

ORDINANCE NO. A-546

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF CONWAY, ARKANSAS, AS LESSOR, AND UMC INDUSTRIES, INC., AS LESSEE, IN SUBSTANTIALLY THE **FORM** AND WITH SUBSTANTIALLY THE CONTENTS SET FORTH IN AND MADE A PART OF THIS ORDINANCE; AUTHORIZING THE EXECUTION AND DELIVERY OF THE LEASE AGREEMENT; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY

BE IT ORDAINED by the City Council of the City of Conway, Arkansas.

Section 1. That there be, and there is hereby authorized the execution and delivery of a Lease Agreement wherein the City of Conway, Arkansas (the "City") is Lessor and UMC INDUSTRIES, INC., a Delaware corporation ("UMC") is Lessee, in substantially the **form** and with substantially the contents hereinafter set forth, and the Mayor and City Clerk be, and they are hereby authorized to execute, acknowledge and deliver the Lease Agreement for and on behalf of the City. The form and contents of the Lease Agreement, which are hereby approved and which are made a part hereof, shall be substantially as follows:

LEASE AGREEMENT

between

CITY OF CONWAY, ARKANSAS

LESSOR

and

UMC INDUSTRIES, INC.

LESSEE

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Exhibit A . . . . .

LEASE AGREEMENT dated as of June 1, 1972, between the CITY OF CONWAY (hereinafter called the "City"), a municipal corporation organized and existing under the laws of the State of Arkansas, as Lessor, and

UMC INDUSTRIES, INC. (hereinafter called the "Lessee"), a corporation organized and existing under the laws of the State of Delaware, as Lessee.

W I T N E S S E T H:

In consideration of the respective representations and agreements hereinafter contained, the City and the Lessee agree as follows (provided, that in the performance of the agreements of the City herein contained, any obligation it may thereby incur for the payment of money shall not be a general debt on its part, but shall be payable solely out of the proceeds derived from this Agreement, the sale of the bonds referred to in Section 2.1 hereof and the insurance and condemnation awards as herein provided):

ARTICLE I

Definitions

In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement shall have the following meanings unless the context or use indicates another or different meaning or intent:

"Act" means Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas, approved January 21, 1960, as amended.

*"Authorized Lessee Representative"* means the person at the time designated to act in behalf of the Lessee by written certificate furnished to the City and the Trustee containing the specimen signature of such person and signed on behalf of the Lessee by the president or any vice president of the Lessee. Such certificate may designate an alternate or alternates.

*"Bonds"* means the Industrial Development Revenue Bonds of the City to be issued pursuant to the Indenture authorized in the total principal amount of \$2,000,000 but to be issued in series.

*"Series A Bonds"* means the initial series of Bonds being delivered under the Indenture and secured by the Indenture in the principal amount of \$1,350,000.

*"Bond Fund"* means the Bond principal and interest fund created in Section 501 of the Indenture.

*"Building"* means those certain buildings and all other facilities forming a part of the Project and not constituting part of the Leased Equipment which are required by Section 4.1(a) hereof to be constructed on the Leased Land, as they may at any time exist.

*"City"* means the City of Conway a municipal corporation organized and existing under the laws of the State of Arkansas.

*"Construction Fund"* means the construction fund created in Section 601 of the Indenture.

*"Construction Period"* means the period between the beginning of construction or the date on which Bonds are first delivered to purchasers thereof (whichever is earlier) and the completion of the Project.



"*Indenture*" means any or all, as required by the particular context, of the Trust Indentures between the City and the Trustee, relating to the Bonds.

"*Independent Counsel*" means an attorney duly admitted to practice before the highest court of any State in the United States of America and not regularly employed by either the City or the Lessee.

"*Independent Engineer*" means an engineer or engineering firm registered and qualified to practice the profession of engineering under the laws of Arkansas and who or which is not a full time employee of either the City or the Lessee.

"*Lease Agreement*" or "*Agreement*" means this Agreement and all supplements hereto.

"*Lease Term*" means the duration of the Lessee's right to use and occupy the Project as specified in Section 5.1 hereof plus all renewals pursuant to the provisions of Section 11.6 hereof.

"*Leased Equipment*" means those items of machinery and equipment required herein to be acquired and installed in the Building or elsewhere on the Leased Land with proceeds from the sale of the Bonds and any item of machinery and equipment acquired and installed in the Building or elsewhere on the Leased Land in substitution therefor pursuant to the provisions of Sections 4.1 (b) and 6.2 (a) hereof, but not including Lessee's own machinery and equipment installed under the provisions of Section 6.1(b) hereof. The Leased Equipment shall be identified in a ledger, one copy of which shall be filed with the Trustee and one copy maintained by Lessee in the Building, and shall be marked by an appropriate tag, or other device, as being the property of the City.

"Leased Land" means the real estate described in Exhibit "A" hereto annexed and by this reference made a part of this agreement.

"Lessee" means (i) UMC Industries, Inc., a Delaware corporation, and (ii) any surviving, resulting or transferee corporation as provided in Section 8.3 hereof.

"Net Proceeds", when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or Condemnation award with respect to which that term is used remaining after payment of all expenses (including attorney's fees and any extraordinary fee of the Trustee as defined in the Indenture incurred in the collection of such gross proceeds).

"Permitted Encumbrances" means, as of any particular time, (i) this Agreement and the Indenture, (ii) utility, access and other easements and rights of way, restrictions, reservations, reversions and exceptions that an Independent Engineer and the Lessee certify will not interfere with or impair the operations being conducted in the Building (or, if no operations are being conducted therein, the operations for which the Building was designed or last modified), and (iii) such minor defects, irregularities, encumbrances, easements, rights of way, and clouds on title as normally exist with respect to properties similar in character to the Project, and as do not, in the opinion of any Independent Counsel, materially impair the property affected thereby for the purpose for which it was acquired or is held by the City.

"Project" means the Leased Land, the Building and the Leased Equipment, and any other structure now or hereafter located on the Leased Land, and all real and personal property, including easements, deemed necessary in connection therewith, as they

may at any time exist, but not including Lessee's own machinery and equipment installed under the provisions of Section 6.1(b) hereof.

"*Trustee*" means Worthen Bank & Trust Company, Little Rock, Arkansas, or any successor trustee under the Indenture.

## ARTICLE II

### Representations

Section 2.1. *Representations by the City.* The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City has authority under the provisions of Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas, approved January 21, 1960, as amended, to acquire, construct and equip industrial revenue projects and issue its bonds to finance the acquisition, construction and equipment of such projects. Any bonds so issued are payable solely out of the revenue derived from the Project and shall not constitute an indebtedness of the municipality so issuing them within the meaning of any state constitutional provision or statutory limitation, and shall never constitute or give rise to a pecuniary liability of the issuer or a charge against its general credit or taxing powers.

(b) The City will perform all of its obligations with reference to the acquiring, constructing and equipping of the Project specified in Article IV of this Agreement.

(c) Notwithstanding anything herein contained to the contrary, it is the intention of the City that any obliga-

tion it may hereby incur for the payment of money shall not be a general debt on its part but **shall** be payable solely from the proceeds derived from this Agreement, the sale of the bonds and the insurance and condemnation awards **as** herein provided.

(d) The City has been induced to enter into this undertaking by the promise of the Lessee to locate industrial facilities within or near the corporate limits of the City.

(e) In order to furnish necessary moneys for the payment of Project costs and the expenses of authorizing and issuing the Bonds, the City has authorized the issuance of City of Conway, Arkansas Industrial Development Revenue Bonds -- UMC Industries, Inc. Project, under the Act in the total amount of \$2,000,000 (the "Bonds"). Simultaneously with the delivery of this Agreement, the City is delivering Series A Bonds in the principal amount of \$1,350,000. The City will sell and deliver additional series up to the total authorization when requested by Lessee in accordance with the provisions of Article IV of this Agreement.

(f) The Bonds are to be issued under and secured by the Indenture, pursuant to which the City's interest in this Agreement, the revenues and receipts derived by the City from the leasing or sale of the Project will be pledged to the Trustee **as** security for payment of the principal of, premium (if any) and interest on the Bonds and the Bonds will be secured by a lien on and security interest in the Project.

Section 2.2. *Representations by the Lessee.* The Lessee makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Lessee is a corporation duly incorporated under the laws of Delaware, is in good standing under its articles of incorporation and the laws of Delaware and is qualified to do business in Arkansas, and has power to enter into this Agreement and perform all obligations contained herein, and has, by proper corporate action, been duly authorized to execute and deliver this Agreement.

(b) The leasing by the City of the Project to the Lessee will induce the Lessee to locate an industrial enterprise within or near the corporate limits of the City.

(c) The Lessee intends to operate the Project as a manufacturing and processing plant from the Completion Date to the expiration or earlier termination of the Lease Term as provided herein for the manufacturing, assembling, processing, storing, warehousing, distributing and selling of such products as the Lessee may deem appropriate, all to the extent that such operation is, in Lessee's judgment, commercially desirable for Lessee.

(d) The Lessee hereby warrants that it is not subject to any charter, by-law or contractual limitation or provision of any nature whatsoever which in any way limits, restricts or prevents the Lessee from entering into this Agreement or performing any of its obligations hereunder and covenants that, anything in this Agreement to the contrary notwithstanding, so long as any of the Bonds are outstanding

there shall be no abatement or reduction of the rent payable by the Lessee except as provided in Section 9.5 hereof.

