

RESOLUTION NO. 2

**A RESOLUTION OF THE CITY COUNCIL OF CONWAY, ARKANSAS AUTHORIZING THE ENTRY INTO AN AGREEMENT TO ISSUE BONDS FOR THE PURPOSE OF ASSISTING IN THE FINANCING OF AN INDUSTRIAL FACILITY WITHIN THE CITY.**

WHEREAS, the City of Conway, Arkansas (the "City"), is authorized under the provisions of Act No. 9 of the First Extraordinary Session of the General Assembly of the State of Arkansas for the year 1960, as amended ("Act 9"), to acquire, construct, and equip facilities to secure and develop industry and to assist in the financing thereof by the issuance of bonds payable from the revenues derived from such facilities; and

WHEREAS, \_\_\_\_\_, a Delaware corporation ("Company"), has evidenced its interest in acquiring, constructing and equipping an industrial facility consisting of a manufacturing facility and related facilities and improvements within the City if permanent financing can be provided through the issuance of bonds under the authority of Act 9; and

WHEREAS, the City desires to assist Company in order to secure and develop industry within the City, and to aid in the financing thereof under the provisions of Act 9; and

WHEREAS, it is desirable that Company and the City enter into an Agreement to Issue Bonds for such purpose;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF CONWAY, ARKANSAS, that:

1. The Mayor and the City Clerk of the City of Conway, Arkansas, be authorized and directed to enter into an Agreement to Issue Bonds in substantially the form and substance as follows:

## AGREEMENT TO ISSUE BONDS

THIS AGREEMENT is made as of February \_\_, 1995, by and between the CITY OF CONWAY, ARKANSAS, a municipal corporation under the laws of the State of Arkansas (the "City"), and \_\_\_\_\_, a Delaware corporation ("Company"), for the purpose of carrying out the purposes set forth in Act 9 of the First Extraordinary Session of the General Assembly of the State of Arkansas for the year 1960, as amended ("Act 9").

### W I T N E S S E T H:

WHEREAS, the City is authorized by Act 9 to own, acquire, construct, equip, operate, maintain, sell, lease, or contract concerning or otherwise deal in or dispose of any land, buildings, or facilities of any and every nature whatsoever that can be used in securing or developing industry within or near the City; and

WHEREAS, the City has determined that such purposes may be served by cooperation with Company in the acquisition, construction and equipping of a manufacturing facility and related facilities and improvements to be located within the City for use by Company in its business (the "Project"); and

WHEREAS, the City and Company desire to cooperate in the acquisition, construction and equipping of the Project and to have the costs of the Project financed from the proceeds of revenue bonds of the City (the "Bonds") to be issued pursuant to Act 9 in an aggregate principal amount now estimated to be \$50,000,000; and

WHEREAS, the City and Company contemplate that the Project will be leased to Company, with an option to purchase, and the rental payments therefor shall be sufficient to pay debt service on the Bonds and all related costs;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration under the mutual benefits, covenants, and agreements herein expressed, the City and Company agree as follows:

1. Proceedings. All proceedings in connection with the issuance of the Bonds shall be consistent with the requirements of Act 9, including notice to all state agencies, and the publication of notice as required by Act 9. All references contained herein to the issuance of the Bonds shall be subject to compliance with the formalities of Act 9 when the facts required to do so are determined.

2. Acquisition. The City and Company will cooperate in causing to be commenced and continued the required acquisition, construction and equipping of the Project, and Company may provide, or cause to be provided, the necessary interim financing to permit such acquisition of the Project to commence pending the issuance of interim and/or permanent Bonds. Not later than the time of issuance of the Bonds for any portion of the Project,

Company will convey and transfer or cause to be conveyed and transferred to the City, for an amount approximately equal to that then expended by Company for the Project or portions thereof which are financed by the Bonds then issued (including at Company's option any costs of interim financing), the Project or portions thereof to be then financed. There shall also be conveyed to the City any easements and rights-of-way necessary to permit acquisition and operation of the Project or such portion.

3. Lease. The City shall enter into a lease, or leases, under which Company will lease, with an option to purchase, from the City, such Project or portions thereof for a term not to exceed thirty (30) years and will agree to make rental payments sufficient to pay the principal of and premium, if any, and interest on the Bonds, together with all charges of any Trustee and/or any Paying Agent for the Bonds.

