

ORDINANCE NO. A-551

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO THE 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; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY

WHEREAS, the City of Conway, Arkansas, has heretofore authorized the issuance of Industrial Development Revenue Bonds, dated June 1, 1960 (the "Bonds"), and.

WHEREAS, all of the holders of said Bonds have consented to an amendment to the Lease Agreement, dated November 9, 1960, which was assigned to St. Louis Union Trust Company for the benefit of the holders of said Bonds, and

WHEREAS, it is desirable that the form of amendment be approved by the action of the City Council;

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

Section 1. That the Mayor and City Clerk are hereby authorized to enter into the amendment to lease, in substantially the form hereinafter set out, with the City of Conway, Arkansas, as Lessor, and UMC INDUSTRIES, INC., as Lessee:

AMENDMENT TO LEASE

This Amendment to Lease entered as of June 1, 1972, by and between the City of Conway, Arkansas (hereinafter called the "Lessor"), and UMC INDUSTRIES, INC. (formerly named Universal Match Corporation) (hereinafter called the "Lessee"),

WITNESSETH:

WHEREAS, the Lessor and Lessee did enter into that certain Indenture of Lease (herein called the "Lease") dated November 9, 1960, which Lease was subsequently assigned to St. Louis Union Trust Company as Trustee for the benefit of the holders of the Lessor's Industrial Development Revenue Bonds, dated June 1, 1960, in the principal amount of \$2,200,000 (the "Bonds"), and

WHEREAS, the Lessor and the Lessee have agreed to the expansion and improvement of the manufacturing facilities located on the leased premises, and the Lessor has approved the issuance of additional industrial development revenue bonds in order to provide permanent financing for the proposed improvements, and

WHEREAS, all of the holders of the Bonds have consented to the modification of the Lease to permit the new bonds proposed to be issued by the City to finance the expansion to be secured by a new lease of a portion of the lands described in the Lease, and have also consented to certain other modifications in the Lease to remove restrictions which would otherwise make the expansion and issuance of additional bonds impossible;

NOW, THEREFORE,

KNOW ALL MEN BY THESE PRESENTS, that the Lessor and Lessee, do agree as follows:

Section 1. Section 1.1(i) of the Lease is hereby amended to read as follows:

"(i) A certain parcel of land on which the main multipurpose factory building was located as of October 1971 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:

Starting at a point 1039.5 feet North of the Southwest corner of said Northwest Quarter of said Section and running thence North 81° East 1204.5 feet to the West boundary line of the Missouri Pacific Railroad right-of-way, thence running Northwestwardly along the West boundary line of said Missouri Pacific Railroad right-of-way for 1372.2 feet, thence Southwestwardly for 110.05 feet to the Northeast corner of the main multipurpose factory building as located as of October 1971 said Northeast corner of said main multipurpose factory building being the point of beginning of the herein described parcel of land; thence Southeastwardly along the building for 660.9 feet to the Southeast corner of said building, said Southeast corner of said building being 109.65 feet Southwestwardly from the West boundary line of the Missouri Pacific Railroad right-of-way, thence Southwestwardly along the building for 300.6 feet to the Southwest corner of said building, thence Northwestwardly along said building for 180 feet to an offset in said building; thence Southwestwardly along said offset in said building for 50 feet to the Southwest corner of said offset in said building; thence Northwestwardly along said offset in said building for 30 feet to the Northwest corner of said offset in said building; thence Northeastwardly along said offset in said building for 50 feet to a point on the West wall of the main building; thence Northwestwardly along the building for 450.8 feet to the Northwest corner of said building; thence Northeastwardly along the building for 301 feet to the Northeast corner of said building and the point of beginning containing 4.6 acres more or less.

Section 2. Section 4.1(a) of the Lease is hereby amended to read as follows:

"(a) at least three days before June 1, 1972, and at least three days before 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 Trust Indenture, the Lessee shall pay to the Trustee as rent for the premises a sum equal to the amount payable on such date as principal and interest upon the Bonds, as provided in the Trust 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 semi-annual interest payment date the balance in the Bond Fund, as defined in the Trust Indenture, is insufficient to make required payments of principal and interest on such date, the Lessee shall forthwith pay any such deficiency. Lessee shall be entitled at all times to a credit against said semi-annual rental payment of any moneys in the Bond Fund which are in excess of those amounts necessary to pay previously matured installments of interest or principal."

Section 3. Section 9.3 of the Lease is hereby amended by deleting the same in its entirety.

Section 4. The lease is hereby amended by the addition thereto of the following Article:

ARTICLE XXVIII

Additions and Expansion

Section 28.1. Notwithstanding any other provision of this Lease and in particular the provisions of Section 11.1, the parties hereto reserve the right at any time and from time to time to amend this Lease for the purpose of permitting the Lessee to expand the facilities and operations with resulting increased employment and other benefits to Lessor and its citizens. In this event, if requested by Lessee, Lessor agrees to proceed under Act No. 9, subject to the approval of its electors as

required by law, and, subject to the compliance with the conditions set forth in the Trust Indenture securing the Bonds, to issue additional bonds to finance the cost of such additional facilities, in which event Lessor and Lessee may, but need not necessarily, execute a supplement to this Lease increasing the basic annual rent by the amount necessary to pay the Paying Agent's fees and Trustee's charges, if any, in connection with said additional bonds, with all other provisions of this Lease to be finally applicable to said demised premises as so improved. Lessor agrees to include appropriate provisions in the Trust Indenture securing the Bonds reserving the right to issue, and specifying the conditions precedent to the issuance of, any such additional bonds. Nothing contained in the foregoing provision or in Section 11.1 shall in any way limit the right of the Lessee to place such equipment and improvements upon the leased premises as it shall desire so to do which may be financed by one or more security interests in such equipment or improvements granted to third parties under applicable provisions of the Uniform Commercial Code.

Section 28.2. Lessor and Lessee agree that all walls presently standing or hereinafter erected on or contiguous to the boundary line of the leased premises shall be party-walls for the purpose of tying-in 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, utility facilities on the leased premises, including those within the building, may be interconnected for the purpose of serving the new construction to be placed on the leased premises and any non-loadbearing panels in any party-wall may be removed; provided,

however, that if the construction on the adjoining premises thereon ceases to be operated under common control with the improvements on the leased premises, non-loadbearing wall panels similar in quality to those that have been removed will be installed and separate utility services will be provided for the new construction.

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

CITY OF CONWAY, ARKANSAS,
Lessor

By: *W. H. Emaway*
Mayor

ATTEST :

A. Davis Dunn
City Clerk

(S E A L)

UMC INDUSTRIES, INC.
Lessee

By: _____
Vice President

ATTEST:

Secretary

(S E A L)

ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF FAULKNER)

On this _____ day of _____, 1972, before me a Notary Public _____ 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:

(S E A L)

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 _____, 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)

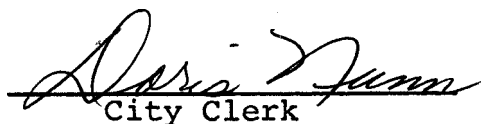
Section 2. That there is hereby found and declared to be an immediate need for the securing and developing of industry in order to provide additional employment and increased pay-rolls, alleviate unemployment and provide other benefits incidental to the operation of a substantial industry, and the execution and delivery of the foregoing Amendment to Lease 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.

ADOPTED: August 1, 1972.

APPROVED :

 - **GL&** - 
Mayor

ATTEST:


City Clerk