### ARTICLE III

#### Demising Clauses and Warranty of Title

Section 3.1. *Demise of the Leased Land and Building and the Leased Equipment.* The City demises and leases to the Lessee, and the Lessee leases from the City, the Project at the rental set forth in Section 5.3 hereof and in accordance with the provisions of this Agreement.

Section 3.2. *Warranty of Title.* The City warrants that it lawfully owns and is lawfully possessed of the Leased Land and that it has good and merchantable title and estate therein, free from all encumbrances other than Permitted Encumbrances, but it has no liability in regard thereto. If requested by Lessee, the City will promptly obtain title insurance (the cost of which is to be defrayed from the Construction Fund) issued by a title insurance company designated by the Lessee in the face amount requested by Lessee with an option to increase such insurance from time to time up to the full insurable value of the Project if the Lessee shall so direct.

Section 3.3. *Quiet Enjoyment.* The City covenants and agrees that the Lessee, upon paying the rent herein and upon performing and observing the covenants, conditions and agreements hereof, shall and may peaceably hold and enjoy the Project during the Lease Term without any interruption or disturbance, subject however, to the terms of this Lease Agreement.

ARTICLE IV

Commencement and Completion of the Facility

Issuance of the Bonds

Section 4.1. *Agreement to Construct and Equip the Building on the Leased Land.*

(a) After the bond proceeds are available, the Lessor will enter into or accept the assignment of contracts or purchase orders having terms, conditions, drawings, specifications and other provisions designated and prescribed by the Lessee for constructing and equipping the Project. All payments necessary to complete the Project: shall be made out of the Construction Fund, and the Lessee shall be reimbursed out of the Construction Fund for all expenditures made by it in connection with the constructing and equipping of the Project. Title to all machinery, equipment and personal property of every nature paid for out of the Construction Fund (either by direct payment or by virtue of reimbursement to the Lessee) shall be transferred to the Lessor. The obligations of Lessor hereunder are subject to the provisions of Subsection (c) hereof limiting the obligations of the Lessor to the extent of moneys in the Construction Fund.

Lessee, with the cooperation of Lessor when necessary, shall obtain all necessary approvals from any and all governmental agencies requisite to the constructing and equipping of the Project, and the Project shall be constructed and equipped in compliance with all State and local laws, ordinances and regulations applicable thereto. Lessee may amend,

modify, authorize or undertake any changes, alterations, extras or additions to or from such contracts. All requests, approvals and agreements required on the part of Lessor and on the part of the Lessee shall be in writing, signed by a duly designated representative of the party making such request, granting such approval, or entering into such agreement. The Lessor and Lessee shall concurrently with the delivery of this Agreement, notify each other of the representative of each. It is agreed that each party may have more than one representative and may change the representative or representatives from time to time, with each such change to be in writing forwarded to the other party. The representative of each party so designated shall be authorized to enter into and execute any contracts or agreements or to grant any approvals or to take any action for and on behalf of the party hereto represented by him, and the other party to this Agreement shall be entitled to rely upon the duly designated representative as having full authority to bind the party hereto represented by him.

(b) Costs incurred by Lessor and Lessee in discharging its obligations under Subsection (a) hereof and in other sections of this Article IV shall be referred to as "Project costs" and it is agreed that the Project costs will not exceed the available proceeds received from the sale of the Bonds, or any series thereof if less than the total authorized principal amount has been delivered and that if the Project costs should exceed such proceeds, the



Project will be completed and the Lessee hereby agrees to pay the entire amount of any such excess. Project costs, **as** that term is used in this Agreement, shall include all costs and expenses of every nature incurred by Lessor and Lessee in accomplishing the Project, all costs and expenses incidental thereto, and all costs and expenses incurred in connection with the issuance of the Bonds, including, without limitation, the following:

(1) All amounts paid by Lessor or Lessee in discharge of their obligations under Subsection (a) hereof, including, without limitation, all amounts paid in acquiring and improving the Leased Land and all amounts paid under all construction, engineering, architectural or other contracts:

(2) All amounts paid for extras, charges or additions agreed to by Lessor and Lessee in accordance with the provisions of Subsection (a);

(3) All payments incurred in acquiring and installing machinery, equipment and other personal property;

(4) Any cost or expense, not otherwise provided for herein, incurred under and pursuant to the provisions of this Article IV pertaining to the constructing and equipping of the Project;

(5) Such other additional fees, costs, expenses and expenditures of whatever nature incidental or pertaining to the Project and the financing **as** may from time to time be agreed upon by Lessor and Lessee as constituting part of the Project costs.

It is understood that the electors of Lessor have authorized the issuance of not to exceed \$2,000,000 in principal amount of bonds and that the initial issue is to be designated "Series A" and is to be in the principal amount of \$1,350,000, which will leave the balance of the total authorized issue to be issued in Series from time to time in the future. Lessor agrees that, subject to compliance with the conditions of the Indenture pertaining thereto, it will execute and deliver from time to time, pursuant to the written request of the Lessee, additional series of bonds of said total authorized principal amount; provided, however, the Lessor assumes no responsibility for finding purchasers for said additional bonds. Such additional bonds shall be issued in accordance with and pursuant to the conditions set forth in the Indenture pertaining thereto.

It is agreed that the sale proceeds shall be deposited in a Construction Fund to be established pursuant to the provisions of the Indenture. It shall be provided in the Indenture that the moneys in the Construction Fund shall be expended solely for the payment of the Project costs. Investments of moneys in, and disbursements of moneys from the Construction Fund shall be made in accordance with the provisions of the Indenture pertaining thereto. Any amount remaining in the Construction Fund after payment of all Project costs shall be deposited in the Bond Fund pursuant to the provisions of the Indenture.

It is understood that the Indenture will be delivered and become effective simultaneously with this Agreement and it is covenanted and agreed that so long as the Lessee

is not in default under this Agreement, the Indenture shall not be amended or supplemented without the approval of the Lessee of the amendment or supplement being made.

(c) Lessor covenants that it will take any action and institute any proceedings requested by Lessee to cause and require all contractors and material suppliers to complete their contracts diligently in accordance with the terms of said contracts, including, without limitation, the correcting of any defective work. All expenses incurred by Lessor in connection with the performance of its obligations under this Subsection (c) may be considered part of the Project costs as defined in Subsection (c), and Lessor agrees that the Lessee may, from time to time, in its own name, or in the name of the Lessor, take such action as may be necessary or advisable, as determined by Lessee, to insure the construction of the Project in accordance with the terms of the construction contract and the installation of machinery and equipment in accordance with any applicable contract pertaining thereto, to insure the peaceable and quiet enjoyment of the Project for the term of this Agreement. All costs and expenses incurred by Lessee in connection therewith may be considered part of the Project costs as defined in Subsection (b).

(d) If requested by Lessee, Lessor will assign and extend to Lessee any vendor's warranties received by Lessor in connection with machinery and equipment purchased by Lessor for the Project, together with any warranties given by contractors, manufacturers or service organizations who

perform construction work or install any machinery and equipment on or in the Project. If requested, Lessor will execute and deliver instruments of assignment to Lessee to accomplish the foregoing.

#### ARTICLE V

##### Effective Date of This Agreement; Definition of Lease Term; Rental Provisions

Section 5.1. *Effective Date of this Agreement; Duration of Lease Term.* This agreement shall become effective upon its delivery, and the leasehold estate created in this Agreement shall then begin, and, subject to the provisions of this Agreement (including particularly Articles X, and XI hereof), shall expire at midnight, City time, June 1, 1992.

Section 5.2. *Delivery and Acceptance of Possession.* The City agrees that the Lessee shall have possession of the Project (subject to the right of the Trustee to enter thereon for inspection purposes and to the other provisions of Section 8.2 hereof) whenever such possession is desired by Lessee, provided such possession **does** not unreasonably interfere with the construction of the Building or installation of the Leased Equipment and Lessee **may** install, maintain and operate its own equipment during the construction period.

Section 5.3. *Rents and Other Amounts Payable.* At least 10 days before December 1, 1972, and at least 10 days before each June 1 and December 1 thereafter until the principal of, premium

(if any), and interest on the Bonds shall have been fully paid or provisions for the payment thereof shall have been made in accordance with the Indenture, the Lessee shall pay to the Trustee as rent for the Project a sum equal to the amount payable on such date as principal and interest upon the Bonds, as provided in the Indenture. In any event each rental payment under this Section shall be sufficient to pay the total amount of interest or interest and principal payable on the next succeeding semi-annual interest payment date, and if at any semiannual interest payment date the balance in the Bond Fund is insufficient to make required payments of principal and interest on such date the Lessee shall forthwith pay any such deficiency.

Anything herein to the contrary notwithstanding, any amount at any time held by the Trustee in the Bond Fund shall be credited against the next succeeding rental payment and shall reduce the payment to be made by Lessee to the extent such amount is in excess of the amount required for payment of Bonds theretofore matured or called for redemption and past due interest in all cases where such Bonds or coupons have not been presented for payment; and further, if the amount held by the Trustee in the Bond Fund should be sufficient to pay at the times required the principal of and interest on the Bonds then remaining unpaid, the Lessee shall not be obligated to make any further rental payments under the provisions of this Section.

The Lessee agrees to pay to the Trustee until the principal, premium (if any), and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the provisions of the Indenture, (i) an amount

equal to the annual fee of the Trustee for the services of the Trustee rendered and its expenses incurred under the Indenture, and (ii) the reasonable fees and charges of the Trustee and any paying agents on the Bonds for acting as paying agents as provided in the Indenture, as and when the same becomes due.

