

RESOLUTION NO. R 032 97

A PROJECT RESOLUTION AUTHORIZING THE ISSUANCE OF \$2,000,000 VARIABLE RATE DEMAND INDUSTRIAL DEVELOPMENT REVENUE BONDS (PATS, INC. PROJECT) SERIES 1997

WHEREAS, the County Council (the "Council") of Sussex County, Delaware (the "County") has heretofore adopted the Sussex County Commercial, Industrial and Agricultural Revenue Bond Ordinance, Ordinance No. 80, as amended by Ordinance No. 113 (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, after notice published in The News-Journal on July 12, 1997, and as required by the General Ordinance, the Application and the proposed issuance of the Bonds (hereinafter defined) were reviewed by a committee (the "Review Committee") comprised of the County Administrator, the County Director of Finance, the County Director of Economic Development, and the County Attorney at a public hearing conducted on July 28, 1997, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Council adopted Resolution No. R 029 97 on September 16, 1997 (the "Initial Resolution") to approve, inter alia, the issuance of the County's \$2,000,000 Variable Rate Demand Industrial Development Revenue Bonds (PATS, Inc. Project) Series 1997 (the "Bonds") and a loan of the proceeds thereof to finance a portion of the costs of a project for PATS, