

RESOLUTION NO. R 012 92

**A PROJECT RESOLUTION AUTHORIZING NOT TO EXCEED \$9,000,000  
INDUSTRIAL REVENUE BONDS (PERDUE FARMS INCORPORATED)  
SERIES 1992**

WHEREAS, the Council of Sussex County (the "County") has heretofore adopted the Sussex County Commercial, Industrial and Agricultural Revenue Bond Ordinance, as amended (the "General Ordinance"), pursuant to the authority of Title 9, Chapter 70, of the Delaware Code to encourage and assist the financing of the construction, acquisition, sale or lease of industrial, commercial and agricultural facilities related to the maintenance or promotion of employment or to the redevelopment or revitalization of areas within the County; and

WHEREAS, Perdue Farms Incorporated, a corporation organized under the laws of the State of Maryland, (the "Applicant"), has applied to the County for the financing of a project (the "Project"), consisting of the acquisition of approximately 62 acres of land and the construction and equipping of a feed mill expected to be able to produce 9,600 tons of finished feed per week, to be located west of U.S. Route 13, on the southeast side of County Road 583, south side of County Road 584, and west of Penn Central Railroad, near Bridgeville, Northwest Fork Hundred, Sussex County, Delaware; and

WHEREAS, as required by the General Ordinance, the Applicant has submitted to the County through the County Administrator (the "Administrator") an application for assistance in financing the Project (the "Application") and has requested the County to finance a portion of the costs of the Project, an estimate of which is attached as Attachment 1 hereto (the "Costs"), through the issuance by the County of its Industrial Revenue Bonds (Perdue Farms Incorporated), Series

1992 in a principal amount not to exceed \$9,000,000 (the "Bonds"); and

WHEREAS, after notice published in The News Journal on November 20, 1991, as required by the General Ordinance, the Application and the proposed issuance of the Bonds were reviewed by a committee comprised of the Administrator, Director of Finance, County Attorney and Director of Economic Development (the "Review Committee") at a public hearing conducted on December 6, 1991, at which time all interested person were given an opportunity to be heard; and

WHEREAS, the Review Committee has made the findings and determinations required by the General Ordinance, including the findings that:

(a) the Project is eligible for financing by the County as provided in the General Ordinance;

(b) the issuance and sale by the County of the Bonds in an aggregate principal amount not to exceed \$9,000,000 in order to lend the proceeds thereof to the Applicant for the sole and exclusive purpose of financing a portion of the costs of the Project will promote the public purposes specified in the General Ordinance and will:

(i) tend to maintain or provide gainful employment opportunities within and for the people of the County;

(ii) aid, assist and encourage the economic development or redevelopment of the county;

(iii) maintain, diversify or expand employment promoting enterprises within the County; and

(iv) be leased to, sold to, or financed for a financially responsible person who has not been convicted or a major labor law violation or of illegal conduct involving moral turpitude by any agency or court of the federal government or



agency or court of any state in the two (2) year period immediately prior to the date hereof;

(c) The Bonds will be special obligations of the County and do not pledge the credit or taxing power thereof but will be payable solely from the Revenue of the Project as specified in Section 7 of the General Ordinance; and

(d) The issuance of the Bonds will accomplish the public purpose contemplated by the General Ordinance;

WHEREAS, the Administrator has advised the Applicant of the Review Committee's findings and determinations; and

WHEREAS, the Administrator has advised the Council of the Review Committee's findings and determinations and recommendations and has transmitted the Application to the Council; and

WHEREAS, this Council also desires to reaffirm its approval of the Project, to make the findings and determinations required by the General ordinance and to authorize the issuance and sale of the Bonds; and

WHEREAS, the Applicant has submitted evidence of financial feasibility of the Project and the financing thereof satisfactory to the County Administrator; and

WHEREAS, the Bonds will be limited obligations of the County payable solely from the Revenues of the Project, as specified in Section 7 of the General Ordinance; and

WHEREAS, the Bonds will initially bear interest at a variable rate determined by A. H. Williams & Co. Inc., which will act as remarketing agent for the Bonds; and

WHEREAS, to provide for the payment of principal and purchase price of and interest on the Bonds, the Bonds will initially be secured by a letter of credit issued by Cooperative Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch (the "Bank") pursuant to a Letter

of Credit and Reimbursement Agreement between the Applicant and the Bank; and

WHEREAS, this Council desires to authorize the issuance, execution and delivery of the Bonds and the execution and delivery of the other documents required to accomplish the foregoing and to authorize all other necessary action in connection with the Project and the financing thereof,

NOW, THEREFORE,

BE IT RESOLVED:

Section 1. Definitions. The terms used in this Resolution shall have the meanings specified herein or in the preamble hereto or, if not otherwise defined herein, as specified in the General Ordinance, unless a different meaning is clearly indicated by the context.