In the event the Lessee should fail to make any of the payments required in this Section, the item or installment so in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid, and the Lessee agrees to pay the same. The provisions of this Section shall be subject to the provisions of Section 9.5 hereof.

Section 5.4. *Place of Rental Payments.* The rent provided for in Section 5.3 hereof shall be paid directly to the Trustee for the account of the City and will be deposited in the Bond Fund. The additional payments provided for in Section 5.3 hereof shall be paid directly to the Trustee for its own use or for disbursement to the paying agents, as the case may be.

Section 5.5. *Obligations of Lessee Hereunder Unconditional.* Subject to the provisions of Section 9.5 hereof, the obligations of the Lessee to make the payments required in Section 5.3 hereof and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, and the payments required in Section 5.3 shall be certainly payable on the dates and at the times specified without notice or demand, and without abatement or set-off, and regardless of any contingencies whatsoever, and notwithstanding any circumstances or occurrences that may now exist or that may hereafter arise or take place, including, but without limiting the generality of the foregoing:

*if*

(a) The unavailability of the Project, or any part thereof, for use by the Lessee at any time by reason of the failure to complete the overall industrial project by any particular time or at all or by reason of any other contingency, occurrence or circumstance whatsoever;

(b) Damage to or destruction of the Project, or any part thereof;

(c) Legal curtailment of Lessee's use of the Project, or any part thereof;

(d) Change in Lessor's legal organization or status;

(e) The taking of title to or the temporary use of the whole or any part of the Project by condemnation;

(f) Any termination of this agreement for any reason whatsoever;

(g) Failure of consideration or commercial frustration of purposes;

(h) Any change in the tax or other laws of the United States of America or of the State of Arkansas;  
or

(i) Any default of the Lessor under this Agreement or any other fault or failure of the Lessor whatsoever.

Nothing contained in this Section shall be construed to release the City from the performance of any of the provisions of this Lease Agreement on its part to be performed.

Lessee covenants that it will not enter into any contract, indenture or agreement of any nature whatsoever which shall in any way limit, restrict or prevent Lessee from performing any of its obligations under this Agreement.

ARTICLE VI

Maintenance, Modifications, Impositions and Insurance

Section 6.1. *Maintenance and Modifications of Project  
by Lessee.*

(a) The Lessee agrees that during the Lease Term it will at its own expense (i) keep the Project in reasonably safe condition as its operations shall permit and (ii) keep the Building and the Leased Equipment and **all** other improvements forming a part of the Project in good repair and in good operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof.

(b) The Lessee may from time to time, in its sole discretion and at its own expense, make any additions, modifications at the Project location, including installation of additional machinery, equipment, furniture or fixtures in the Building or on the Leased Land, which it may deem desirable for its business purposes; provided that all such additions, modifications and improvements do not adversely affect the structural integrity of the Building. **All** machinery, equipment, furniture and fixtures so installed by the Lessee shall remain the sole property of the Lessee (other than interest of a secured party) in which neither the City nor the Trustee shall have any interest and may be sold, encumbered, modified or removed **at** any time while the Lessee is not in default under this agreement; provided that any damage to the Project occasioned by such modification or removal shall be repaired by the Lessee at its own expense.



(c) The Lessee will not permit any mechanics' or other liens to be established or remain against the Project for labor or materials furnished in connection with any addition, modifications, improvements, repairs, renewals or replacements so made by it; provided, that if the Lessee shall first notify the Trustee of its intention so to do, the Lessee may in good faith contest any mechanics' or other liens filed or established against the Project and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the City or the Trustee shall notify the Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the security of the Bondholders, as to any part of the Project, will be materially endangered or the Project or any substantial part thereof will be subject to loss or forfeiture, in which event the Lessee shall promptly pay and cause to be satisfied and discharged or bond (if legally permissible) all such unpaid items. The City will cooperate fully with the Lessee in any such contest.

Section 6.2. *Removal of Leased Equipment*, The City shall not be under any obligation to renew, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary Leased Equipment. In any instance where the Lessee in its sound discretion determines that any items of Leased Equipment have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Lessee may remove such items of

Leased Equipment from the Building and the Leased Land and (on behalf of the City) sell, trade-in, exchange or otherwise dispose of them (as a whole or in part) without any responsibility or accountability to the City or the Trustee therefor, provided that the Lessee shall:

(a) Substitute (either by direct payment of the costs thereof or by advancing to the City the funds necessary therefor) and install anywhere in the Building or on the Leased Land other machinery or equipment having equal or greater utility (but not necessarily having the same function) in the operation of the Building as a modern manufacturing facility (provided such removal and substitution shall not impair the operating unity of the remaining property), all of which substituted machinery or equipment shall be free of all liens and encumbrances (other than Permitted Encumbrances) but shall become a part of the Leased Equipment; or

(b) Not make any such substitution and installation unless, (i) in the case of the sale of any such machinery or equipment to anyone other than itself or in the case of the scrapping thereof, the Lessee shall pay into the Bond Fund the proceeds from such sale or the scrap value thereof, as the case may be, (ii) in the case of the trade-in of any such machinery or equipment for other machinery or equipment not to be installed in the Building or on the Leased Land, the Lessee shall pay into the Bond Fund the amount of the credit received by it in such trade-in

and (iii) in the case of the sale of any such machinery or equipment to the Lessee or in the case of any other disposition thereof the Lessee shall pay into the Bond Fund an amount equal to the original cost thereof less depreciation at rates calculated in accordance with generally accepted accounting practice; provided further, that the Lessee may not fail to make any such substitution and installment if such failure would impair the operating unity of the remaining property.

The removal from the Project of any portion of the Leased Equipment pursuant to the provisions of this Section, shall not entitle the Lessee to any abatement or diminution of the rents payable under Section 5.3 hereof.

The Lessee will promptly report to the Trustee each such removal, substitution, sale and other disposition and will pay to the Trustee such amounts as are required by the provision of the preceding subsection (b) of this Section to be paid into the Bond Fund promptly after the sale, trade-in, scrapping or other disposition requiring such payment. The Lessee will not remove, or permit the removal of, any of the Leased Equipment from the Leased Land except in accordance with the provision of this Section:

**Section 6.3. Impositions.** Lessee shall, during the life of this Lease Agreement, bear, pay and discharge, before the delinquency thereof, all taxes and assessments, general and special, if any, which may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, or any part thereof, or any improvements at any time

thereon or Lessee's interest in the Project under this Agreement, including any new lawful taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied against real and personal property, and further including all water and sewer charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would encumber City's title to the Project (all of the foregoing being herein referred to as "Impositions"). In the event any special assessment taxes are lawfully levied and assessed which may be paid in installments, Lessee shall be required to pay only such installments thereof as become due and payable during the life of this lease as and when the same become due and payable. Any Impositions which the Lessee is required to bear, pay and discharge, shall be remitted directly to the authority which is entitled to the payment thereof.

Within thirty (30) days after the last day for payment, without penalty or interest, of an Imposition which Lessee is required to bear, pay and discharge pursuant to the terms hereof, Lessee shall deliver to the City a reproduced copy of the statement issued therefor duly receipted to show the payment thereof.

Lessee shall have the right, in its or the City's name, to contest in good faith the validity or amount of any Imposition which Lessee is required to bear, pay and discharge pursuant to the terms of this article by appropriate legal proceedings provided, Lessee, before instituting any such contest, gives the City written notice of its intention so to do, and if, and provided further, Lessee diligently prosecutes any such contest, at all times effectively stays or prevents any official or ju-

ditional sale therefor, under execution or otherwise, and promptly pays any final judgment enforcing the Imposition so contested and thereafter promptly procures record release or satisfaction thereof. Lessee shall hold the City whole and harmless from any costs and expenses the City may incur related to any such contest.

The parties hereto recite knowledge of the decision of the Supreme Court of the State of Arkansas in Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 633, concerning the exemption of properties owned by municipalities and used for securing and developing industry under and pursuant to the provisions of the Act. The City covenants that it will not part with title to the Project or any part thereof during the Lease Term or take any other affirmative action which may reasonably be construed as tending to cause or induce the levy or assessment of ad valorem taxes on the Project. The City and the Lessee acknowledge that (a) under their interpretation of present law, no part of the Project will be subject to ad valorem taxation by the State of Arkansas or by any political or taxing sub-division thereof, and (b) this factor, among others materially induced the Lessee to enter into this Lease and Agreement.

**Section 6.4. Insurance Required.** During the construction period and throughout the Lease Term, the Lessee shall keep the Project continuously insured against such risks as are customarily insured against by business of like size and type, paying as the same become due all premiums in respect thereto, including but not necessarily limited to:

(a) Insurance upon the repair or replacement basis if available, and otherwise to the full insurable value of the Project as determined by a recognized appraiser or insurer selected by the Lessee, against loss or damage by fire and lightning, with uniform standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in Arkansas, provided that the insurance required by this subsection may contain a deductible provision of not in excess of \$5,000 direct damage applicable to each separate instance of loss or damage insured against. In time of war in which the United States is a belligerent, such insurance to the extent of the full insurable value of the Project as may be available from the United States of America against loss thereof or damage thereto from risks and hazards of war, if such insurance is then generally carried by owners of industrial plants in Arkansas.

(b) Boiler and pressure vessel (including pressure pipes) explosion insurance in an amount at least equal to \$500,000 (with deductible provisions not to exceed \$5,000) with respect to all boilers and pressure vessels and pressure pipes installed in the Project.

