

RESOLUTION NO. R-86-72

A RESOLUTION AUTHORIZING AMENDMENT TO LEASE AGREEMENT BY AND BETWEEN THE CITY OF CONWAY, ARKANSAS, AND CONWAY PARTNERSHIP AMENDING THE LEASE AGREEMENT DATED AS OF OCTOBER 1, 1984, TO PERMIT THE ASSIGNMENT OF THE INTERESTS OF CONWAY PARTNERSHIP; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

BE IT RESOLVED 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 an Amendment to Lease Agreement by and between the City of Conway, Arkansas (the "City"), and Conway Partnership, a Wisconsin general partnership (the "Company"), amending the Lease Agreement between the City and the Company dated as of October 1, 1984, in substantially the form and with substantially the contents hereinafter set forth in Exhibit A attached, and the Mayor and City Clerk be, and they are hereby authorized to execute and deliver the Amendment to Lease Agreement for and on behalf of the City. The form and contents of the Amendment to Lease Agreement, which are approved, are made a part hereof.

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 obligations under the Amendment to Lease Agreement.

PASSED: December 22, 1986.

APPROVED:



Mayor

ATTEST:



City Clerk

(S E A L)

CERTIFICATE

The undersigned, City Clerk of Conway, Arkansas, hereby certifies that the foregoing is a true and compared copy of a resolution passed at a special session of the City Council of Conway, Arkansas, held at the regular meeeing place of the Council at 5:00 o'clock, P.M., on the 22nd day of December, 1986.


City Clerk

(S E A L)

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT TO LEASE AGREEMENT, made and entered into as of the 1st day of December, 1986, by and between the City of Conway, Arkansas (the "Lessor"), a municipal corporation of the State of Arkansas, created and validly existing under the laws of Arkansas, and Conway Partnership, a general partnership organized and existing under the laws of the State of Wisconsin (the "Lessee");

W I T N E S S E T H:

WHEREAS, pursuant to the Lease Agreement dated as of October 1, 1984 (the "Lease"), between the Lessor and the Lessee, the Lessor leased the Project (as defined in the Lease) to the Lessee in order to facilitate the development of industry within or near the corporate limits of the Lessor; and

WHEREAS, in order to finance the Project costs, the Lessor authorized and issued \$700,000 principal amount of City of Conway, Arkansas, Industrial Development Revenue Bonds (Conway Machine Project), Series 1984 (the "Bonds"); and

WHEREAS, the Bonds were issued pursuant to the provisions of a Trust Indenture dated as of October 1, 1984 (the "Indenture"), between the City and First State Bank & Trust Company (the "Trustee"); and

WHEREAS, under the Indenture this Amendment to Lease Agreement will not become effective unless and until the Trustee and the holders of not less than two-thirds (2/3) in aggregate principal amount of the Bonds at the time outstanding, consent to the execution and delivery of this Amendment to Lease Agreement; and

WHEREAS, Sections 8.3 and 9.1 of Articles VIII and IX of the Lease provide as follows:

"ARTICLE VIII
Special Covenants

Section 8.3 Lessee to Maintain its Existence; Conditions under which Exceptions Permitted. Lessee will maintain its existence as a general partnership and will not dissolve, sell, lease or otherwise dispose of all or substantially all of its business and assets or consolidate with or merge into another entity, provided, however, Lessee may, without the consent of Trustee, and without violating this Section 8.3, consolidate

with or merge into another domestic entity (i.e., a partnership or corporation organized under the laws of one of the states of the United States), or sell to another domestic entity all or substantially all of its business and assets, on the condition that such entity 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 entity 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. One or more partners of the Lessee may sell or assign their interest to another partner or to another person who assumes all obligations of the withdrawing partner with respect to this Lease Agreement.

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

Section 9.1. Assignment and Subleasing. With the written consent of the Trustee, which consent shall not be unreasonably withheld, Lessee may assign this Lease Agreement or sublet the leased premises or part thereof to a person, firm or corporation other than the Sublessee (whose subletting of the Project is hereby approved) provided that no such assignment or subletting and no dealings or transactions between Lessor or Trustee and any sublessee or assignee shall relieve 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.

It is understood and agreed that this Lease Agreement (and the leased premises and rents hereunder) will be assigned to Trustee as security for the payment of the principal of and interest on the Bonds, but otherwise Lessor shall not, without the prior written consent of Lessee, 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 Lessee in accordance with the provisions of this Lease Agreement and to Trustee under the Indenture, but subject to the provisions set forth below, without the prior written consent of Lessee."; and

WHEREAS, the Lessee has advised the Lessor that it desires to dissolve the general partnership and transfer the assets of the partnership, including the rights of the Company as Lessee under the Lease, to Conway Machine, Inc., an Arkansas corporation, the sublessee of the Project (the "Corporation"), which Corporation will assume all obligations of the Company under the Lease;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of

which are hereby acknowledged, and of the mutual covenants and undertakings herein expressed and the mutual benefits to be realized by the parties pursuant hereto, the Lessor and the Lessee hereby agree as follows:

Section 1. Definitions. All words and terms defined in Article I of the Lease and used but not otherwise defined herein shall have the same meanings, respectively, in this Amendment to Lease Agreement as such defined words and terms are given in Article I of the Lease.

Section 2. Amendment. Section 9.1 of Article IX of the Lease is hereby amended to read as follows:

"ARTICLE IX
Assignment, Subleasing, Pledging and Selling;
Redemption; Rent Prepayment and Abatement

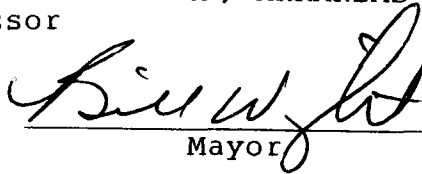
Section 9.1. Assignment and Subleasing. With the written consent of the Trustee, which consent shall not be unreasonably withheld, Lessee may assign this Lease Agreement or sublet the leased premises or part thereof to a person, firm or corporation provided that no such assignment or subletting and no dealings or transactions between Lessor or Trustee and any sublessee or assignee shall relieve 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.

With the consent of the Trustee and the holders of all of the Bonds then outstanding, the Lessee may assign this Lease Agreement to another person provided such other person shall assume all obligations of the Lessee hereunder and upon obtaining such consent and assumption, the Lessee shall be relieved of all further obligations hereunder as of the date specified in such assignment and assumption agreement.

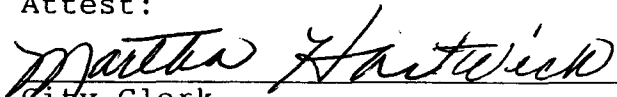
It is understood and agreed that this Lease Agreement (and the leased premises and rents hereunder) will be assigned to Trustee as security for the payment of the principal of and interest on the Bonds, but otherwise Lessor shall not, without the prior written consent of Lessee, assign, encumber, sell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

IN WITNESS WHEREOF, Lessor and Lessee have caused this Amendment to Lease Agreement to be duly executed as of the day and year first above written.

CITY OF CONWAY, ARKANSAS
Lessor

By: 
Mayor

Attest:


City Clerk

(S E A L)

CONWAY PARTNERSHIP
Lessee

By: _____
Charles Ruesing, a
general partner