fiscal Agents for any claim or loss arising as a result of the gross negligence or willful misconduct of the Issuer or the Fiscal Agents or for any claim that the Company is prohibited by law from providing indemnification to such party.

(d) For purposes of this Section 6.15, all references to the Issuer and the Fiscal Agents shall include its present and future directors, officers, members, agents and employees.

(e) The provisions of this Section 6.15 shall survive the termination of this Lease.

Section 6.16. Information to be Provided by the Company.

(a) The Company shall also provide to the owner of the Bond and the Issuer (i) each year a certificate of insurance indicating that the Company is maintaining the insurance required by Section 6.10 of this Lease and (ii) such other information as the owner of the Bond or the Issuer may reasonably request.

(b) The Company shall provide the Annual Report (as defined in the Memorandum of Understanding) on the date and to the parties set forth in the Memorandum of Understanding.

Section 6.17. Removal and Release of Unimproved Project Site.

(a) The Company may from time-to-time request that the Issuer release, and the Issuer shall release, any portion of the Project Site upon which the Improvements are not located without consideration but with the consent of the owner of the Bond. In connection with such release, there shall be deposited with the Issuer a certificate of the Company, dated not more than 60 days prior to the date of the release, stating that the release so proposed to be made will not materially impair the utility of the Project and will not destroy the means of ingress thereto and egress therefrom.

(b) The release of a portion of the Project Site shall not entitle the Company to any abatement or diminution in the amount of rents payable under Section 4.2 hereof. The Issuer shall deliver to the Company a quit-claim deed conveying to the Company title to any portion of the Project Site released under this Section. The Project Site description attached as Exhibit A of this Lease shall be amended to reflect the release. The Company shall pay the Issuer's reasonable attorneys' fees and expenses incurred in connection with such release of a portion of the Project Site.

Section 6.18. Granting and Release of Easements.

The Company may, on behalf of the Issuer and itself, at any time or times (a) cause to be granted easements, licenses, rights of way and other rights or privileges in the nature of easements with respect to all or any portion of the Project Site or (b) cause to be amended, modified or released existing easements, licenses, rights-of-way and other rights or privileges in the nature of easements, with respect to all or any portion of the Project Site with or without consideration. The Issuer agrees that it shall execute and deliver any instrument necessary or appropriate to confirm and grant, amend, modify or release any such easement, license, right of way or other right or privilege upon receipt of a certificate of the Company stating that the easement, license, right-of-way or other right or privilege so proposed to be made will not materially impair the utility of the Project and will not destroy the means of ingress thereto and egress therefrom. The Company hereby agrees to pay for the Issuer's reasonable attorneys' fees and expenses associated with any actions required by the Issuer pursuant to this Section.

Section 6.19. Issuer Fees.

The Company shall pay the fee for transferring the Bond referred to in Section 4.2(c). The Company shall also pay the Issuer's consent fee in effect from time to time for granting its consent hereunder.

Section 6.20. Estoppel Certificate; Leasehold Mortgages; and Fee Mortgages.

(a) The Issuer will, at any time from time to time, upon not less than ten (10) days prior request by the Company or by the Lender, execute, acknowledge and deliver a commercially reasonable certificate (i) to the effect that (A) this Lease is unmodified and in full effect (or setting forth any modifications and that this Lease is in full effect as modified), (B) the rent and other amounts payable and the dates to which the rent and other amounts payable hereunder have been paid and (C) to the knowledge of the Issuer, there are no Events of Default or events with the passage of time or notice or both would become an Event of Default; (ii) setting forth (A) the commencement and expiration dates of this Lease, (B) the amount of any security or other deposits and (C) the name of the person or entity in possession of the Project; and (iii) concerning such other matters as may reasonably be required by the requesting party. Any such certificate may be relied upon by the Lender.