(c) General public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Project and the adjoining streets, sidewalks, and passageways, such insurance to afford protection of not less than \$300,000 with respect to bodily injury of

any one person, not less than \$1,000,000 with respect to any one accident, and not less than \$100,000 with respect to property damage; provided that the policies evidencing such insurance may provide that the Lessee shall be self insured to the extent of \$20,000 in connection with each separate claim insured against. Insurance in amounts sufficient to cover any liability under the Workmen's Compensation laws of Arkansas for deaths of or injuries to persons arising out of any act or omission during the preparation for or the construction of the Project.

Nothing in this Section 6.4 or any other portion of this Lease Agreement shall be construed to prevent Lessee from including the Project under Lessee's blanket forms of insurance coverage, provided that each and all of the requirements of this Section 6.4 be complied with under such blanket coverage.

**Section 6.5. *Application of Net Proceeds of Insurance.***

The Net Proceeds of the insurance required in Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required in Sections 6.4 (a) and 6.4(b) hereof shall be applied as provided in Section 7.1 hereof, and (ii) the Net Proceeds of the insurance required in Section 6.4(c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.6. *Additional Provisions Regarding Insurance.* All insurance required in Section 6.4 hereof shall be taken out and maintained in generally recognized responsible insurance companies selected by the Lessee. All policies evidencing such insurance shall provide for payment of the losses to the City, the Lessee and the Trustee as their respective interests may appear, and the policies required by Sections 6.4(a) and 6.4(b) shall bear endorsements requiring that all proceeds of insurance resulting from any claim in excess of \$100,000 for loss or damage covered thereby be paid to the Trustee; provided however that all claims regardless of amount may be adjusted by the Lessee with insurers, subject to approval of the Trustee as to settlement of any claim in excess of \$100,000.

All policies or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Trustee and shall contain a provision that such policy may not be cancelled unless the Trustee is notified at least 15 days prior to cancellation; and at least 15 days prior to the expiration of any such policy, the Lessee shall furnish the Trustee with evidence satisfactory to the latter, that the policy has been renewed or replaced or is no longer required by this agreement .

Section 6.7. *Advances by City or Trustee.* In the event the Lessee shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Project in as reasonably safe condition as its operating conditions will permit, or shall fail to keep the Building and the Leased Equipment in good repair and good operating condition, the City or the Trustee may



(but unless satisfactorily indemnified shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or make the required repairs, renewals and replacements; and all amounts so advanced therefor by the City or the Trustee shall become an additional obligation of the Lessee to the one making the advancement, which amounts the Lessee agrees to pay.

Section 6.8. *Indemnity.* Lessee shall and covenants and agrees to indemnify, protect, defend and save the City harmless from and against any and all claims, demands, liabilities and costs, including attorneys' fees, arising from damage or injury, actual or claimed, of whatsoever kind or character, to property or persons, occurring or allegedly occurring in, on or about the Project during the life of this Lease Agreement, and upon notice from the City Lessee shall defend the City in any action or proceeding brought thereon.

## ARTICLE VII

### Damage, Destruction and Condemnation

Section 7.1. *Damage and Destruction.* If prior to full payment of the Bonds and coupons appertaining thereto (or provision for payment thereof having been made in accordance with the provisions of the Indenture) the Project is destroyed (in whole or in part) or is damaged by fire or other casualty to such extent that the claim for loss resulting from such destruction or damage is not greater than \$100,000, the Lessee, (i) will promptly repair, rebuild or restore the property damaged to

substantially the same condition as it existed prior to the event causing such damage or destruction, with such changes alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not impair operating unity or productive capacity or the character of the Building as a manufacturing facility and (ii) will apply for such purpose so much as may be necessary of any Net Proceeds of insurance resulting from claims for such losses, as well as any additional moneys of the Lessee necessary therefor. All Net Proceeds of insurance resulting from claims for such losses not in excess of \$100,000 shall be paid to the Lessee.

Unless the Lessee shall have elected to exercise its option to acquire legal title to the Project pursuant to the provisions of Section 11.2(a) hereof, if prior to full payment of the Bonds and coupons appertaining thereto (or provision for payment thereof having been made in accordance with the provisions of the Indenture) the Project is destroyed (in whole or in part) or is damaged by fire or other casualty to such extent that the claim for loss resulting from such destruction or damage is in excess of \$100,000, the Lessee shall promptly give written notice thereof to the Trustee. All Net Proceeds of insurance resulting from claims for such losses in excess of \$100,000 shall be paid to and held by the Trustee, whereupon (i) the Lessee will promptly to repair, rebuild or restore the property damaged or destroyed to substantially the same condition as it existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee

and as will not impair operating unity or productive capacity or the character of the Building as a manufacturing facility, and (ii) the Trustee will apply so much as may be necessary of the Net Proceeds of such insurance to payment of the cost of such repair, rebuilding or restoration, either on completion thereof or as the work progresses, as directed by Lessee. Each such direction of the Lessee shall be accompanied by a certificate of an architect or engineer (who shall be selected by the Lessee and satisfactory to the Trustee) in charge of the rebuilding, repairing or restoring, dated not more than 30 days prior to such direction, setting forth in substance that (a) the sum then directed to be applied either has been paid by the Lessee, or is justly due, to contractors, subcontractors, materialmen, engineers, architects or other persons who shall have rendered services or furnished materials or improvements for the rebuilding, repairing or restoring therein specified; the names of such persons; a brief description of such services or materials or improvements and the several amounts so paid or due to each of such persons; and a statement that none of the cost of the services or materials or improvements described in such certificate has been or is being made the basis, in any previous or then pending direction for payment under this Section and that the sum then directed to be applied does not exceed the value of the services or materials or improvements described in the certificate, and (b) that, except for the amount, if any, stated (pursuant to (a) preceding) in such certificate to be due for services or materials or improvements, there is not outstanding any indebtedness known to the persons signing such certificate to be due for services or materials or

improvements, there is not outstanding any indebtedness known to the persons signing such certificate which is then due for labor, wages, materials, supplies or services in connection with the repairing, rebuilding or restoring which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialman's lien upon the Project or any part thereof. The Trustee may conclusively rely upon such direction and shall have no liability or responsibility for payments made pursuant to this Section 7.1 in reliance thereon. In the event said Net Proceeds are not sufficient to pay in full the **costs** of such repair, rebuilding or restoration, the Lessee will nonetheless complete the work thereof and will pay that portion of the costs thereof in excess of the amount of said Net Proceeds. The Lessee shall not, by reason of the payment of such excess costs, be entitled to any reimbursement from the City or any abatement or diminution of the rents payable under Section 5.3 hereof.

Any balance of such Net Proceeds, whether held by the Lessee or the Trustee, remaining after payment of all the costs of any such repair, rebuilding or restoration shall be paid into the Bond Fund. If the Bonds have been fully paid (or provision therefor made in accordance with the provisions of the Indenture), all Net Proceeds will be paid to the Lessee.

Section 7.2. *Rights of Parties in Event of Condemnation; Bonds Protected in Any Event.* **A.** If during the term of this Lease and Agreement title to all or substantially all of the leased premises shall be taken or condemned by a competent authority for any public use or purpose, then this Lease and Agreement

shall terminate at midnight on the fifteenth day after the vesting of title in such authority and rent shall be paid to and adjusted as of that day. In that event, subject to the subsequent provisions of this Section, the condemnation award shall belong to the Lessor and the Lessee hereby assigns the award to the Lessor. In the event the net condemnation award (being the gross amount awarded less all attorney's and other expenses and costs in the condemnation proceeding) together with the amount then in the Bond Fund, shall be insufficient to pay in full, on the redemption date, the amount necessary to pay all principal, interest, Trustee's fees, redemption premiums, and all other costs of redemption (all of which, for purposes of this Section, shall be called "total bond redemption expense"), Lessee agrees to pay, promptly upon payment of the condemnation award, as additional rent hereunder, the amount by which the total bond redemption expense shall exceed the net condemnation award plus the amount then on deposit in the Bond Fund. The Lessee's agreement pertaining to this Section 7.2 shall survive such termination. For the purposes of this Article VII, "all or substantially all of the leased premises" shall be deemed to mean a taking of all of the leased premises or a taking of such substantial portion of the leased premises that the Lessee, as determined by the Lessee in its sole discretion, cannot reasonably operate in the remainder in substantially the same manner as before. In the event the net condemnation award, together with the amount in the Bond Fund, shall be in excess of the amount necessary to pay the total bond redemption expense, if Lessee is not in default in any of its other

obligations under this Lease Agreement, such excess shall belong to and be paid to the Lessee, and if Lessee is in default with reference to any of its other obligations, the amount in excess of that necessary to satisfy such default shall be paid to Lessee. The Lessor agrees that it will not voluntarily accept, without the prior approval of the Lessee, any condemnation award, and the Lessor agrees that it will cooperate with the Lessee with the end in view of obtaining the maximum justifiable condemnation award.

