

RESOLUTION NO. R-77-47

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

Section 1. That the Mayor and City Clerk be, and they are hereby, authorized for and on behalf of the City of Conway, Arkansas (the "City") to enter into a Real Estate Purchase Agreement with R. G. Barry Corporation, a Delaware corporation (the "Company"), in the form and with the contents hereinafter set forth and made a part hereof, to wit:

of the Premises. Buyer and Seller shall use their best efforts to obtain such resolution and agreement. If such resolution and agreement are not timely obtained, and this contingency is not waived by Buyer, this Agreement shall be void and of no further force and effect after January 1, 1978.

5. Evidence of Title. Seller shall, within fifteen (15) days after execution of this Agreement by Seller and Buyer, furnish to Buyer, at Seller's expense, a title insurance commitment (hereinafter called the "Commitment") certified to a date not earlier than the date of execution of this Agreement by Seller and Buyer, remaining in force until the date provided for closing herein, and issued by a title insurance company acceptable to Buyer and authorized to do business in Arkansas, in which Commitment said company commits that upon delivery and recording of the general warranty deed provided for herein, said company will issue, at its usual rates which premium shall be paid by Seller, its policy of Owner's Title Insurance on ALTA 1970 Owner's Form B, insuring in Buyer, in the total amount of the purchase price, good and merchantable title in fee simple to the Premises, free and clear of all liens, encumbrances, easements, tenancies, mineral rights, covenants, restrictions, reservations, conditions, charges, agreements and encroachments except the following permitted exceptions: Taxes and assessments not yet due and payable; zoning laws and ordinances and other laws and ordinances affecting the use of the Premises; utility easements; conditions and restrictions of record, if any, which are acceptable to Buyer; legal highways; and such other exceptions to title as Buyer may be willing to waive in writing. If said Commitment or any endorsement to said Commitment shows any exception to title other than the permitted exceptions, Seller shall have a reasonable time after receiving written notice thereof from Buyer, but not to exceed ninety (90) days, or such additional time to which Buyer and Seller may agree, within which to remedy or remove or secure insurance against the same, and if Seller fails to do so, this Agreement shall, at the option of Buyer, become void and of no further force or effect.

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT, made by and between the City of Conway, Arkansas, a municipality existing under the laws of the State of Arkansas, hereinafter called "Seller" and R. G. Barry Corporation, a Delaware corporation, hereinafter called "Buyer".

WITNESSETH:

In consideration of the mutual agreements hereinafter contained the parties hereto agree as follows:

1. Sale and Purchase. Seller agrees to sell and convey, and Buyer agrees to purchase and pay for, subject to the terms, conditions and provisions hereinafter set forth, the real property described on Exhibit A attached hereto and incorporated herein by this reference together with all improvements and fixtures thereon and appurtenances thereto (hereinafter called the "Premises").
2. Purchase Price; Deposit; Payment. The total purchase price to be paid by Buyer to Seller for the fee simple title to the Premises shall be \$100,000 payable in cash on or before the date of closing of the issuance and sale of industrial development bonds by the Seller referred to in paragraph 4 hereof.
3. Closing. The transaction for the purchase and sale of the Premises shall be closed at such time on or before February 15, 1978, and at such place in Conway, Arkansas, as to which Buyer and Seller shall agree. Said transaction shall be closed by Buyer's paying to Seller the purchase price as provided in paragraph 2 and the Seller's executing and delivering to the Buyer a general warranty deed for said premises as hereinafter set forth.
4. Contingency. Buyer's obligation to purchase the Premises pursuant to the terms of this Agreement is contingent upon the Seller, having adopted on or before January 1, 1978, an Inducement Resolution and such body have entered into a Memorandum of Intent with the Buyer in customary form providing for the issuance and sale of industrial development bonds in an amount sufficient to pay the costs of Buyer's acquisition, renovation and equipping of

6. Deed. Seller shall convey to Buyer a good and marketable title in fee simple to the Premises by a transferable and recordable general warranty deed, free and clear of all liens and encumbrances, and other exceptions except the permitted exceptions specified in paragraph 5 above. Seller shall pay the transfer tax required to be paid at the time of filing of said deed for record. Buyer shall pay the recording fee required to be paid at the time of the filing for record of said deed.

7. Possession and Access. Seller shall deliver possession of the Premises to Buyer on the date of closing free of all leases, tenancies and occupancy. Seller grants to Buyer and persons designated by Buyer the right and permission at any time after the execution of this Agreement and from time to time, to enter upon the Premises to inspect the same and to make such preparations thereof as shall be reasonably necessary to enable Buyer to utilize the Premises in its manufacturing operations subsequent to the closing, provided, however, that Buyer shall indemnify and hold harmless the Seller from any loss, liability, cost or expense arising out of the activities of Buyer on the Premises prior to the closing and, if the transaction is not closed, Buyer shall immediately vacate the Premises leaving the Premises in as good condition as existed upon Buyer's entry thereon.

8. Survey. Seller shall, within thirty (30) days after the execution of this Agreement furnish to Buyer, at Seller's expense, a certified survey of the Premises, prepared by a registered surveyor, showing the same to be free of restrictions, violations and questions of encroachments upon the Premises. The survey shall show dimensions and total square foot area of the subject property; easements, if any; location of adjoining streets; and such other details as might be requested by Buyer; and shall contain a complete legal description of the Premises. Seller shall also furnish or cause to be furnished to Buyer satisfactory evidence that the Premises are zoned classification "I" which will permit Buyer's intended use thereof for the manufacture of footwear and related items.