(b) From time to time during the Term of this Lease, the Company may secure financing of its interest in the Project by executing a Leasehold Mortgage. The Issuer hereby consents to each and every Leasehold Mortgage and hereby subordinates interest in this Lease to each and every Leasehold Mortgage. This provision shall be self-operating, and no further action of the Issuer shall be required. However, in the event that the secured party requires a consent or a subordination, the Issuer shall, upon not less than ten (10) days prior request by Company, execute, acknowledge and deliver to Company a (i) consent to such Leasehold Mortgage and (ii) subordination, non-disturbance and attornment agreement in a form reasonably satisfactory to the Issuer upon execution of same by the secured party granted the Leasehold Mortgage.

(c) From time to time during the Term of this Lease, the Company may also secure the financing of its interest in the Project by requesting that the Issuer grant a deed to secure debt on its interest in the Project (a "Permitted Mortgage"). Each and every Permitted Mortgage shall expressly provide that it is a non-recourse obligation of the Issuer limited solely to the Issuer's interest in the Project and that the Issuer shall have no pecuniary obligations thereunder. Should any secured party exercise its remedies under a Permitted Mortgage resulting in a loss of all or a portion of the Project or interests therein, no such loss shall abate or diminish the Company's obligations hereunder.

(d) The Company hereby agrees to pay for the Issuer's reasonable attorney fees, costs and expenses associated with any actions required of the Issuer pursuant to this Section 6.20.

(e) The Leasehold Mortgage and the Permitted Mortgage are subject to the Lender's rights described in Section 6.5.

ARTICLE VII.

OPTIONAL PREPAYMENTS AND PURCHASE OF PROJECT

Section 7.1. Optional Prepayments.

The Company shall have the option to prepay, in whole or in part, amounts owing under this Lease at any time. Such prepayments shall be applied to the prepayment of the Bond.

Section 7.2. Option to Purchase Project.

The Company shall have, and is hereby granted, the option to purchase the Project prior to the expiration of the Term hereof and prior to the payment in full of the Bond. To exercise such option, the Company shall give written notice to the Issuer specifying the date of closing such purchase, which date shall be not less than 45 days from the date such notice is given. The amount which shall be paid by the Company in the event of its exercise of the option granted in this Section shall be the sum of the following: (a) an amount of money which will be sufficient to pay the principal of and interest on the Bond as the same become, plus (b) all amounts owing under the Resolution and this Lease, plus (c) the sum of \$10, which sum the parties hereto acknowledge and agree constitutes good and adequate consideration for the purchase of the Project. Notwithstanding the foregoing, if the Company is the owner of the Bond, the Company may cancel the Bond in lieu of paying the principal of and interest on the Bond.

Section 7.3. Obligation to Purchase Project.

The Company hereby agrees to purchase, and the Issuer hereby agrees to sell, the Project for the sum of the following: (a) an amount of money which will be sufficient to pay the principal of and interest on the Bond as the same become due, plus (b) all amounts owing under the Resolution and this Lease, plus (c) the sum of \$10.00 at the expiration or sooner termination of this Lease, and the parties hereto acknowledge and agree that such sum constitutes good and adequate consideration for the purchase of the Project. Notwithstanding the foregoing, if the Company is the owner of the Bond, the Company may cancel the Bond in lieu of paying the principal of and interest on the Bond.

Section 7.4. Conveyance or Purchase.

At the closing of any purchase pursuant to Sections 7.2 or 7.3 hereof or pursuant to the exercise of any option to purchase granted herein, the Issuer will upon receipt of the purchase price by it or by the Paying Agent on its behalf deliver to the Company or to its designee a quitclaim deed or similar document satisfactory to the Company conveying to the Company or its designee title in and to the Project, subject to the following, (a) those liens and encumbrances (if any) to which such title in and to such property was subject as of the effective date of this Lease, (b) those liens and encumbrances created by the Company or to the creation or suffering of which the Company consented in writing and (c) those liens, security interests and

encumbrances resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease. In the event that a Georgia transfer tax is due on the conveyance of the Project to the Company pursuant to this Article VII, the Company shall be responsible for payment of any such transfer tax.

Section 7.5. Issuer's Attorney Fees.

The Company hereby agrees to pay for the Issuer's reasonable attorneys' fees, costs and expenses associated with any purchase pursuant to this Article VII.