B. If less than substantially all of the leased premises shall be taken or condemned by a competent authority for any public use or purpose, neither the term nor any of the obligations of either party under this Lease Agreement shall be affected or reduced in any way, and

(i) If any part of the improvements owned by Lessor on the leased premises (improvements as used herein shall include any item of Lessor's equipment) is taken, Lessee shall proceed to, repair or rebuild (repair or rebuild shall include replacement of any item of Lessor's equipment) the remaining part as nearly as possible to the condition existing prior to such taking, to the extent that the same may be feasible, subject to the right on the part of the Lessee to make alterations so as to improve the efficiency of the improvements; and

(ii) The entire condemnation award shall be paid to the Lessee and the Lessor hereby assigns the same to the Lessee for the use of the Lessee in repairing and rebuilding as pro-

vided in (i) above. The said award shall be transferred to the Lessee in the same manner as is provided in Section 7.1 with respect to insurance proceeds, provided that the words "Net Proceeds" there referred to shall for purposes of this subparagraph (i) refer to "net condemnation award." If the net condemnation award is in excess of the amount necessary to repair and rebuild as specified in (i) above, such excess shall be paid to the Trustee and deposited in the Bond Fund. If such excess is more than the remaining total basic rent obligations of the Lessee hereunder, and if at that time Lessee is not in default with respect to any of its obligations, the amount of excess over and above the amount necessary to satisfy the obligations with reference to which Lessee is in default shall be paid to Lessee. If the net condemnation award is less than the amount necessary for the Lessee to repair and rebuild as set forth in (i) above, the Lessee shall nevertheless complete the repair and rebuilding work and pay the cost thereof; and

(iii) If no part of the improvements is taken, the net condemnation award shall be paid to the Trustee and deposited in the Bond Fund.

C. In the event of taking under either A or B above, the Lessee shall have the right to participate in and to prove in the condemnation proceedings and to receive any award (by way of negotiation, settlement or judgment) which may be made for damages sustained by Lessee by reason of the condemnation; provided, however, nothing in this sub-section C shall be construed

to diminish or impair in any way Lessee's obligation under subsection A of this Section 7.2 to pay as additional rent the amount of any insufficiency of the net condemnation award and the funds in the Bond Fund to pay the total bond redemption expense.

D. If the temporary use of the whole or any part of the leased premises shall be taken by right of, or acquired pursuant to the threat of, eminent domain, this Lease and Agreement shall not be thereby terminated and the parties shall continue to be obligated under **all** of its terms and provisions, and the Lessee shall be entitled to receive the entire amount of the award made for such taking, whether by way of damages, rent or otherwise.

Section 7.3. *Lessee Obligated to Continue Basic and Additional Rental Payments Until Condemnation Award Available.* In the event of a taking of all or substantially all of the leased premises as provided in Section 7.2 A. notwithstanding the provision therein that the rent shall be paid to and adjusted **as** of the fifteenth day after vesting of title in the taking authority, the Lessee agrees to continue to make payment of the basic rent and the additional rent until the condemnation award shall be actually received by the Lessor; provided, however, the Lessee shall be repaid **solely** out of the net condemnation award the amount of rent so paid after the date provided in Section 7.2 A for the adjustment of rent. This agreement to repay shall not be construed in any way to impair or diminish Lessee's obligations under Section 7.2 to pay as additional rent the amount of any insufficiency of the net condemnation award and the funds in the Bond Fund to pay the total bond redemption expense.



Section 7.4. *Lessee's Right to Exercise Options Continues in Force Notwithstanding Condemnation Proceedings.* Notwithstanding the fact that all or any part of the leased premises shall be taken by right of eminent domain, Lessee shall have the right to exercise any option granted to it by the provisions of Article XI hereof and the foregoing provisions of this Article VII shall be construed in the light of the effect of any option so exercised by Lessee. In the event of the exercise of an option under Article XI and payment of the required purchase price, whether before or after such taking, the net condemnation award shall belong to Lessee.

Section 7.5 *Right of Lessee to Participate in Condemnation Proceedings.* Lessee shall have the right to participate in its own name in any negotiations or condemnation proceedings, but at its own expense, to resist or defend condemnation and to make any presentation or conduct any proceeding which in its discretion is necessary or desirable to obtain any proper relief and, if the condemnation is concluded, to obtain the maximum award justified by the taking.

Section 7.6. *Lessor's Covenant Not to Condemn.* Lessor covenants that it will not take or condemn any part of the leased premises, or attempt to do so.

ARTICLE VIII

Special covenants

Section 8.1 *No Warranty of Condition or Suitability by the City.* (a) The City makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Lessee's purposes or needs. The Lessee releases the City from, agrees that the City shall not be liable for and agrees to hold the City harmless against, any **loss** or damage to property or any injury to or death of any person that may be occasioned by any negligent act or omission of Lessee relating to the Project or the use thereof.

Section 8.2. *Inspection of the Project.* The Lessee Agrees that the Trustee, the City or their duly authorized agents shall have the right at all reasonable times during business hours to enter upon the Leased Land and to examine and inspect the Project without interference or prejudice to the Lessee's operations. The Lessee further agrees that the City and its; duly authorized agents who are acceptable to the Lessee shall have such rights of access to the Project as may be reasonably necessary to cause to be completed the construction and installation provided for in Section 4.1 hereof.

Section 8.3 *Lessee to Maintain its Corporate Existence; Conditions under which Exceptions Permitted.* The Lessee will maintain its corporate existence and will not, without the consent of the Trustee, dissolve, sell, lease or otherwise dispose of all or substantially all of its business and assets, provided,

however, the Lessee may, without the consent of the Trustee, consolidate with or merge into another domestic corporation (i.e., a corporation organized under the laws of one of the states of the United States), or sell to another domestic corporation substantially all of its business and assets, on the condition that such corporation shall expressly assume in writing all of the obligations of Lessee contained in this Lease Agreement and that the net tangible assets of the other corporation after the consolidation, merger or sale be at least equal to the net tangible assets of Lessee immediately prior to such consolidation, merger or sale. In the event of the consolidation with **or** merger into another corporation or the sale of all, or substantially all, of its business and assets by the Lessee, as permitted by this Subsection, and the assumption by the other corporation of the obligations hereof, the Lessee shall be relieved from all further obligations hereunder.

Section 8.4. *Qualification in Arkansas.* The Lessee warrants **(i)** that **it** is and throughout the Lease Term **it** will continue to be duly qualified to do business in Arkansas as a foreign corporation and **(ii)** that if **it** elects to consolidate with, merge into or transfer its assets to another corporation in accordance with Section 8.2 hereof, and such other corporation **is** not organized under the laws of the State of Arkansas, the Lessee, **as** a condition of such consolidation, merger **or** transfer of assets, shall cause such other corporation to qualify to do business as a foreign corporation **in** Arkansas and to agree to remain **so** qualified continuously during the Lease Term.

Section 8.5. *Release of Certain Land.* Notwithstanding any other provision of this Agreement, the parties hereto reserve the right at any time and from time to time to amend this Agreement for the purpose of effecting the release of and removal from this Agreement, and the leasehold estate created hereby (i) of any unimproved part of the Leased Land (on which neither the Building nor any Leased Equipment is located by on which transportation or utility facilities may be located) on which the City proposes to construct improvements for lease to the Lessee under another and different lease agreement or (ii) any part of the Leased Land with respect to which the City proposes to grant an easement or convey a free or other title to a railroad or other public or private carrier or to any public utility or public body in order that transportation facilities or services by rail, water, road or other means or utility services for the Project may be provided, increased or improved; provided that if at the time any such amendment is made any of the Bonds are outstanding and unpaid there shall be deposited with the Trustee the following:

(a) A copy of the said amendment as executed.

(b) A resolution of the City (i) stating that the City is not in default under any of the provisions of the Indenture and the Lessee is not to the knowledge of the City in default under any of the provisions of this Agreement, (ii) giving an adequate legal description of that portion of the Leased Land to be released, (iii) stating the purpose for which the City desires the release, (iv) stating that the said improvements which will be construct-

ed or the said facilities and services which will be provided, increased or improved will be such as will promote the continued industrial development of the City, and (v) requesting such release.

(c) A resolution of the board of directors of the Lessee or executive committee of said board (if permitted under the Lessee's by-laws) authorizing the execution of such amendment together with an officer's certificate stating that the Lessee is not in default under any of the provisions of this Agreement.

(d) A copy of the agreement between the City and the Lessee wherein the City agrees to construct improvements on the portion of the Leased Land so requested to be released and agrees to lease the same to the Lessee, and wherein the Lessee agrees to lease the same from the City or a copy of the instrument granting the easement or conveying the title to a railroad, public utility or public body.

(e) A certificate of an Independent Engineer who is acceptable to the Trustee, dated not more than sixty days prior to the date of the release and stating that, in the opinion of the person signing such certificate, (i) the portion of the Leased Land so proposed to be released is necessary or desirable for railroad, utility service or roads to benefit the Project or *is* not otherwise needed for the operation of the Project for the purposes hereinabove stated and (ii) the release so proposed to be made will not impair the usefulness of the Building *as* manufacturing facilities.

(f) Lessee and the City agree that all walls presently standing or hereinafter erected on or contiguous to the boundary line of the Leased Land so proposed to be released shall be party walls for the purpose of tying-in of new construction. If any party wall is utilized for the purpose of tying-in new construction with the building to be utilized under common control with the Project, utility facilities on the Leased Land, including those within the Building, may be interconnected for the purpose of serving the new construction to be placed on Leased Land so released and any non-loadbearing panels in any party wall may be removed; provided, however, that if the Leased Land so released and construction thereon ceases to be operated under common control with the Building, non-loadbearing wall panels similar in quality to those to have been removed will be installed and separate utility services will be provided for the new construction.

No release effected under the provisions hereof shall entitle the Lessee to any abatement or diminution of the rents payable under Section 5.3 hereof.

