

ORDINANCE NO. A-552

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TRUST INDENTURE BY AND BETWEEN THE CITY OF CONWAY, ARKANSAS, AND WORTHEN BANK & TRUST COMPANY, AS TRUSTEE, 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 execution and delivery of a certain Trust Indenture, executed as of November 9, 1960, and heretofore filed for record in the office of the Recorder of Faulkner County, Arkansas, which authorized the issuance of Industrial Development Revenue Bonds, dated June 1, 1960 (the "Bonds") in the original principal amount of \$2,200,000, and

WHEREAS, all of the holders of said Bonds have consented to the execution and delivery of an Supplemental Trust Indenture, to amend said Original Trust Indenture, in order that additional bonds might be issued by the City of Conway for the use and benefit of UMC Industries, Inc., and

WHEREAS, it is desirable that the form of Supplemental Trust Indenture 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 Supplemental Trust Indenture, in substantially the form hereinafter set out, with Worthen Bank & Trust Company, of Little Rock, Arkansas, as Trustee:

SUPPLEMENTAL TRUST INDENTURE

This SUPPLEMENTAL TRUST INDENTURE, dated as of June 1, 1972, between the City of Conway, Arkansas (herein called "City"), and Worthen Bank & Trust Company (herein called "Trustee"), a banking corporation organized and existing under the laws of the State of Arkansas;

WHEREAS, the City has heretofore executed and delivered to St. Louis Union Trust Company, as Trustee, a Trust Indenture dated November 9, 1960, (hereinafter called the "Original Indenture") said Original Indenture appearing of record in Mortgage Book 108, at page 76, in the office of the Recorder of Faulkner County, Arkansas; and

WHEREAS, the Trustee is the successor trustee to St. Louis Union Trust Company which has resigned as Trustee under the Original Indenture; and

WHEREAS, the City and the Trustee desire to amend the Original Indenture, which amendment has been approved by all of the holders of the Industrial Development Revenue Bonds, dated June 1, 1960, by written Consents now on file with the Trustee; and

WHEREAS, the execution of this Supplemental Trust Indenture has been duly authorized by Ordinance of the City Council of the City of Conway, Arkansas, duly adopted on August ____, 1972, and

WHEREAS, all things necessary to make **this** Supplemental Trust Indenture a valid, binding and legal instrument have been done and performed,

NOW, THEREFORE, THIS SUPPLEMENTAL TRUST INDENTURE,
WITNESSETH:

ARTICLE ONE

Amendment of the Original Indenture

Section A101. The description of the real property herein mortgaged appearing on page 16 is 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 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 A102. Subparagraph (v) appearing on page 17 of the Original Indenture is amended to read as follows:

"(v) all right, title and interest of the City in and to all improvements, accretions, replacements, substitutions and appurtenances thereunto belonging or

in anywise appertaining and all other personal property at any time and from time to time placed in said building from the proceeds of the Bonds and leased to Universal; provided, however, that the foregoing provision shall not convey any interest in any improvements, machinery or equipment placed therein at the sole expense of Universal or restrict the granting of a security interest therein by Universal to third parties providing purchase money financing for improvements, machinery or equipment."

Section A103. Section 210 of the Indenture is hereby amended by deleting the original provisions and substituting therefore the following:

"Section 2.10 In the event that the Internal Revenue Service shall determine that the interest on the entire issue of the Bonds then outstanding is not exempt from income taxation by the United States of America, the Bonds shall bear interest at the rate of 6% per annum and the coupons pertaining thereto shall be deemed to provide for such high rate of interest. Such higher rate of interest shall commence on the effective date of such ruling, provided, however, that the payment of such higher rate of interest may be delayed during the contest in administrative or judicial proceedings of the determination of the Internal Revenue Service. Such payments of interest shall be made from the Bond Fund provided for in Article V and UMC shall promptly be given notice thereof by the Trustee, such notice to constitute a demand for payment of the amount of such payments as rent under Section 4.1 of the Lease. Such delay shall not compound the rate of interest, and payment of the increased interest shall be made as soon as practicable after the final determination of any contest, the appeal of any contest to be in the sole discretion of the taxpayer involved. Notice of any proceeding by the Internal Revenue Service shall be given by the

City or Trustee to UMC at the earliest practical opportunity. From and after the date payments are first made by the Trustee under this Section 210 all the Bonds (without necessity of surrender thereof for notation) shall bear interest at the rate of 6% per annum and the coupons pertaining thereto shall be deemed to provide for such higher rate of interest. Upon written notice to the City and the Trustee, any bondholder may require the City to issue and deliver to the Trustee and the Trustee to authenticate and deliver to such holder and registered owner, against surrender of an equivalent principal amount of outstanding Bonds, with all unmatured coupons attached, a Bond or Bonds of like number, tenor and effect and equal and ratably secured with all other Bonds issued hereunder but indicating on its face and on the coupons pertaining thereto that the rate of interest thereon or represented thereby, as the case may be, is 6% per annum. The Trustee shall cause said bonds to be prepared and the cost and expenses relating thereto shall be paid in the same manner as that provided in Section 2.02 with respect to the issue of Bonds for exchange for Initially Issued Bonds."

Section A104. Section 404 of the Original Indenture is hereby amended to read as follows:

"Section 404. The City covenants that it will not sell or otherwise dispose of or encumber the Mortgaged Property or any part thereof or interest therein, except as for encumbrances on the occasion of the issuance of additional industrial development revenue bonds which encumbrances shall be subordinate to the lien of this Indenture, and will not create or permit to be created any charge or lien on the revenues derived therefrom except as provided in this Indenture and as may be necessary to secure additional industrial revenue bonds

by the assignment of a supplemental lease and additional rentals derived therefrom."