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ARTICLE VIII.

EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events of Default Defined.

The following shall be “Events of Default” under this Lease and the terms “Event of Default” and “Default” shall mean, whenever they are used in this Lease, any one or more of the following events:

(a) Failure by the Company to make the payments required to be paid under Section 4.2 hereof and the continuation of such failure for a period of five (5) business days after written notice thereof has been given to the Company.

(b) Failure by the Company or the Issuer to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subparagraph (a) of this Section 8.1, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to the defaulting party by the nondefaulting party, unless the nondefaulting party shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice be such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the defaulting party within the applicable period and is being diligently pursued until the Default is corrected.

(c) The occurrence of an Event of Default under the Resolution that continues beyond applicable notice and cure periods.

(d) An order or decree shall be entered, with the consent or acquiescence of the Company, appointing a receiver, or receivers, of the Company, or any proceedings shall be instituted, with the consent or acquiescence of the Company, for the purpose of effecting a composition between the Company and its creditors, pursuant to any federal or state statute now or hereafter enacted, or if such order or decree, having been entered without the consent and acquiescence of the Company, shall not be vacated or discharged or stayed on appeal within 60 days after entry thereof, or if such proceeding, having been instituted with the consent or acquiescence of the Company, shall not be withdrawn, or any orders entered shall not be vacated, discharged or stayed on appeal within 60 days after the institution of such proceedings, or the entry of such orders.

(e) Failure by the Company to perform any obligation under the Memorandum of Understanding.

The provisions of subsection (b) and (e) of this Section are subject to the following limitation: if by reason of force majeure the Company is unable in whole or in part to carry out any of its agreements contained herein (other than its obligations contained in Section 6.10 and 6.11), the Company shall not be deemed in Default during the continuance of such

inability. The term “force majeure” as used herein shall mean, without limitation, shall mean any of the following events that are not caused by the Company, that are beyond the Company’s reasonable control and that cause the cessation of Company operations at the Project: (a) acts of God, including earthquakes, tornados, storms or floods; (b) acts of public enemies or terrorists; (c) civil insurrections; (d) orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, or officials; (e) epidemics and pandemics; or (f) fires. The Company agrees, however, to use reasonable efforts to remedy with reasonable dispatch the cause or causes preventing the Company from carrying out its agreements. In no event shall a Force Majeure last for more than six months and apply to more than one Jobs Report (as defined in the Memorandum of Understanding).

Section 8.2. Remedies on Default.

Upon the occurrence of an Event of Default by the Company, the Issuer may (a) terminate this Lease, (b) seek specific performance of any obligation, agreement or covenant of the Company under this Lease or (c) pursue any other remedy available under law. Notwithstanding anything contained herein to the contrary, the Company shall be entitled to exercise the purchase option under Article VII herein upon the occurrence and during the continuance of a Default or Event of Default hereunder or the Resolution.

Upon the occurrence of an Event of Default by the Issuer, the Company may, as its sole remedy, seek specific enforcement of any obligation, agreement or covenant of the Issuer under this Lease.

Section 8.3. Delays.

No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

Section 8.4. Agreement to Pay Attorneys’ Fees and Expenses.

In the event any party should Default under any of the provisions of this Lease and the non-defaulting party should employ attorneys or incur other expenses for the collection of payments or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the non-defaulting party its reasonable attorneys’ fees and such other reasonable expenses so incurred by the non-defaulting party.

Section 8.5. No Additional Waiver Implied by One Waiver.

In the event any agreement contained in this Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE IX.

MISCELLANEOUS

Section 9.1. Notices.

All notices, certificates or other communications hereunder shall be given by (a) registered mail, postage prepaid, (b) overnight delivery or (c) hand delivery, addressed as follows:

If to the Issuer:	Coweta County Development Authority 19 C Jefferson St. Newnan, Georgia 30263 Attn: Executive Director
with a copy to:	Glover & Davis, P.A. 10 Brown St. Newnan, Georgia 30264 Attn: Nathan T. Lee
If to the Company:	Hitachi Construction Machinery Americas Inc. 60 Amlajack Blvd Newnan, Georgia 30265 Attn: Director of General Affairs
with a copy to:	Nelson Mullins Riley & Scarborough LLP 201 17th Street NW, Suite 1700 Atlanta, GA 30363 Attention: Earle R. Taylor III

The Issuer and the Company may, by written notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 9.2. Binding Effect; Third-Party Beneficiary.