4. Sale of Bonds, Security. The City will take such steps as are necessary to issue, sell, and deliver, pursuant to the terms of Act 9, the Bonds for the purpose of financing the Project in the aggregate amount necessary to furnish the permanent financing of all or any part of the costs of accomplishing the Project. It is presently estimated by Company that Bonds in the aggregate amount of \$50,000,000 will be issued. However, the City's commitment is to issue the Bonds, pursuant to the terms of Act 9, in such amount as shall be requested by Company for accomplishing all or any part of the Project, whether or not such amount is more or less than the above estimate and whether or not the manufacturing facility and related facilities and improvements finally acquired, constructed and equipped are identical to or different from the facilities presently expected to constitute the Project. The Bonds shall mature in such amount and times and shall bear interest at such rate or rates, to be payable on such date or dates, and to have such optional and mandatory redemption features and prices as are mutually agreed upon in writing by the City and Company. Company or an affiliate of Company may be the purchaser of the Bonds. The City further agrees that it will enter into a lease and, if required, an indenture of trust with a bank or trust company, qualified to exercise trust powers where necessary, for the purpose of providing rental payments sufficient, with direct or indirect proceeds of the Bonds, to pay the principal of and premium, if any, and interest on the Bonds as they become due together with the charges of any Trustee and/or any Paying Agent for the Bonds, and pledging and/or otherwise securing the payment of such rental payments for the benefit of the owner(s) of the Bonds. The lease, the indenture, other related documents, and the Bonds shall contain such customary terms and conditions as are agreed upon by the City and Company. The City will co-operate in consummating the transaction so contemplated.

5. Bonds to be Special Obligations. The City shall have no financial responsibility with respect to the Project, the Bonds, or the costs associated thereto, and the Bonds shall be special obligations of the City and shall never constitute a

general obligation, indebtedness, or pledge of the credit of the City within the meaning of any constitutional or statutory provision and shall never be paid in whole or in part out of any funds raised or to be raised by taxation or any other revenues or other funds of the City except those (including unexpended Bond proceeds) derived from or in connection with the sale or lease of the Project, as provided for herein.

6. Conditions of Issuance. The Bonds may be issued either at one time or in several series and/or issues from time to time, in such aggregate principal amount or amounts as Company shall request in writing; provided, however, that all conditions of Act 9 shall have been met.

7. Costs to be Financed. The costs of the Project may include any costs permissible under Act 9, including but not limited to reasonable and necessary costs, expenses, and fees incurred by the City in connection with the issuance of the Bonds; attorney's fees and expenses; and any trustee fees and expenses, if any, required in connection with the underwriting or placement of the Bonds; recording costs; rating agency's fees, if any, and printing costs. The City will upon request provide or cause to be provided to Company any data or information which may be reasonably required to verify any of such costs, expenses, and fees.

8. Termination. In the event that the Bonds shall not be sold within five years from the date hereof, this Agreement shall automatically terminate unless the parties hereto shall agree in writing to its extension for a further period of time specified in such writing. Company may unilaterally terminate this Agreement without liability to the City (except for any amounts due and owing by Company to the City arising out of the transactions occurring on or before the time of such termination, which shall be promptly paid by Company to the City) by giving notice by ordinary mail, postage prepaid, facsimile or overnight courier service to the City specifying therein the date of termination which may be the date of the notice.

9. Protection to the City. Company shall pay all of the City's costs and expenses reasonably and necessarily incurred in connection with this Agreement or any other related document or instrument. Company will at all times indemnify and hold harmless the City against any and all losses, costs, damages, expenses, and liabilities of whatsoever nature directly or indirectly resulting from, arising out of, or related to matters in connection with this Agreement.

10. Payment in Lieu of Taxes. The City and Company recognize that under the Arkansas Constitution and decisions of the Supreme Court of Arkansas, the Project will be exempt from ad valorem taxation. Company and the City agree, however, to enter into an agreement in the form attached hereto as Exhibit A requiring Company to make payments in lieu of taxes, in such amounts and on such terms as set forth therein.

11. Purpose and Effect. The Bonds are to be issued, sold, and delivered under the authority of Act 9 and all related actions and documents shall be in conformity therewith. The City intends this Agreement to be the expression of its present intent, pursuant to the terms hereof, to issue the Bonds in the aggregate principal amount necessary to furnish the permanent financing to pay for all of the costs of accomplishing the Project and to expend the Bond proceeds to defray the costs of the Project. The City considers this Agreement to be an official action for all purposes of the Federal Income Tax Regulations.

IN WITNESS WHEREOF, the City of Conway, Arkansas, acting pursuant to a resolution of its City Council, has caused its name to be hereunto subscribed and Company has caused its name to be subscribed hereto by its duly authorized officers, all as of the year and date first above written.

CITY OF CONWAY, ARKANSAS

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

Mayor

ATTEST:

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

City Clerk

(S E A L)

\_\_\_\_\_  
a Delaware Corporation

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

Title: \_\_\_\_\_

ATTEST:

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

Title: \_\_\_\_\_

(S E A L)

The undersigned taxing authorities approve and consent to the payment by Company in lieu of taxes required in Paragraph 1 to the Agreement for Payments in Lieu of Taxes attached hereto as Exhibit A.

FAULKNER COUNTY, ARKANSAS

By: \_\_\_\_\_  
County Judge

CONWAY SCHOOL DISTRICT

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

2. This Resolution shall be in full force and effect from and after its adoption.

ADOPTED this 2nd day of February, 1995.