**Section 8.6. Granting of Easements,** If no event of default shall have happened and be continuing, the Lessee may at any time or times grant easements, licenses, rights of way (including the dedication of public highways) and other rights; or privileges in the nature of easements with respect to any property included in the Project, free from the lien of the Indenture, or Lessee

may release existing easements, licenses, rights of way and other rights or privileges with or without consideration and the City agrees that it shall execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right of way or other right or privilege upon receipt of: (i) a copy of the instrument of grant or release; (ii) a written application signed by a vice president of the Lessee requesting such instrument; and (iii) a certificate executed by a vice president of the Lessee stating (1) that such grant or release is not detrimental to the proper conduct of the business of the Lessee, and (2) that such grant or release will not impair the effective use or interfere with the operation of the Project and will not weaken, diminish or impair the security intended to be given by or under the Indenture.

Section 8.7. *Furnishing of Certain Information.* The Lessee agrees to furnish the City not later than 120 days after the close of each of its fiscal years during the term hereof a copy of its annual report to shareholders, which report shall contain financial statements certified by independent auditors.

Section 8.8. *Election Under Section 103(c)(6)(D).* The City has elected, with respect to the Bonds, that the provisions of Section 103(c)(6)(D) of the Internal Revenue Code of 1954, shall be applied. In order to effectuate such election and to continue the same in full force and effect so long as any of the Bonds shall remain outstanding and unpaid, the Lessee agrees to cooperate

with the City in taking such further action and filing or causing to be filed, such further or supplemental instruments, documents, statements, or reports and at such office or offices, as may from time to time be required by applicable law or regulation in connection therewith.

Section 8.9. *Obligation of the Lessee to Redeem the Bonds.*

It is the intention of the parties hereto that the interest on the bonds remain free from federal income taxation and to that end the Lessee covenants with the Lessor, with the Trustee and with each of the future holders of any of the bonds or interest coupons appertaining thereto, as follows:

(1) Lessee covenants and agrees that: it will never permit the occurrence of the circumstances set forth in said Section 103(c)(6)(D) and (E) so as to cause the loss of federal income tax exemption on the interest on the bonds.

(2) Should the interest on the bonds become taxable because of the occurrence of the circumstances set forth in Section 103(c)(6)(D) and (E) of the Internal Revenue Code of 1954, as amended, Lessee agrees that within 30 days after demand by the Trustee it will either,

(i) Purchase the leased premises (in which event Lessor agrees to sell the leased premises) for a purchase price of the full amount necessary under the provisions of the Trust Indenture to pay or redeem (on the first day thereafter on which all outstanding bonds may be redeemed after giving the



necessary notice) all outstanding bonds (including, without limitation, principal, interest, redemption premiums, if any, expenses of redemption and the Trustee's and Paying Agent's fees), but after deduction of any amount then in the Bond Fund and available for payment and redemption, or

(ii) Prepay rent in the full amount necessary under the provisions of the Trust Indenture to pay or redeem (on the first day thereafter on which all outstanding bonds (including, without limitation, principal, interest, redemption premiums, if any, expenses of redemption and the Trustee's and Paying Agent's fees), but after deduction of any amount then in the Bond Fund and available for payment and redemption, and thereafter to continue in possession as Lessee with all provisions of the Lease and Agreement (except Lessee's basic rent obligations which shall be discharged) to continue in full force and effect at the extension annual rental specified in Section 11.6.

ARTICLE IX

Assignment, Subleasing, Pledging and Selling;  
Redemption; Rent Prepayment and Abatement

Section 9.1. *Assignment and Subleasing.* Lessee may assign this Lease or sublet the leased premises or part thereof provided that no such assignment or subletting and no dealings or transactions between the Lessor or the Trustee and any sublessee or assignee shall relieve the Lessee of any of its obligations under this Lease Agreement and Lessee shall remain as fully bound as though no assignment or subletting had been made, and performance by any assignee or sublessee shall be considered as performance pro tanto by Lessee; provided, however, that Lessee may assign this Lease, and be thereby relieved of further obligation hereunder, in connection with a transaction involving merger, consolidation or sale as set forth below.

It is understood and agreed that this Lease Agreement (and the leased premises and rents hereunder) will be assigned to the Trustee as security for the payment of the principal of and interest on the bonds, but otherwise the Lessor shall not assign, encumber, sell or dispose of all or any part of its rights, title and interest in and to the leased premises and this Lease Agreement, except to the Lessee in accordance with the provisions of the Lease Agreement and to the Trustee under the Trust Indenture, but subject to the provisions set forth below, without the prior written consent of the Lessee.

Section 9.2, *Restrictions on Sale, Mortgage or other Conveyance of Project by City.* The City agrees that, except for the assignment of this Agreement and the rentals hereunder to the

Trustee pursuant to the Indenture, it will not sell, assign, mortgage, pledge, transfer or convey the Project during the Lease Term, except as specifically provided in this Lease Agreement.

Section 9.3. *Redemption of Bonds*, The City, at the request at any time of the Lessee and if the same are then callable, shall forthwith take all steps that may be necessary under the applicable redemption provisions of the Indenture to effect redemption of all or part of the then outstanding Bonds, as may be specified by the Lessee, on the earliest redemption date on which such redemption may be made under such applicable provisions or upon the date set for the redemption by the Lessee pursuant to Section 11.2 hereof.

Section 9.4. *Prepayment of Rents*. To permit the redemption of Bonds pursuant to the exercise of any options of the Lessee hereunder, and solely for that purpose, there is expressly reserved to the Lessee the right, and the Lessee is authorized and permitted, at any time it may choose, to prepay all or any part of the rents payable under Section 5.3 hereof, and the City agrees that the Trustee may accept such prepayment of rents when the same are tendered by the Lessee. All rents so prepaid shall be credited on the rental payments specified in Section 5.3 hereof, in the order of their maturities.

Section 9.5. *Lessee Entitled to Certain Rent Abatement if Bonds Paid Prior to Maturity*. If at any time the aggregate moneys in the Bond Fund shall be sufficient to retire in accordance with the provisions of the Indenture all of the Bonds at the time outstanding, and to pay all fees and charges of the

Trustee due or to become due through the date on which the last of the Bonds is retired, under circumstances not resulting in termination of the Lease Term, and if the Lessee is not at the time otherwise in default hereunder, the Lessee shall be entitled to use and occupy the Project from the date on which such aggregate moneys are in hands of the Trustee to and including June 1, 1992, without the payment of rent during the interval (but otherwise on the terms and conditions hereof).

Section 9.6. *Reference to Bonds Ineffective After Bonds Paid.* Upon payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) and all fees and charges of the Trustee, all references in this Agreement to the Bonds and the Trustee shall be ineffective and neither the Trustee nor the holders of any of the Bonds shall thereafter have any rights hereunder, saving and excepting those that shall have theretofore vested.

## ARTICLE X

### Events of Default and Remedies

Section 10.1. *Events of Default Defined.* The following shall be "events of default" under this Lease Agreement and the terms "event of default" or "default" shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

- (a) Failure by the Lessee to pay the basic rent, any additional rent payable hereunder or any part thereof and

(i) continuation of said failure for a period of five (5) days after notice by telegram or by certified or registered mail sent by either the Lessor or the Trustee or (ii) continuation of said failure for a period of seven (7) days whether or not notice is given.

(b) Failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsection (a) of this Section, for a period of thirty (30) days after the mailing of notice by certified or registered mail, specifying such failure and requesting that it be remedied, to the Lessee by the Lessor or the Trustee, unless the Lessor and the Trustee shall agree in writing to an extension of such time prior to its expiration.

(c) The dissolution or liquidation of the Lessee or the filing by the Lessee of a voluntary petition in Bankruptcy, or failure by the Lessee promptly to lift any execution, garnishment or attachment of such consequence as will impair its ability to carry on its operations at the Project, or the commission by the Lessee of any act of bankruptcy, or assignment by the Lessee for the benefit of its creditors, or the entry by the Lessee into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Lessee in any proceeding for its reorganization instituted under the provisions

of the general bankruptcy act, as amended, or under similar act which may hereafter be enacted. The term "dissolution or liquidation of the Lessee", as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Lessee resulting either from a merger or consolidation of the Lessee into or with another corporation or a dissolution or liquidation of the Lessee following a transfer of all or substantially all of its assets as an entirety, under the conditions permitting such actions contained in this Lease Agreement.

The foregoing provisions of this Section are subject to the following limitations: If by reason of force majeure the Lessee is unable in whole or in part to carry out its agreements on its part herein contained, other than the obligations on the part of the Lessee contained in Article V and Sections 6.3 and 6.4, hereof, the Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God, strikes, lock-outs or other industrial disturbances; acts of public enemies, orders of any kind of the government of the United States or of Arkansas or any of their departments, agencies, or officials, or any civil or military authority, insurrections; riots; epidemics; landslides; lightning; earthquake; fire; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery,

transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Lessee. The Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the Lessee from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Lessee, and the Lessee shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the Lessee unfavorable to the Lessee.

Section 10.2. *Remedies on Default.* Whenever any event of default shall happen, the Lessor or the Trustee may take any of the following remedial steps:

(a) The Lessor or the Trustee may, at its option, declare all installments of basic and additional rent payable for the remainder of the term to be immediately due and payable, whereupon the same shall become immediately due and payable.

(b) The Lessor or the Trustee may re-enter and take possession of the Project without terminating this Lease Agreement, and sublease the Project for the account of the Lessee, holding the Lessee liable for the difference in the rent and other amounts payable by such sublessee in such subleasing and the basic and additional rent payable by the Lessee hereunder.