Notwithstanding any other provisions to the contrary, "Costs" means with respect to the Project all costs, whether capital or otherwise, and includes, without limitation, the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of any building, structure, facility or other improvement; the cost of machinery and equipment; the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of pollution control devices, equipment or facilities; the cost of lands, rights-in-lands, easements, privileges, agreements, franchises, utility extensions, disposal facilities, access roads and site development necessary or useful and convenient for the Project or in connection therewith, financing costs including, but not limited to, discount on bonds, costs of issuance of bonds, engineering and inspection costs, trustee or fiscal agents fee, cost of financial, legal, professional and other estimates and advice, organization, administrative, insurance, and other expenses of the County or the Applicant



prior to and during any acquisition or construction; and all such other expenses as may be necessary or incidental to the financing, acquisition, construction or completion of the Project or part thereof, including, but not limited to, capitalized interest and such provisions for reserves for payment of principal of or interest on the Bond during or after such financing, acquisition or construction as may be provided for herein, but shall not include raw materials, work in progress, working capital, or stock in trade.

Section 2. Authorization. This Resolution is enacted pursuant to the provisions of the Constitution of the State of Delaware under Title 9 Delaware Code Section 7001 et seq. and in accordance with the provisions of the General Ordinance.

Section 3. Interpretation. All references in this Resolution to articles, sections and other subdivisions of this Resolution are to the designated articles, sections or other subdivisions of this Resolution originally enacted. The words "herein", "hereof", "hereby", and "hereunder" and other words of similar import refer to this Resolution as a whole and not to any particular article, section or other subdivision. The use of words in the singular number includes the plural and the use of the plural includes the singular number.

Section 4. Descriptive Headings. The descriptive headings of the sections of this Resolution are inserted for convenience only and shall not control or affect the meaning or construction of any of its provisions.

Section 5. Severability. In case any one or more of the provisions contained in this Resolution or in the Bonds or any other document executed and delivered pursuant hereto shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Resolution or of

said Bonds or other documents, and this Resolution, said Bonds or other documents shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained herein or therein.

Section 6. Approval of Project and Findings with Respect Thereto. The Council hereby approves the findings and determinations made by the Review Committee with respect to the Project, and in conjunction therewith does hereby make the following findings and determinations:

(a) the issuance and sale by the County of the Bonds in a principal amount not to exceed \$9,000,000, in order to lend the proceeds thereof to the Applicant for the sole and exclusive purpose of financing a portion of Costs of the Project, will accomplish the public purposes specified in the General Ordinance and will:

(i) tend to maintain or provide gainful employment opportunities within and for the people of the County;

(ii) aid, assist and encourage the economic development or redevelopment of the County; and

(iii) maintain, diversify or expand employment promoting enterprises within the County; and

(b) the Bonds will be special, limited obligations of the County and do not pledge the credit or taxing power thereof but will be payable solely from the Revenues of the Project as specified in Section 7 of the General Ordinance.

Based on the foregoing findings and determinations and as a substantial inducement to the Applicant to locate, remain or expand within the County, the Project is hereby approved and determined to be eligible for financing by the County as provided herein and in the General Ordinance.



Section 7. Authorization of the Bonds. (a) In order to provide funds to pay a portion of Costs of the Project, the County shall issue the Bonds, which shall be entitled the "Sussex County, Delaware, Industrial Revenue Bonds (Perdue Farms Incorporated Project), Series 1992", shall be issued in an aggregate principal amount not to exceed \$9,000,000, shall be dated the date of delivery, shall mature on April 1, 2012, subject to prior redemption as set forth therein and shall have such other terms as set forth in the form of Bond attached hereto as Appendix A to Attachment 2.

The Bonds shall be issued pursuant to an Indenture of Trust (the "Indenture"), by and between the County and the First National Bank of Chicago, as trustee. The form of the Indenture attached hereto as Attachment 2, including the form of the Bond attached thereto as Exhibit A, is hereby approved.

(b) The Bonds shall be special, limited obligations of the County payable solely and exclusively from the payments made by the Applicant out of the Revenues pledged with respect to the Project as specified in Section 7 of the General Ordinance. The Bonds shall not pledge the full faith and credit or taxing power of the County or of The State of Delaware or of any other political subdivision thereof and shall not be a debt or liability of The State of Delaware or of any other political subdivision thereof.

(c) The Bonds shall be sold at private (negotiated) sale to A. H. Williams & Co. Inc. (the "Placement Agent") at a price equal to the principal amount thereof, plus accrued interest, if any. The Bonds shall initially bear interest at a variable rate determined by the remarketing agent for the Bonds (the "Remarketing Agent") in accordance with the Bonds and the Indenture, being the minimum rate that, in the judgment of the Remarketing Agent, taking into account prevailing market conditions, would allow the Remarketing Agent to sell all of

the Bonds at a price equal to the principal amount of the Bonds plus accrued interest thereon to the date of sale. The Bonds shall bear interest at such variable rate except during any period in which the Bonds are converted to a fixed rate as provided in the Indenture or otherwise in accordance with the Indenture and the Bonds.

