

RESOLUTION NO. R 014 96

A PROJECT RESOLUTION AUTHORIZING \$3,680,000
ECONOMIC DEVELOPMENT REFUNDING REVENUE BONDS
(PACKEM ASSOCIATES LIMITED PARTNERSHIP PROJECT)

WHEREAS, Council of Sussex County (the "County") has heretofore adopted the Sussex County Commercial, Industrial and Agricultural Ordinance, Ordinance No. 80, as amended, (the "General Ordinance") to encourage and assist the financing and refinancing 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, Packem Associates Limited Partnership, a Maryland limited partnership (the "Applicant"), applied to the County for the financing of a project consisting of the acquisition of land on Wilmington Avenue and South First Street, Rehoboth, Delaware and the construction thereon of a mixed use commercial facility, including a hotel and related commercial facilities (the "Project"); and

WHEREAS, in response to said application, the County issued its Economic Development Revenue Bonds (Packem Associates Limited Partnership) Series 1986 in the initial aggregate principal amount of \$3,950,000 (the "1986 Bonds") to assist in financing the Project; and

WHEREAS, \$3,680,000 of the 1986 Bonds remain outstanding and the Applicant desires for the County to issue its revenue bonds to refinance the 1986 Bonds to achieve interest rate savings; 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 refinancing the outstanding 1986 Bonds (the "Application") through the issuance by the County of its Economic Development Refunding Revenue Bonds in the initial aggregate principal amount not to exceed \$3,680,000 (the "Refunding Bonds"); and

WHEREAS, as required by the General Ordinance, the Application and the proposed issuance of the Refunding Bonds were reviewed by a committee comprised of the County Administrator, Director of Finance, County Attorney and Director of Economic Development (the "Review Committee"); 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 financial assistance and the financing thereof will accomplish the public purposes contemplated by the General Ordinance;

(b) the Project 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

(c) the Refunding Bonds are to be payable solely from Revenues as specified in Section 7 of the General Ordinance; and

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 approve the Project, to make the findings and determinations required by the General Ordinance and to authorize the issuance and sale of the Refunding Bonds; and

WHEREAS, the County has received a commitment for the purchase of the Refunding Bonds from NationsCredit Commercial Corporation (the "Bond Purchaser"); and

WHEREAS, (i) the Refunding Bonds will be issued pursuant to the terms of a Trust Indenture (the "Indenture") between the County and a trustee to be selected by the Applicant and not objected to by the County Administrator (the "Trustee"); (ii) the Refunding Bonds will be placed with the Bond Purchaser by Newman and Associates, Inc. (the "Placement Agent"); (iii) the proceeds of the Refunding Bonds will be loaned to the Applicant pursuant to the terms of a Loan Agreement (the "Loan Agreement") between the County and the Applicant and applied to redeem the outstanding 1986 Bonds; (iv) to provide a source of payment for and to secure its obligations with respect to the Refunding Bonds, the County will assign to the Trustee substantially all of its rights under the Loan Agreement and (v) to induce the Bond Purchaser to purchase the Refunding Bonds, the Applicant will provide, or cause to be provided, to the Trustee or the Bond Purchaser certain collateral security documents (the "Collateral") as are required by the Bond Purchaser's commitment to purchase the Refunding Bonds.

WHEREAS, the Refunding Bonds will be limited obligations of the County payable solely from the Revenues of the Project, as that term is defined in Section 7 of the General Ordinance; and

WHEREAS, the Administrator has delivered to the Clerk of Council, for the Council's review, the form of the documents referred to herein; and

WHEREAS, this Council desires to authorize the issuance, execution and delivery of the Refunding 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 refinancing 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.

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 Refunding 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 Refunding Bonds in an aggregate principal amount not to exceed \$3,680,000 in order to lend the proceeds thereof to the Applicant for the sole and exclusive purpose of refinancing the 1986 Bonds 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 Refunding Bonds will be 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, the Project is hereby approved for refinancing by the County as provided herein and in the General Ordinance.

Section 7. Authorization of the Refunding Bonds. In order to provide funds to refinance the outstanding 1986 Bonds, the County shall issue its Economic Development Refunding Revenue Bonds (Packem Associates Limited Partnership Project) Series 1996 in the initial aggregate principal amount not exceeding \$3,680,000, which shall mature and bear interest substantially as set forth in Exhibit "A" to this Resolution.