CITY OF CONWAY, ARKANSAS

By: David A. Finley  
Mayor

ATTEST:

By: Matthew Hartwick  
City Clerk

(S E A L)

EXHIBIT A

AGREEMENT FOR PAYMENTS IN LIEU OF TAXES

City of Conway, Arkansas  
Conway, Arkansas

Ladies and Gentlemen:

\_\_\_\_\_, a Delaware corporation ("Company") has requested the City of Conway, Arkansas (the "City") to enter into an Agreement to Issue Bonds pursuant to Act No. 9 of 1960, as amended ("Act 9"), for the purpose of assisting Company in acquiring, constructing and equipping industrial facilities, consisting of a manufacturing facility and related facilities and improvements to be located within the City (the "Project"). To provide for the financing of the cost of the Project it is proposed that the City issue approximately \$50,000,000 of industrial development revenue bonds under the authority of Act 9 (the "Bonds").

The Bonds will be secured by a pledge of revenues derived from the Project, including particularly lease rentals to be paid by Company to the City under a lease agreement not to exceed thirty years (the "Lease") proposed to be entered into between the City and Company.

The Lease will provide that Company would be obligated to pay all taxes and assessments, general and special, levied and assessed on the Project during the term of the Lease as well as water and sewer charges, assessments and other governmental charges and impositions. Company is informed and understands that, notwithstanding such provisions in the Lease, under the decision of the Supreme Court of the State of Arkansas in the case of Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 633 (1960), the Project will be exempt from ad valorem taxes because it would be owned by the City and used for a public purpose within the meaning of the applicable Constitutional provision affording the exemption. Thus, Company understands that it, as lessee of the Project owned by the City, will, in fact, have no ad valorem taxes to pay under the provisions of the Lease. The City has indicated a reluctance to lose all tax revenues which would otherwise be received if the properties involved were privately owned. Therefore to induce the City to proceed with the issuance of the Bonds for the purpose indicated and to induce Company to build a substantial industrial project near the City, and for other valuable consideration, the receipt of which is hereby acknowledged by the City, Company agrees with the City as follows:



1. For the duration of the Lease, Company will pay an annual amount equal to 1.0% of the assessed valuation of the Project real property plus .15% of the assessed valuation of the Project personal property as payments in lieu of taxes, with the first such payment to be made on or before the 10th day of October, 1997, with reference to tax year 1996.

2. The payments to be made by Company, pursuant to this Agreement, are intended to be in lieu of all ad valorem taxes that would have to be paid on the Project leased by Company in the Lease to the State of Arkansas, the City of Conway, Faulkner County, School or Community College Districts and/or other political subdivisions of the State of Arkansas if the Project were not exempt from ad valorem taxes under the provisions of Article 16, Section 5 of the Constitution of the State of Arkansas as interpreted by the Supreme Court of the State of Arkansas in Wayland v. Snapp, supra (the "taxing authorities").

3. The City agrees to distribute each payment hereunder among the taxing authorities in the proportion that the millage collected by each bears to the total millage collected by all during the year of distribution.

4. The City and Company agree to cooperate in sustaining the enforceability of this Agreement. However, if by reason of a change in the Constitution, or a change by the Supreme Court of the State of Arkansas in its interpretation of the Constitution or otherwise, Company is required to pay any tax which the payments specified herein are intended to be in lieu of, Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of taxes and need only pay the difference to the taxing authorities. Furthermore, inasmuch as the payment herein agreed to be made by Company is intended to be in lieu of taxes, it is agreed that said payment shall not as to any year be in an amount greater than would otherwise be payable for such year in ad valorem taxes, in the aggregate, on account of its ownership of the Project.

5. The agreement herein made shall terminate and be of no further force and effect from and after the date that the Lease shall terminate for any purpose other than a default on the part of Company.

If such termination shall be at a point constituting a portion of a tax year, Company shall pay in lieu of taxes for the year in which termination occurred that portion of the specified annual payment that the number of days in such tax year that Company was Lessee prior to the termination bears to 365 days.

6. This agreement shall be binding upon the successors and assigns of Company, but no assignment shall be effective to relieve Company of any of its obligations hereunder unless expressly authorized and approved in writing by the City.

7. This agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

If the foregoing is acceptable, please so indicate by executing the acceptance set forth below, and returning to Company, whereupon this instrument shall constitute a valid and binding contract between Company and the City.

DATED: February 2<sup>nd</sup> 1995.

\_\_\_\_\_  
a Delaware Corporation

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

ACCEPTED:

CITY OF CONWAY, ARKANSAS

By: David A. Jenkins  
Mayor

February \_\_, 1995

**CERTIFICATE**

The undersigned, Clerk of the City of Conway, Arkansas, hereby certifies that the foregoing is a true and perfect copy of Resolution No. R-95-02 adopted by the City Council of Conway, Arkansas, at a regular meeting held at City Hall in said City, at 5:00 o'clock, p.m., on the 2nd day of February, 1995.

GIVEN under my hand and seal on this 2nd day of February, 1995.

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

(S E A L)