

ORDINANCE NO. 0-83-32

AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS FOR THE PURPOSE OF PROVIDING PERMANENT FINANCING FOR INDUSTRIAL FACILITIES; AUTHORIZING A TRUST INDENTURE AND A GUARANTY AGREEMENT SECURING THE BONDS AND A MORTGAGE AND SECURITY AGREEMENT IN CONNECTION THEREWITH; AUTHORIZING A LEASE AND AGREEMENT BETWEEN THE CITY OF CONWAY, ARKANSAS, AS LESSOR, AND TATE CONTAINERS OF CONWAY, INC., AS LESSEE; AUTHORIZING THE SALE OF THE BONDS; AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Conway, Arkansas (the "City"), is authorized and empowered under the provisions of Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas, approved January 21, 1960, as amended (the "Act"), to issue revenue bonds and to expend the proceeds thereof to finance the acquisition, construction and equipment of land, buildings or facilities which can be used in securing or developing industry; and

WHEREAS, the City has heretofore issued its Industrial Development Revenue Bonds - Tate Containers of Conway, Inc. Project, Series A, B and C, in the aggregate principal amount of \$1,900,000 (the "Previous Bonds"), for the purpose of financing the cost of acquiring, constructing and equipping an industrial plant (including an expansion thereto) located within the boundaries of the City (the "Plant"), which is being leased to and is operated by Tate Containers of Conway, Inc., an Arkansas corporation (the "Company"); and

WHEREAS, it is proposed that the City provide permanent financing, through the issuance of revenue bonds under the Act, of the cost of acquiring, constructing and equipping certain additional industrial facilities (the "Project"), as part of an expansion to the Plant; and

WHEREAS, pursuant to and in accordance with the provisions of the Act, the City is now prepared to proceed with financing the Project and to issue and sell \$2,000,000 in principal amount of its Industrial Development Revenue Bonds (InDeBonds-Tm) - Tate Containers of Conway, Inc. Project (the "Bonds"), to provide such financing; and

WHEREAS, the payment of the principal of and interest on the Bonds, together with certain other amounts, will be unconditionally guaranteed by the Company and by Tate Containers, Inc., an Arkansas corporation and an affiliate of the Company (the "Guarantor"); and

WHEREAS, the payment of the principal of and interest on the Bonds will be insured by Firemen's Insurance Company of Newark, New Jersey (the "Insurer"), acting through its agent, IDBI Managers, Inc., a New York corporation (the "Agency"); and

WHEREAS, copies of the hereinafter described Trust Indenture, Guaranty Agreement, Mortgage and Security Agreement and Lease Agreement have been presented to and are before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Conway, Arkansas:

Section 1. That the issuance of the Bonds is hereby authorized. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, and shall be subject to redemption prior to maturity all upon the terms and conditions recommended by the Company and to be set forth in the Trust Indenture (hereinafter authorized) securing the Bonds. The Bonds shall bear interest at the rates per annum, and shall mature in each of the years, as set forth in the following table:

<u>YEAR</u>	<u>PRINCIPAL AMOUNT</u>	<u>INTEREST RATE</u>
1984	\$ 75,000	6.35%
1985	80,000	6.70
1986	85,000	7.00
1987	90,000	7.25
1988	95,000	7.50
1989	105,000	8.00
1990	110,000	8.50
1991	120,000	8.75
1992	130,000	9.00
1993	145,000	9.35
1994	160,000	9.50
1995	175,000	9.75
1996	190,000	9.90
1997	210,000	10.25
1998	230,000	10.35

Section 2. That the Bonds be sold to T.J. Raney & Sons, Inc. and Stephens Inc., both of Little Rock, Arkansas (the "Purchasers"), for the purchase price of 97% of par, plus accrued

interest from the date of the Bonds to the date of delivery, which price is recommended by the Company.

Section 3. To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized to execute and acknowledge (a) a Trust Indenture dated as of November 1, 1983 (the "Indenture"), by and between the City and The First National Bank of Conway, Conway, Arkansas, as Trustee (the "Trustee"); (b) a Guaranty Agreement dated as of November 1, 1983 (the "Guaranty"), by and among the Company and/or the Guarantor, the City, the Trustee, and the Insurer; and (c) a Mortgage and Security Agreement dated as of November 1, 1983 (the "Mortgage"), from the City (joined by the Company) to the Agency; and the City Clerk is hereby authorized to execute and acknowledge the aforesaid agreements and to affix the seal of the City thereto. The Indenture, the Guaranty, and the Mortgage are hereby approved in substantially the forms submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Company the Guarantor, the Agency, the Insurer, and the Purchasers in order to complete the agreements in substantially the forms submitted to this meeting with such changes as shall be approved by such persons executing each document, their execution to constitute conclusive evidence of such approval.

Section 4. That there be, and there is hereby authorized the execution and delivery of a Lease Agreement dated as of November 1, 1983, (the "Agreement"), by and between the City as Lessor, and the Company as Lessee, and the Mayor and City Clerk be, and they are hereby, authorized to execute, acknowledge and deliver the Agreement for and on behalf of the City. The Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Company, the Trustee, the Guarantor, the Agency, the Insurer, and the Purchasers 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.

Section 5. That there be, and there is hereby, authorized the preparation and distribution to various prospective and actual purchasers of the Bonds of an Official Statement in the name of the City, describing the Bonds and setting forth such other information as may be determined to be necessary or desirable by the Purchasers, the Company and the City. The Mayor is authorized to execute such Official Statement on behalf of the City.

Section 6. That the Mayor and City Clerk, for and on behalf of the City, be, and they are hereby, authorized and

directed to take the necessary steps to obtain the release from the lien of the trust indenture securing the Previous Bonds of such land necessary to the Project and its financing by the Bonds, and to do any and all things necessary to effect the execution and delivery of the Indenture, the Guaranty, the Mortgage, and the Agreement, the performance of all obligations of the City thereunder, the issuance, execution, sale and delivery of the Bonds, the execution, delivery and distribution of an Official Statement, and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. That the Mayor and City Clerk be, and they 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. That the City is hereby involved with the acquiring, constructing and equipping of industrial facilities, and pursuant to applicable laws of the State of Arkansas, including particularly the Act, competitive bidding is waived.

Section 8. That the City Clerk is hereby authorized and directed to file in the office of the City Clerk, as a part of the minutes of the meeting at which this Ordinance is adopted, for inspection by any interested person a copy of the Indenture, Guaranty, Mortgage, and Agreement, and such documents shall be on file for inspection by any interested person.

Section 9. That the law firm of Friday, Eldredge & Clark, Little Rock, Arkansas, be appointed to act as Bond Counsel on behalf of the City in connection with the issuance and sale of the Bonds.

Section 10. That the provisions of this Ordinance are hereby declared to be separable, 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 and provisions.

Section 11. That all ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 12. That there is hereby found and declared to be an immediate need for the securing and developing of industry in order to provide employment and payrolls, alleviate unemployment and otherwise benefit the public health, safety and welfare of the City and the inhabitants thereof, and the issuance of the Bonds authorized hereby and the taking of the other action authorized hereby are immediately necessary for the accomplishing

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 peace, health and safety shall be in force and effect immediately upon and after its passage.

PASSED: September 27, 1983.

ATTEST:

Martha Hartwick  
City Clerk

APPROVED:

Bill Wight  
Mayor

(SEAL)