9. Taxes and Assessments. Seller shall pay all delinquent taxes, penalties, and interest, and all special assessments now a lien, both current and reassessed and whether due or to become due and all future assessments for improvements presently installed, or for future improvements which Seller has received notice of from public authorities.

10. Utility Charges. Seller shall pay all accrued utility charges, if any, to the date of closing.

11. Risk of Loss or Damage. Except as hereinbefore provided with respect to Buyer's activities on the Premises prior to closing, Seller shall bear the risk of loss or damage to the Premises until the transaction which is the subject of this transaction is closed. If any event, such as fire, flood, windstorm, earthquake or other occurrence occurs prior to the time of closing which causes loss or damage and which renders the Premises unfit for the Buyer's intended use or which would require additional expense to restore the Premises to its original condition or otherwise to make the Premises fit for Buyer's intended use, then Buyer may, at its option, (a) elect to proceed with the transaction in which Buyer shall be entitled to all insurance proceeds, if any, payable to Seller under any and all insurance policies covering such property, plus full credit against the purchase price for any uninsured portion of the loss or damage; or (b) elect to terminate this Agreement by giving written notice to that effect, in which case each party shall be released from all further obligations and liability hereunder.

12. Representations and Warranties. Seller hereby represents and warrants that Seller has good and marketable fee simple title to the Premises, free and clear of all liens, encumbrances and other exceptions to title as stated above; that the use of said real estate for the manufacture of footwear and related items is permitted under the laws, regulations, ordinances and restrictions now in force; that all needed utility lines, sewer and water lines have been prior to the delivery of the deed will have been extended

by Seller to the property line of the Premises and Buyer shall be permitted to tap into and receive service from said utility lines, sewers and water lines, without charge to Buyer; that the services from or use of the utilities, sewer and water lines serving the Premises are not now restricted or being denied and Seller has no knowledge of any threatened service or use restriction that would affect Buyers' operations thereon. Buyer may, but shall not be required to, take any appropriate steps to confirm the accuracy of such representations and warranties and Seller will execute any requests for information or other instruments which Buyer requests in connection with any search or confirmation of the accuracy of the foregoing warranties and representations.

13. Commissions. Seller shall pay all real estate broker's fee and commissions which become due or payable as the result of the execution of this Agreement or the closing of the transaction which is the subject hereof and Seller shall indemnify and hold Buyer harmless from any liability therefor. Buyer represents and warrants to Seller that Buyer has no knowledge of any Agreement, understanding or fact which would entitle any person, firm or corporation to any such fee or commission.

14. Notices. Any notice which is required or permitted to be given, delivered or served pursuant to the terms of this Agreement shall be deemed to have been given, delivered or served if reduced to writing and mailed by U. S. Registered or Certified Mail, postage prepaid, to the party who is to receive such notice. When so mailed, a notice shall be deemed to have been given, delivered or served on the date on which it was mailed. Any notice mailed to Seller or Buyer shall be addressed to the U. S. Post Office mailing address noted below.

15. General Provisions. All representations and warranties of the parties hereunder shall survive the closing of the transaction which is the subject of this Agreement and the delivery of the Deed by Seller to Buyer as hereinbefore provided. This Agreement shall inure to the benefit of and bind the parties hereto and their respective successors and assigns.

The headings to the sections hereof have been inserted for convenience of reference only and shall in no way modify or restrict any provisions hereof or be used to construe any such provisions. This contract shall be governed by the laws of the State of Arkansas.

16. Additional Obligation of Buyer. Buyer agrees to proceed, promptly after the closing, to renovate and equip the Premises as a manufacturing facility and, upon completion of the renovation and equipping to operate the Premises as a manufacturing facility; provided, however, the Buyer shall not be obligated to purchase the Premises unless the industrial development bonds referred to in paragraph 4 hereof are issued and sold as contemplated by the parties.

17. Assignment. This Agreement shall not be assignable except to a person controlled by or under common control with the Buyer.

18. Acceptance of this Offer. In the event this Agreement is not signed simultaneously by both parties, it shall be considered an offer by the party first executing it to the other party to either purchase or sell the Premises on the terms and conditions herein set forth. In such event, this offer shall expire at midnight, local time, on December 15, 1977, unless one copy of this Agreement, executed by the party to whom this offer has been made, shall have been mailed to the party making the offer in accordance with the provisions of paragraph 14 hereof.

IN WITNESS WHEREOF, the undersigned Seller, being hereunto duly authorized, has executed this Agreement at Conway, Arkansas, this _____ day of _____, 1977.

SELLER

CITY OF CONWAY, ARKANSAS
Municipal Building
P. O. Box 99
Conway, Arkansas 72032

Signed in the presence of:

By _____
Jim A. Hoggard, Mayor

IN WITNESS WHEREOF, the undersigned Buyer has executed this Agreement at Columbus, Ohio this _____ day of _____, 1977.

BUYER

R. G. BARRY CORPORATION
13405 Yarmouth Road, N. W.
Pickerington, OH 43147

Signed in the presence of:

By _____

EXHIBIT A

Beginning at a point 30' north and 985' east of the southwest corner of the northwest quarter of Section 1 Township 5 north range 14 west, Conway, Faulkner County, Arkansas, said point being on the north right-of-way line of Hairston Avenue; thence run north 731' to the south right-of-way line of the Missouri Pacific Railroad; thence run southeasterly along said railroad right-of-way approximately 385' to a point on the east line of Lot 201-A of the plat of the City of Conway, Arkansas; thence run south along said east line of Lot 201-A approximately 577' to the north right-of-way line of Hairston Avenue; thence west 349.4' to the point of beginning.