(c) The Lessor or the Trustee may terminate the term, exclude the Lessee from possession of the Project and use its best efforts to lease the Project to another for the account of the Lessee, holding the Lessee liable for all basic and additional rent up to the effective date of any such leasing.

(d) The Lessor or the Trustee shall have access to and may inspect, examine and make copies of such of the books, records, accounts and data of the Lessee, as pertain to the Project.

(e) The Lessor or the Trustee may take whatever action at law or in equity may appear necessary or desirable to collect the rent and any other amounts payable by Lessee hereunder, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Lease Agreement.

**Any** amounts collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture.

Section 10.3. **Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Lessor or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity or by statute. 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 as often as may be deemed expedient.

Section 10.4. *Rental, Damages and Reletting Go Into Bond Fund.* The foregoing provisions of this Article relating to the receipt of moneys by Lessor as the result of an acceleration, upon a reletting or otherwise are each to be construed as providing that all such payments by Lessee or others shall be made into the Bond Fund referred to in Section 5.3.

Section 10.5. *Equitable Relief.* The City,, Lessee and the Trustee shall each be entitled to specific performance, and injunctive or other appropriate equitable relief for any breach or threatened breach of any of the provisions of this Lease Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

## ARTICLE XI

### Options in Favor of Lessee

Section 11.1 *Options to Terminate.* The Lessee shall have the following options to cancel or terminate the term of this Agreement:

- (a) At any time prior to full payment of the Bonds and coupons appertaining thereto (or provision for payment thereof having been made in accordance with the pro-

visions of the Indenture), the Lessee may terminate the Lease Term by giving the City sixty days notice in writing of such termination and by paying to the Trustee an amount which, when added to the amount on deposit in the Bond Fund, will be sufficient to pay, retire and redeem all the outstanding Bonds in accordance with the provisions of the Indenture (including, without limiting the generality of the foregoing, principal, interest to maturity or earliest applicable redemption date, as the case may be, premium, expenses of redemption and Trustee's and paying agent's fees and registrars' fees and expenses), and, in case of redemption, making arrangements satisfactory to the Trustee for the giving of the required notice of redemption.

(b) At any time after full payment of the Bonds and coupons appertaining thereto (or provision for payment thereof having been made in accordance with the provisions of the Indenture), the Lessee may terminate the Lease Term by giving the City notice in writing of such termination and such termination shall forthwith become effective.

Section 11.2. *Option to Acquire the City's Interest in and to Project Prior to Payment of the Bonds.* The Lessee shall have, and is hereby granted, the option to acquire legal title to the Project prior to the full payment of the Bonds and coupons appertaining thereto (or provision for payment thereof having been made in accordance with the provisions of the Indenture), if any of the following events be treated or shall have occurred:

(a) The Building or the Leased Equipment shall have been damaged or destroyed as set forth in Section 7.1 hereof to such extent that in the judgment of the Lessee (i) it cannot be reasonably restored within a period of four months to the condition thereof immediately preceding such damage or destruction, or (ii) the Lessee is thereby prevented from carrying on its normal operation of the Project for a period of four months, or (iii) the cost of restoration thereof would exceed the Net Proceeds of insurance carried thereon pursuant to the requirements of Section 6.4 hereof, plus the amounts for which the Lessee is self-insured with respect to deductible amounts permitted under Section 6.4 hereof.

(b) Title to, or the temporary use of, all or substantially all the Project shall have been taken under the exercise of the power of eminent domain by any governmental authority, or person, firm or corporation acting under governmental authority (including such a taking as results in the Lessee being thereby prevented from carrying on its normal operations therein for a period of four months).

(c) As a result of any changes in the Constitution of Arkansas or the Constitution of the United States of America or of legislative or administrative action (whether state or federal) or by final decree, judgment or order of any court or administrative body (whether state or federal) this Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as expressed in this Agreement,

or unreasonable burdens or excessive liabilities shall have been imposed on the City or the Lessee including without limitation federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Agreement.

To exercise such option, the Lessee shall, within ninety days following the event authorizing the exercise of such option, give written notice to the City and to the Trustee, if any of the Bonds shall then be unpaid, and shall specify therein the date of closing such purchase, which date shall be not less than forty-five nor more than ninety days from the date such notice is mailed, and in case of a redemption of the Bonds in accordance with the provisions of the Indenture shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. The purchase price which shall be paid to the Trustee by Lessee in the event of its exercise of the option granted in this Section shall be the sum of the following:

(1) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to retire and redeem all the then outstanding Bonds on the earliest applicable redemption date including, without limitation, principal, premium (if any) plus accrued interest thereon to said redemption date, plus

(2) an amount of money equal to the Trustee's, paying agents' and registrars' fees and expenses, including the reasonable fees of its counsel, under the Indenture accrued and to accrue until such final payment and redemption of the Bonds.

In the event of the exercise of the option granted in this Section any Net Proceeds of insurance or condemnation shall be paid to the Lessee.

Section 11.3 *Option to Acquire Legal Title to Unimproved Land.* In addition to the provisions of Section 8.5, the Lessee shall have, and is hereby granted an option to acquire legal title to any unimproved portion of the Leased Land (on which neither the Building nor any Leased Equipment are located but on which transportation or utility facilities may be located) at any time and from time to time at a purchase price equal to \$1.00 per acre of the portion of the Leased Land to be acquired, provided that it furnishes the City with the following:

(a) A notice in writing containing (i) an adequate legal description of that portion of the Leased Land with respect to which such option is to be exercised, (ii) a statement that the Lessee intends to exercise its option to acquire legal title to such portion of the Leased Land on a date stated, which shall not be less than forty-five nor more than ninety days from the date of such notice and (iii) a statement that the use to which it is intended that such portion of the Leased Land is to be devoted will promote the continued industrial development of the City.

(b) A certificate of an Independent Engineer who is acceptable to the Trustee, dated not more than sixty days prior to the date of the acquisition and stating that, in the opinion of the person signing such certificate, (i) the portion of the Leased Land with respect to which the

option is exercised is not needed for the operation of the Project for the purposes hereinabove stated or that sufficient right and title is reserved to the City to fulfill said needs, and (ii) the acquisition will not impair the usefulness of the Building as a manufacturing facility.

(c) An amount of money equal to the price computed as provided in this Section.

The City agrees that upon receipt of the notice,, certificate and money required in this Section to be furnished to it by the Lessee, the City will promptly deliver said money to the Trustee for deposit in the Bond Fund. In the event the Lessee shall exercise the option granted to it under this Section the Lessee shall not be entitled to any abatement or diminution of the rents payable under Section 5.3.

If the Lessee acquires legal title to any unimproved part of the Leased Land pursuant to the provisions of the preceding paragraph, Lessee and the City agree that all walls presently standing or hereafter erected on or contiguous to the boundary line of the land so purchased by the Lessee shall be party walls and each party grants the other a 10 foot easement adjacent to any such party wall for the purpose of inspection, maintenance, repair and replacement thereof and the tying-in of new construction. If the Lessee utilizes any party wall for the purpose of tying-in new construction that will be utilized under common control with the Project, Lessee may also tie in to the utility facilities on the Leased Land for the purpose of serving the

new construction and may remove any non-loadbearing wall panels in the party wall; provided, however, that if the property so purchased ceases to be operated under common control with the Project, Lessee covenants that it will install non-loadbearing wall panels similar in quality to those that have been removed and will provide separate utility services for the new construction.

Section 11.4. *Conveyance on Exercise of Option to Acquire Legal Title.* At the closing of the purchase pursuant to the exercise of any option to acquire legal title granted herein, the City will upon receipt of the purchase price delivery to the Lessee the following;

(a) If the Indenture shall not at the time have been satisfied in full, a release from the Trustee of the property being acquired.

(b) Documents conveying to the Lessee good and marketable title to the property being acquired, as such property then exists, subject to the following: (i) those liens and encumbrances (if any) to which title to said property was subject when conveyed to the City; (ii) those liens and encumbrances created by the Lessee or to the creation or suffering of which the Lessee consented; (iii) those liens and encumbrances resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Agreement; (iv) Permitted Encumbrances other than the Indenture and this agreement; and (v) if

the option is exercised pursuant to the provisions of Section 11.2 (b) hereof, the rights and title of the condemning authority.

Section 11.5. *Option to Acquire Legal Title Upon Full Payment of the Bonds.* The Lessee shall have and is hereby granted an option to purchase and acquire legal title to and the City agrees to sell the Project at or at any time after the expiration or sooner termination of the Lease Term following full payment of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture), for a price of \$100.00. At the closing of the foregoing purchase, the City will deliver to the Lessee the documents referred to in Section 11.4. The right to purchase granted in this Section shall be and remain prior and superior to the Indenture and may be exercised whether or not the Lessee is in default hereunder provided that such default will not result in nonfulfillment of any condition to this right.

Section 11.6. *Renewal Options.* Lessee shall have and is hereby granted the option to extend this Lease Agreement for **six (6)** successive renewal terms of five (5) years each for an annual rental of One Thousand Dollars (\$1,000) per year, payable in advance on the first business day of each year of the renewal terms and otherwise upon the terms, conditions and provisions of this Lease Agreement. The renewal options provided for herein shall be deemed automatically exercised by Lessee (without requirement of any notice of exercise) unless thirty



(30) days prior to the end of the initial term or any renewal term Lessee shall give the City written notice by certified or registered mail (with or without return receipt requested) that Lessee does not elect to have the Lease Term extended beyond the then current initial or renewal term.