This Lease shall inure to the benefit of and shall be binding upon the Issuer, the Company and their respective successors and assigns. The owner of the Bond shall be a third-party beneficiary hereof.

Section 9.3. Severability.

In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.4. Amounts Remaining in Funds.

It is agreed by the parties hereto that any amounts remaining in any funds or accounts created under the Resolution upon expiration or earlier termination of this Lease, as provided in this Lease, after payment in full of the Bond (or provision for payment thereof having been made in accordance with the provisions of the Resolution) and all other amounts owing hereunder, shall belong to and be paid to the Company.

Section 9.5. Amendments, Changes and Modifications.

This Lease may not be amended, changed or modified except in writing by the parties hereto with the written consent of the owner of the Bond.

Section 9.6. Execution in Counterparts.

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

Section 9.7. Applicable Law.

This Lease shall be governed by and construed in accordance with the laws of the State.

Section 9.8. Captions.

The captions and headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Lease.

Section 9.9. Conflict with Memorandum of Understanding.

The parties acknowledge and agree that if the terms of this Lease conflict with the Memorandum of Understanding, the terms of the Memorandum of Understanding shall control.

IN WITNESS WHEREOF, the Issuer has caused this Lease to be executed by its duly authorized officers and its seal to be impressed hereon, and the Company has caused this Lease to be executed by its duly authorized officer and its seal to be impressed hereon, all as of the date first written above.

COWETA COUNTY DEVELOPMENT
AUTHORITY

(SEAL)

By: _____
Chairman

Attest:

By: _____
Secretary

(Lease)

HITACHI CONSTRUCTION MACHINERY
AMERICAS INC.

(SEAL)

By: _____
CEO

(Lease)

EXHIBIT A

PROJECT SITE

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 84, Fifth District, Coweta County, Georgia, and being more particularly bounded and described as follows:

BEGINNING AT A POINT marked by an iron pin found at the intersection of the western margin of the right-of-way of Amlajack Boulevard (having a right-of-way width of 200 feet) with the southern margin of the right-of-way of Dart Road (having a right-of-way width of 60 feet); THENCE south 00 degrees 20 minutes 09 seconds west along the western margin of the right-of-way of Amlajack Boulevard a distance of 810.06 feet to a point; THENCE southerly along the western margin of the right-of-way of Amlajack Boulevard and following the arc thereof a distance of 136.06 feet to a point marked by an iron pin found (the said arc being subtended by a chord having a chord distance of 136.01 feet and a chord bearing of south 03 degrees 15 minutes 40 seconds west, the arc being northwest of its chord); THENCE south 89 degrees 42 minutes 20 seconds west a distance of 864.73 feet to a point marked by an iron pin found on the eastern margin of the right-of-way of an Atlanta West Point Railroad spur (having a right-of-way width of 100 feet); THENCE north 00 degrees 07 minutes 22 seconds east along the eastern margin of the right-of-way of the said Atlanta West Point Railroad spur a distance of 946.20 feet to a point marked by an iron pin found at the intersection of the eastern margin of the right-of-way of the said Atlanta West Point Railroad spur with the southern margin of the right-of-way of Dart Road; THENCE north 89 degrees 43 minutes 59 seconds east along the southern margin of the right-of-way of Dart Road a distance of 875.19 feet to the POINT OF BEGINNING; being as depicted on plat of survey for Kawasaki Loaders Manufacturing Corp., USA, by B. K. Rochester, Jr., Georgia Registered Land Surveyor No. 1534 with Rochester & Associates, Inc., dated April 2, 1987 and revised June 11, 1987, and containing 18.961 acres according to the aforesaid plat.

EXHIBIT B

SITE PLAN

[To be Provided]