

ORDINANCE NO. O-17-111

AN ORDINANCE REPEALING ORDINANCE NO. O-16-123 AND AUTHORIZING THE ISSUANCE OF TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE AUTHORITY OF ACT NO. 9 OF 1960, AS AMENDED, FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY WITHIN THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT BETWEEN THE CITY, AS LESSOR, AND DOUGLAS FAMILY LLC AND DOUGLAS COMPANIES, INC., AS LESSEES; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT FOR PAYMENTS IN LIEU OF TAXES; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS RELATING TO THE ISSUANCE OF THE BONDS; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Conway, Arkansas (the "City") is authorized under the provisions of the Municipalities and Counties Industrial Development Revenue Bond Law, Arkansas Code Annotated (1998 Repl. & 2015 Supp.) Sections 14-164-201 *et seq.* (the "Act"), to own, acquire, construct, reconstruct, improve, equip and lease 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, the necessary arrangements have been made with Douglas Family LLC, an Arkansas limited liability company (the "Company"), and Douglas Companies, Inc., an Arkansas corporation (the "Corporation") for the financing of an industrial project consisting of the expansion and equipping of industrial facilities (the "Project") located at 200 Exchange Avenue within the corporate boundaries of the City and to be utilized in the Company's and Corporation's convenience products warehousing and distribution business; and

WHEREAS, the City, pursuant to Ordinance No. O-16-123 adopted on November 8, 2016, the City has previously authorized the issuance of its industrial development revenue bonds under the Act for the benefit of the Company and the Corporation in principal amount not to exceed \$7,000,000; and

WHEREAS, it has become necessary to revise the arrangements specified in Ordinance No. O-16-123, such that permanent financing of the Project costs, necessary costs and expenditures incidental thereto and the cost of the issuance of bonds is being furnished by the City pursuant to the Act through the issuance of (i) its Taxable Industrial Development Revenue Bonds (Douglas Companies Project), Series 2017A, in principal amount not to exceed Six Million Dollars (\$6,000,000) (the "Series 2017A Bonds"), and (ii) its Taxable Industrial Development Revenue Bonds (Douglas Companies Project), Series 2017B, in principal amount not to exceed Five Hundred Thousand Dollars (\$500,000) (the "Series 2017B Bonds," and together with the Series 2017A Bonds, the "Bonds"); and

WHEREAS, an open public hearing on the question of the issuance of the Bonds was held before the City Council on November 8, 2016, following publication of notice in *The Log Cabin Democrat* on October 30, 2016; and

WHEREAS, the Bonds will be issued pursuant to the terms and provisions of a Trust Indenture (the "Indenture"), by and between the City and a financial institution mutually agreeable to the City, the Company and the Corporation, as trustee (the "Trustee"); and

WHEREAS, the necessary arrangements have been made by the City to lease the Project to the Company and the Corporation pursuant to the terms of a Lease Agreement (the "Lease Agreement");

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

Section 1. There is hereby authorized and directed the issuance from time to time of the Bonds and the sale thereof to the Corporation, the Company or another affiliate thereof (the "Purchaser") pursuant to the terms and provisions of a Bond Purchase Agreement to be dated as of the date of delivery of the Bonds (the "Bond Purchase Agreement"), which Bond Purchase Agreement is specifically approved in Section 2 hereof. The Bonds shall be sold at the purchase price of par plus accrued interest, if any, and shall be issued and delivered according to the terms and provisions of the Bond Purchase Agreement. The Bonds shall be issued in two series as follows: (i) the Series 2017A Bonds shall be issued in the original aggregate principal amount of not to exceed Six Million Dollars (\$6,000,000), and (ii) the Series 2017B Bonds shall be issued in the original aggregate principal amount of not to exceed Five Hundred Thousand Dollars (\$500,000). The Bonds shall be dated as of the date of their delivery, shall have a final maturity of December 31, 2036, shall bear interest at the rate of 3.00% per annum, shall be in the forms, and shall be issued upon the terms and conditions recommended by the Company, all as more particularly set forth in the Trust Indenture approved in Section 3 hereof. The Mayor is hereby authorized and directed to execute and deliver the Bonds from time to time as requested by the Company, and the City Clerk is hereby authorized and directed to execute and deliver the Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Bonds to be authenticated by the Trustee.

The Bonds shall not constitute general obligations of the City within the meaning of any constitutional or statutory limitation, but shall be special limited obligations of the City as provided in the Act, the principal and interest on which shall be payable solely from the revenues or other receipts, funds, monies and property pledged therefor under the Indenture.