(d) The Bonds shall be substantially in the form set forth in Exhibit A to Attachment 2 attached hereto, with such alterations and deletions as the County Administrator may deem appropriate to carry out the intent of this Resolution, and shall be executed on behalf of the County by the manual or facsimile signature of the County Administrator, with the manual or facsimile seal of the County imprinted thereon, attested by the manual or facsimile signature of the County Clerk.

(e) The Bonds shall not be payable out of any funds, revenues or properties of the County other than those specifically assigned or pledged therefor.

Section 8. The proceeds of the Bonds shall be loaned to the Applicant pursuant to a Loan Agreement (the "Loan Agreement"), by and between the County and the Applicant, in order to finance the acquisition, construction and equipping of the Project. The form of the Loan Agreement attached hereto as Attachment 3 is hereby approved.

Section 9. Execution and Delivery of Documents. The Indenture and the Loan Agreement shall be substantially in the form approved hereby, with such alterations, changes and additions as the County Administrator shall approve in accordance herewith, and shall be executed and delivered by the County Administrator with the seal of the County impressed thereon, attested by the County Clerk.



The County Administrator and such other officers and officials of the County as may be appropriate are hereby authorized to execute and deliver or accept, as the case may be, for and on behalf of the County, the Bonds, the Loan Agreement, the Indenture and any and all other certificates and documents or other papers and to do any and all other things necessary or appropriate in order to effect the issuance and sale of the Bonds and to consummate the transactions contemplated in the General Ordinance and this Resolution; provided that no such actions and no such documents shall require the County to incur any pecuniary liability.

The County Administrator is hereby authorized to make or approve such changes in the form of the Bond, the Loan Agreement and the Indenture prior to the execution and delivery thereof as may be appropriate and consistent with the purpose and intent of, and within the limitations provided by, the General Ordinance and this Resolution. The execution and delivery by the County Administrator of the Bonds, the Loan Agreement and the Indenture shall constitute conclusive evidence of the approval by the County Administrator of any such changes.

Section 10. Binding Effect of Covenants and Agreements. All covenants, obligations and agreements of the County set forth in this Resolution and in the documents authorized hereby shall be deemed to be the covenants, obligations and agreements of the County to the full extent authorized or permitted by law.

Section 11. Repeal of Inconsistent Resolution. All prior Resolutions or portions thereof which are inconsistent with this Resolution are hereby repealed.

Section 12. Effective Date. This Resolution shall become effective upon its passage by Council.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT  
COPY OF RESOLUTION NO. R 012 92 PASSED BY THE COUNTY COUNCIL OF  
SUSSEX COUNTY ON THE 10TH DAY OF MARCH, 1992.

Re A. M. M.  
CLERK OF THE COUNTY COUNCIL



SYNOPSIS: This Project Resolution authorizes the County to issue its economic development revenue bonds in a maximum principal amount of \$9,000,000 for the financing of a project for Perdue Farms Incorporated, a corporation organized under the laws of the State of Maryland (the "Applicant"), consisting of the acquisition of approximately 62 acres of land and the construction and equipping of a feed mill capable of processing approximately 9,600 tons of feed per week, all located west of U.S. Route 13, on the southeast side of County Road 583, south side of County Road 584, and west of Penn Central Railroad, near Bridgeville, Northwest Fork Hundred, Sussex County, Delaware.

FISCAL NOTE: This Project Resolution, inasmuch as it is an authorization to issue economic development revenue bonds, has no direct fiscal impact on Sussex County. The bonds or obligations contemplated by this resolution will be limited obligations of the County, which will not constitute or give rise to any pecuniary liability of the County other than from the revenues derived under the loan agreement with the Applicant, which will be specifically assigned or pledged to payment of principal and interest on the bond.

ATTACHMENT 1  
to  
PROJECT RESOLUTION  
for  
Perdue Farms Incorporated

Estimated Costs of Project

Land	\$ 568,000
Construction and Equipment	6,485,000
Capitalized Interest	400,000
Issuance Costs	<u>149,060</u>
Revenue Bond Financing Requested	\$7,602,060



**ATTACHMENT 2**  
**to**  
**PROJECT RESOLUTION**  
**for**  
**Perdue Farms Incorporated**

**Form of Indenture of Trust**

**ATTACHMENT 3**  
**to**  
**PROJECT RESOLUTION**  
**for**  
**Perdue Farms Incorporated**

**Form of Loan Agreement**