The Refunding Bonds shall be dated on the date of delivery thereof (or as otherwise provided in the Indenture), shall be issued as typewritten bonds in denominations as provided in the Indenture, payable to the order of the Bond Purchaser or its designee and shall be payable in lawful money of the United States of America at the location designated by the Bond Purchaser.

The Refunding Bonds shall be limited obligations of the County payable solely and exclusively from the payments made by the Applicant under the Loan Agreement, the Collateral and out of other Revenues derived from the Project and shall be secured by the assignment hereinafter authorized. The Refunding 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.

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

Section 8. Authorization of Loan Agreement - Sale of Bonds; Loan to Applicant; Assignment to Trustee. The County shall enter into the Indenture with the Trustee and the Loan Agreement with the Applicant setting forth the terms and conditions under which (i) the Refunding Bonds are to be purchased by the Bond Purchaser, (ii) the County is to lend the proceeds of the Refunding Bonds to the Applicant to be applied to redeem the outstanding 1986 Bonds, (iii) the County is to assign to the Trustee substantially all of its rights under the Loan Agreement and (iv) the Applicant is to provide, or cause to be provided, the Collateral to the Trustee or the Bond Purchaser. The Refunding Bonds are hereby awarded and sold to the Bond Purchaser at private sale at a price of par and in accordance with all of the terms and conditions set forth in Exhibit "A" to this Resolution and the further terms and conditions specified in the Loan Agreement and Indenture.

Section 9. Execution and Delivery of Documents. The Administrator is hereby authorized to execute and deliver (or to accept delivery of, as the case may be), in the name of the County and on its behalf, the below listed documents, in substantially the form previously submitted to the Council for review, and in accordance with the provisions of this Resolution and consistent with the terms of the Bond Purchaser's commitment letter submitted with the Applicant's Application (as may be modified by the Bond Purchaser with the consent of the Applicant and the County Administrator) and is further authorized to approve the final form thereof, and to approve the exact principal amount of the Refunding Bonds, such approvals to be conclusively evidenced by the execution thereof, and the County Clerk is hereby authorized to affix to all of the below listed documents the seal of the County and to attest to the same:

- (a) The Indenture
- (b) The Loan Agreement;
- (c) The Refunding Bonds; and
- (d) Such other documents as the Administrator determines to be reasonable and appropriate to complete the refinancing of the 1986 Bonds as authorized by this Resolution.

Copies of the foregoing documents, together with the other documents relating to the transactions authorized hereby, in final form as executed and delivered by the parties thereto, shall be filed in the official records of the County.

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. Further Action. The proper officers of the County are hereby authorized and directed to execute such further documents and do such further things as may be necessary or proper to carry out the intent and purpose of this Resolution or any document herein authorized.

Section 12. Repeal of Inconsistent Resolution. All prior Resolutions or portions thereof which are inconsistent with this Resolution are hereby repealed.

Section 13. 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 014 96 ADOPTED BY THE COUNTY COUNCIL OF SUSSEX COUNTY ON THE 23RD DAY OF APRIL, 1996.


Robin A. Griffith
Clerk of the County Council

SYNOPSIS: This Project Resolution authorizes the County to issue its economic development refunding revenue bonds in the principal amount of \$3,680,000 for the refinancing of a project for Packem Associates Limited Partnership, consisting of the acquisition of land on Wilmington Avenue and South First Street, Rehoboth, Delaware and the construction thereon of a mixed use commercial facility, including a hotel and related commercial facilities.

FISCAL NOTE: This Project Resolution, in as much as it is an authorization to issue economic development refunding 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 from the project financed, which will be specifically pledged to payment of principal and interest on the bonds.

EXHIBIT A
to
PROJECT RESOLUTION
for
PACKEM ASSOCIATES LIMITED PARTNERSHIP PROJECT

Terms of the Bond

Principal Amount Not to Exceed:	\$3,680,000
Interest Rate per annum:	2% plus the U.S. Treasury rate for 7-year maturities in effect two days prior to closing
Maturity:	January 1, 2017
Amortization:	Based on an assumed 10% interest rate and a 23-year amortization schedule
Bond Purchaser's Put Right:	The Bond Purchaser will have the right to put the Refunding Bonds for payment in full on the date which is 7 years after the date of closing
Prepayment Provisions:	The Refunding Bonds may be redeemed in full, but not in part, anytime after the 36th loan month at a price of par plus a Breakage Fee as specified in the Bond Purchaser's Commitment Letter
Other:	Other terms and conditions as specified in the Bond Purchaser's commitment letter