

RESOLUTION NO. R 023 87

AUTHORIZING FIRST SUPPLEMENTAL INDENTURE OF TRUST AND AMENDATORY AGREEMENT WHICH AMENDS (1) THAT CERTAIN INDENTURE OF TRUST BETWEEN THE COUNTY AND UNITED VIRGINIA BANK, AS TRUSTEE, DATED AS OF DECEMBER 1, 1986, (2) THAT CERTAIN FINANCING AGREEMENT BETWEEN THE COUNTY AND GATEWAY PARTNERSHIP VI (THE "PURCHASER"), DATED AS OF DECEMBER 1, 1986, (3) THAT CERTAIN LOAN AGREEMENT BETWEEN THE COUNTY AND THE PURCHASER, DATED AS OF DECEMBER 1, 1986, AND (4) THAT CERTAIN SCHEDULE OF DEFINITIONS RELATED THERETO, WITH RESPECT TO \$1,950,000 SUSSEX COUNTY, DELAWARE ECONOMIC DEVELOPMENT REVENUE BONDS (GATEWAY PARTNERSHIP VI PROJECT), SERIES 1986

WHEREAS, The Council of Sussex County (the "County") has heretofore adopted the Sussex County Commercial, Industrial and Agricultural Ordinance No. 80 (the "General Ordinance") 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, Gateway Partnership VI, a Maryland partnership (the "Purchaser"), has applied to the County for the financing of a project consisting of the acquisition of approximately 2.58 acres of land, to construct thereon and operate a 60-room luxury budget motel, to be located on the southeast intersection of U.S. Route 13 and Beaver Dam Road in the Town of Seaford, Seaford Hundred, Sussex County, Delaware (the "Project"); and

WHEREAS, as required by the General Ordinance, the Purchaser submitted to the County through the County Administrator (the "Administrator") an application for assistance in financing the Project (the "Application") and requested the County to finance a portion of the costs of the Project through the issuance by the County of Economic Development Revenue Bonds in a principal amount not to exceed \$2,540,000; and

WHEREAS, the County issued on December 30, 1986 its \$2,540,000 Economic Development Revenue Bonds (Gateway Partnership VI Project), Series 1986 (the "Bonds") pursuant to the above-captioned Indenture (the "Indenture") and the Basic Documents (as defined in the Indenture), including the above-captioned Financing Agreement (the "Financing Agreement"), and the above-captioned Loan Agreement (the "Loan Agreement"), to each of which Basic Documents was attached a certain Schedule of Definitions (the "Schedule of Definitions"); and

WHEREAS, Section 4.9 of the Financing Agreement provides for the termination of the Initial Rate Period (as defined in the Bonds) and the conversion to the Fixed Rate Period (as defined in the Bonds) upon, among other things, the posting of Additional Security (as defined in the Bonds) by, or on behalf of, the Purchaser; and

WHEREAS, the Purchaser has supplied the Trustee with evidence of the availability of Additional Security in the form of a Letter of Credit to be issued by the Sussex Trust Company, a Delaware banking corporation, on the Initial Rate Conversion Date (as defined in the Bonds), which shall be May 1, 1987; and

WHEREAS, Articles XII and XIII of the Indenture grant to the County and the Trustee the right to modify or amend the Basic Documents under certain circumstances; and

WHEREAS, the Review Committee made the findings and determinations required by the General Ordinance; and

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

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

WHEREAS, there has been presented to the County Council at this meeting the form of a First Supplemental Indenture of Trust and Amendatory Agreement, dated as of April 1, 1987, among the County, the Trustee and the Purchaser (the "Supplemental Instrument"); and

WHEREAS, after careful consideration and in furtherance of the public purposes for which the General Ordinance was enacted, the County Council proposes to execute and deliver the Supplemental Instrument;

NOW, THEREFORE,

BE IT RESOLVED BY COUNTY COUNCIL OF SUSSEX COUNTY:

1. The execution, delivery and performance of the Supplemental Instrument is hereby authorized. The Supplemental Instrument shall be in substantially the form submitted to the County Council at this meeting, as hereinabove recited, with such changes, insertions, omissions or completions as may be approved by the Review Committee or the Administrator of the County, whose approval thereof shall be conclusively evidenced by the execution and delivery of the Supplemental Instrument by the County Administrator with such changes, insertions, omissions or completions.

2. The County Administrator is hereby authorized to execute and deliver, on behalf of the County, the Supplemental Instrument, and each officer of the County is hereby authorized to execute and deliver all such other instruments, documents and certificates and to do and perform all such things and acts as each such officer shall deem necessary or appropriate in furtherance of the execution and delivery of, and the performance by the County under, the Supplemental Instrument and the carrying out of the transactions authorized by this Resolution or contemplated by the Supplemental Instrument.

All such things and actions heretofore done or performed by the officers of the County are in all respects approved, ratified and confirmed.


3. All other acts of the officers of the County which are in conformity with or in furtherance of the purposes and intent of this Resolution, whether such acts occurred before or occur after the adoption of this Resolution, are hereby ratified, approved and confirmed.

4. The Indenture, the Financing Agreement, the Loan Agreement and the Schedule of Definitions, as modified by the Supplemental Instrument, are hereby ratified, approved and confirmed.

5. The Purchaser will pay all costs and expenses of the County, including reasonable counsel fees and expenses, in connection with the execution and delivery of the Supplemental Instrument.

6. This Resolution shall take effect immediately upon its adoption by a three-fifths vote of all of the members of the County Council of Sussex County, Delaware.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF RESOLUTION NO. R 023 87 PASSED BY THE COUNTY COUNCIL OF SUSSEX COUNTY ON THE 28TH DAY OF APRIL, 1987.


DORIS E. ROGERS
CLERK OF THE COUNTY COUNCIL