Section A105. Section 702 of the Original Indenture is hereby amended to read as follows:

"Section 702. Any equipment placed in or on the Mortgaged Property, whether in exchange or in lieu of any sold, removed or disposed of under Section 701 hereof, except equipment, machinery and personal property placed thereon by the Lessee at its sole expense and to which title remains in the Lessee (provided, however, that security interests to secure purchase money obligations may be granted), or placed thereon by the City under lease to Lessee at the expense of the City from the proceeds of the sale of additional industrial development revenue bonds, shall automatically become and be subject to the lien of this Indenture as if specifically mortgaged hereby. The City will, however, upon written request by the Trustee, convey the same to the Trustee by an indenture supplemental hereto in form and substance satisfactory to the Trustee or other appropriate instrument as requested by the Trustee and cause the same to be recorded and filed in such manner as the Trustee requests to secure and continue the lien of this Indenture thereon."

Section A106. Section 801(f) of the Original Indenture is hereby amended to read as follows:

"(f) Any default or event of default under the Lease (as such terms are defined in the Lease) continuing after thirty (30) days notice of such circumstance and the failure to correct such circumstance;"

Section A107. Universal Match Corporation having changed its corporate name to UMC INDUSTRIES, INC., all references contained in the Original Indenture to Universal Match Corporation or "Universal" alone shall hereafter refer to UMC INDUSTRIES, INC.

ARTICLE TWO

Part of Amendment to Lease

Section A201. The City, for the consideration and purposes set forth in the Original Indenture, does hereby further sell, assign, transfer and set over unto Worthen Bank & Trust Company, as Trustee, and unto its successors or successors in trust hereby created, and unto them and their assigns forever, all its right, title, and interest in and to, and the rents, issues and profits now due and which may hereafter become due under or by virtue of, that certain Amendment to Lease, duly executed by UMC, INDUSTRIES, INC., dated as of June 1, 1972, which Amendment to Lease is recorded in the office of the Recorder of Faulkner County, Arkansas, it being the intention hereby to establish an absolute transfer and assignment of the said lease and all the avails thereunder to the Trustee.

ARTICLE THREE

The Trustee

Section A301. The Trustee hereby accepts the Trust hereby declared and provided, and agrees to perform the same upon the terms and conditions contained in the Original Indenture, as amended by this Supplemental Indenture.

Section A302. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity and sufficiency of this Supplemental Indenture or the due execution thereof by the City or for or in respect of the recitals as contained herein, all of which recitals are made by the City only.

ARTICLE FOUR

Miscellaneous Provisions

Section A401. All terms contained in this Supplemental Indenture shall have the meanings given to such terms in the Original Indenture, except where expressly amended by this Supplemental Indenture.

Section A402. Except as hereby expressly amended, the Original Indenture, as supplemented, and the Bonds therein referred to, are in all respects ratified and confirmed in all the terms, provisions and conditions thereof shall be and remain in full force and effect.

Section A403. This Supplemental Trust Indenture may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original; but such counterpart shall together constitute but one and the same instrument.

Section A404. The amendments made by this Supplemental Indenture shall be deemed effective as of June 1, 1972.

IN WITNESS WHEREOF, THE CITY OF CONWAY, ARKANSAS, has caused this Supplemental Trust Indenture to be signed by its duly authorized Mayor, attested by its City Clerk, and its seal to be

affixed, and Wosthen Bank & Trust Company, as Trustee, has caused this Supplemental Trust Indenture to be executed by its Trust Officer or Assistant Trust Officer and its corporate seal to be affixed hereunto and attested by its Secretary or Assistant Secretary, all as of June 1, 1972.

CITY OF CONWAY, ARKANSAS

By *Walter D. Conway*
Mayor

ATTEST:

Doris D. Gunn
City Clerk

(S E A L)

WORTHEN BANK & TRUST COMPANY
Trustee

By _____
Trust Officer

ATTEST:

Secretary

(S E A L)

STATE OF ARKANSAS)
) ss ACKNOWLEDGMENT
COUNTY OF FAULKNER)

On this day before me, the undersigned, a Notary Public within and for the said County and State, duly commissioned, qualified and acting, appeared Walter Dunaway and Doris Nunn, to me well known, who stated that they are the Mayor and City Clerk, respectively, of the City of Conway, Arkansas, and that they are duly authorized in that capacity to execute the foregoing instrument for and in the name and behalf of said City, and further stated and acknowledged that they have so signed, executed, and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this _____ day of August, 1972.

Notary Public

My commission expires:

(S E A L)

STATE OF ARKANSAS)
) ss
COUNTY OF PULASKI)

On this day, 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 _____, to me personally well known, who stated that they are the Assistant Trust Officer and Assistant Secretary, respectively of Worthen Bank & Trust Company, a corporation, and that they are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this _____ day of August, 1972.

Notary Public

My commission expires:

(S E A L)

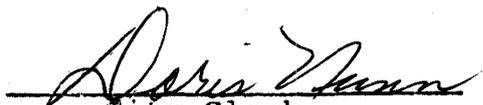
Section 2. That there is hereby found and declared to be an immediate need for the securing and developing of industry in order to provide additional employment and increased pay-rolls, alleviate unemployment and provide other benefits incidental to the operation of a substantial industry, and the execution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


Mayor

ATTEST :


City Clerk