Section 2. To prescribe the terms and conditions upon which the Bonds are to be sold to the Purchaser, the Mayor is hereby authorized and directed to execute at the request of the Company the Bond Purchase Agreement on behalf of the City, by and between the City and the Purchaser, and approved by the Company and/or the Corporation. The Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Purchaser, the Company, the Corporation and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 3. To prescribe the terms and conditions upon which the Bonds are to be secured, executed, authenticated, issued, accepted and held, the Mayor and the City Clerk are hereby authorized and directed to execute, acknowledge and deliver the Trust Indenture, by and between the City and the Trustee, and the Mayor and City Clerk are hereby authorized and directed to cause the Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Trust Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Trustee, the Company, the Corporation, the Purchaser and Bond Counsel in order to complete the Trust Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Trust Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4. There is hereby authorized and directed the execution and delivery of the Lease Agreement by and between the City, as lessor, and the Company and the Corporation, as lessees, and the Mayor and the City Clerk are hereby authorized to execute, acknowledge and deliver the Lease Agreement for and on behalf of the City. The Lease Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Company, the Corporation, the Trustee and Bond Counsel in order to complete the Lease Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Lease Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. The City, the Company and the Corporation recognize that under Article 16, Section 5, of the Constitution of the State of Arkansas, as interpreted under past decisions of the Supreme Court of the State of Arkansas applicable to facilities financed pursuant to the Act, including particularly the case of Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 663 (1960), the Project will be exempt from *ad valorem* taxation. Although the City makes no representation as to the continued precedential value of such past decisions, the Company and the Corporation have agreed to enter into an Agreement for Payments in Lieu of Taxes to be dated as of the date of its execution (the "PILOT Agreement") requiring the Company and/or the Corporation to make certain payments in lieu of all *ad valorem* taxes which would otherwise be levied on the Project real and personal property by local public bodies with taxing power. In order to provide for such payments, there is hereby authorized and directed the execution and delivery of the PILOT Agreement, and the Mayor is hereby authorized to execute and deliver the PILOT Agreement for and on behalf of the City. The PILOT Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Company, the Corporation and Bond Counsel

in order to complete the PILOT Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the PILOT Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Bonds, the Bond Purchase Agreement, the Trust Indenture, the Lease Agreement and the PILOT Agreement, and to perform all of the City's obligations under and pursuant thereto. The Mayor and the City Clerk are hereby further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

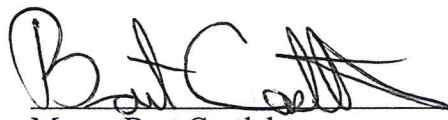
Section 7. Because the City is here involved with the expansion and equipping of a complex industrial project requiring highly specialized work and specialized types of machinery and equipment, it has been and is hereby determined by the City Council that competitive bidding be, and the same is hereby, waived as to this particular industrial project. This action is taken by the City pursuant to applicable laws of the State of Arkansas, including particularly the Act.

Section 8. Kutak Rock LLP, Little Rock, Arkansas, is hereby appointed as Bond Counsel with respect to the issuance of the Bonds, the fees and expenses of which firm shall be costs of the Project and paid from the proceeds of the Bonds or by the Company or Corporation.

Section 9. The provisions of this Ordinance are hereby declared to be severable, 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 10. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict, including particularly Ordinance No. O-16-123.

ADOPTED: October 10th, 2017.



Mayor Bart Castleberry

Attest:



Michael O. Garrett
City Clerk/Treasurer

(S E A L)

CERTIFICATE

**STATE OF ARKANSAS
COUNTY OF FAULKNER
CITY OF CONWAY**

I, Michael Garrett, the duly elected, qualified, and acting: Clerk-Treasurer of the City of Conway, Arkansas, do hereby certify that the attached and foregoing is a true and correct copy of an ordinance presented to the City Council of the City of Conway, Arkansas, at a meeting of that body held on the 10th day of October, 2017 same is duly recorded in the minutes of meeting of said Council.

Witness, my hand, and seal of the City of Conway, Arkansas this 19th day of October, 2017.



CITY CLERK-TREASURER



CERTIFICATE of RECORD

Instrument #201716902

Real Estate Book

Ordinance

Filed: 10/27/2017 10:02 am

Faulkner County, Arkansas

Crystal Taylor, Circuit Clerk

By: Diana Varner, D.C.

5 Pages

\$35.00