## ARTICLE XII

### Miscellaneous

Section 12.1. **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If intended for Lessee:

UMC INDUSTRIES, INC.  
72 Wall Street  
New York, New York 10005  
Attention: Corporate Secretary

and

Universal/Nolan  
Division of UMC Industries, Inc.  
P.O. Box 909  
Conway, Arkansas 72032  
Attention: President

If intended for Lessor:

City of Conway, Arkansas  
Office of the Mayor  
Conway, Arkansas 72302

If intended for Trustee:

Worthen Bank and Trust Company  
200 West Capitol Avenue  
Little Rock, Arkansas 72201  
Attention: Trust Department

A duplicate copy of each notice, certificate or other communication given hereunder by either the City or the Lessee to the other shall also be given to the Trustee. The City, the Lessee, and the Trustee may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates or other communications shall be sent.

Section 12.2. *Binding Effect.* This Agreement shall inure to the benefit of and shall be binding upon the City, the Lessee and their respective successors and assigns, subject, however, to the limitations contained in Sections 8.3, 9.1 and 9.2 hereof.

Section 12.3 *Severability.* In the event any provision of this Agreement 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 12.4. *Amendments, Changes and Modifications.* Except as otherwise provided in this Agreement or in the Indenture, subsequent to the initial issuance of Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture); this Agreement may not be effectively amended, changed, modified, altered or terminated without the concurring written consent of the Trustee.

Section 12.5. *Priority of Lease Agreement.* This Agreement (as it may be amended or supplemented pursuant to the provisions hereof) and the estate of the Lessee hereunder are and shall continue to be superior and prior to the Indenture (as it may be amended and supplemented).

Section 12.6. *Covenant Concerning Arbitrage Bonds.* The City and the Lessee covenant that neither of them shall take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the bonds to be subject to federal income taxation. Without limiting the generality of the foregoing, the City and the Lessee covenants that the proceeds of the sale of the Bonds will not be used directly or indirectly in such manner as to cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 103(d) of the Internal Revenue Code of 1954, **as** amended.

Section 12.7. *Execution Counterparts.* This Agreement 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 12.8. *Captions.* The captions or headings of this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

Section 12.9. *Recording of Agreement.* This Agreement or **a** short form thereof and every assignment and modification hereof shall be recorded in the office of the Circuit Clerk and Ex Officio Recorder of Faulkner County, Arkansas, or in such other office as may be at the time provided by law as the proper place for such recordation.

Section 12.10. *Law Governing Construction of Agreement.*

**This** Agreement shall **be** governed by, and construed in accordance with, the laws of the State of **Arkansas**.

**IN WITNESS WHEREOF**, the parties hereto have executed these presents as of the day and **year** first above written.

CITY OF CONWAY, ARKANSAS  
Lessor

By : \_\_\_\_\_  
Mayor

ATTEST :

\_\_\_\_\_  
City Clerk

(S E A L)

UMC INDUSTRIES, INC.  
Lessee

By: \_\_\_\_\_

\_\_\_\_\_  
(title)

ATTEST :

\_\_\_\_\_  
\_\_\_\_\_  
(title)

(S E A L)

ACKNOWLEDGMENT

STATE OF ARKANSAS     )  
                                  )  
COUNTY OF FAULKNER    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1972, before me a Notary Public duly commissioned, qualified and acting, within and for the County and State aforesaid, appeared in person the within named \_\_\_\_\_ and \_\_\_\_\_, Mayor and City Clerk, respectively, of the City of Conway, Arkansas, a municipality of the State of Arkansas, to me personally known, who stated that they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name of the City, and further stated and acknowledged that they had signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 1972.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

ACKNOWLEDGMENT

STATE OF NEW YORK  
COUNTY OF

)  
)  
)

On this \_\_\_\_\_ day of \_\_\_\_\_, 1972, before me, a Notary Public duly commissioned, qualified and acting within and for the County and State aforesaid, appeared in person the within named \_\_\_\_\_ and \_\_\_\_\_,

and \_\_\_\_\_, respectively, of UMC Industries, Inc., a Delaware corporation, authorized to do business in the State of Arkansas, to me personally known, who stated that they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of the corporation, and further stated and acknowledged that they had so signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and Official seal this - \_\_\_\_\_ day of \_\_\_\_\_, 1972.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

(S E A L)

EXHIBIT A

TO THE LEASE AGREEMENT BY AND BETWEEN THE CITY OF  
CONWAY, ARKANSAS AND UMC INDUSTRIES, INC.

The following described real estate situated in Faulkner  
County, Arkansas, to-wit:

(i) A certain parcel of land situate in the County  
of Faulkner and State of Arkansas, being a part of the  
Northwest Quarter of Section 18, Township 5 North,  
Range 13 West, described as follows:

Commencing at a point 15.75 chains North of the  
Southwest corner of said Northwest Quarter of said  
Section and running thence North  $81^{\circ}$  East 18.25  
chains to the West boundary line of the Missouri  
Pacific Railroad right-of-way, thence running North-  
westwardly along the West boundary line of said  
Missouri Pacific Railroad right-of-way to the South  
line of Robins Street, thence West along the South  
line of Robins Street to the West line of said  
Northwest Quarter of said Section, thence South to  
point of beginning, containing 31 acres, more or  
less;

Section 2. That the Mayor and City Clerk be, and they are hereby, authorized and directed, for and on behalf of the City, to do all things, execute all instruments and otherwise take all action necessary to the realization of the City's rights and to the discharge of the City's obligations as Lessor under the Lease Agreement.

Section 3. That the provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or provision shall, for any reason, be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions.

Section 4. That all ordinances and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. That there is hereby found and declared to be an immediate need for the securing and developing of industry in order to provide additional employment and increased payrolls, alleviate unemployment and provide other benefits incidental to the operation of a substantial industry, and the execution and delivery of the Lease Agreement authorized by this Ordinance are necessary for the accomplishment of these public benefits and purposes. 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: May 9TH, 1972.

APPROVED :

  
Mayor

ATTEST:

  
City Clerk

(S E A L)



The Mayor then stated that consideration should be directed by said Council to the question of the passage and adoption of an Ordinance to provide for the issuance of bonds for the purpose of securing and developing industry within or near the City of Conway.

After discussion by said Council, Alderman THESSING introduced in writing <sup>the following</sup> ~~an~~ Ordinance, entitled, "AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER ACT NO. 9 OF THE FIRST EXTRAORDINARY SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY OF THE STATE OF ARKANSAS, APPROVED JANUARY 21, 1960, AS AMENDED, FOR THE PURPOSE OF PROVIDING PERMANENT FINANCING OF THE COST OF SECURING AND DEVELOPING INDUSTRY (THE PARTICULAR INDUSTRIAL PROJECT IS DESCRIBED IN THE ORDINANCE); AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING TO THE INDUSTRIAL PROJECT, THE CONSTRUCTING THEREOF AND THE FINANCING THEREOF; AND DECLARING AN EMERGENCY", which Ordinance he read in full.

Alderman ENTS then moved that the rule requiring an ordinance or resolution to be read in full on three different days be suspended, and that said Ordinance be placed on its second reading, which motion was seconded by Alderman KING, and thereafter the Mayor put the question on the adoption of said motion, and the roll being called, the following voted:

Aye:	<u>Sevier</u>	<u>Foreman</u>
	<u>Thassing</u>	<u>Moix</u>
	<u>Clements</u>	<u>Love</u>
	<u>King</u>	

and the following voted:

Nay : None

Thereupon, the Mayor declared the motion duly passed and said ordinance placed on its second reading. The ordinance was then read in full by the Clerk.

Alderman FOREMAN then moved that the rules be further suspended and the ordinance be placed on its third and final reading. This motion was seconded by Alderman Moix, and after due consideration thereof by said Council, the Mayor put the question on the adoption of the motion, and upon the roll being called the following voted:

Aye: <u>Sevick</u>	<u>Foreman</u>
<u>Thessing</u>	<u>Moix</u>
<u>Clements</u>	<u>Love</u>
<u>King</u>	

and the following voted:

Nay : None

Whereupon, the Mayor declared the motion duly carried and said Ordinance placed upon its final reading.

Said Ordinance was then read in full by the Clerk, Alderman LOVE moved its adoption, which motion was seconded by Alderman FOREMAN, and after due consideration thereof by said Council, the Mayor put the question upon the adoption of said motion and the passage of said Ordinance, and the roll being called, the following voted:

Aye: <u>Sevick</u>	<u>Foreman</u>
<u>Thessing</u>	<u>Moix</u>
<u>Clements</u>	<u>Love</u>
<u>King</u>	

and the following voted:

Nay : None

Whereupon, the Mayor declared said motion duly adopted and said Ordinance duly passed, and signed his approval to said Ordin-

ance; and same was attested by the Clerk and impressed with the seal of the City.

Alderman Moix then moved that said Ordinance go into immediate operation and become effective without delay because of the emergency declared in the final section of said Ordinance, which section was then read in full, seconded by Alderman G. The Mayor put the question on the adoption of said motion, and the roll being called, the following voted:

Aye:	<u>Sevier</u>	<u>FOLEMAN</u>
	<u>Thessina</u>	<u>Moix</u>
	<u>Clements</u>	<u>Love</u>
	<u>King</u>	

and the following voted:

Nay: None

Whereupon, the Mayor declared said motion duly passed.

Said Ordinance, to which no amendment was offered, read as follows: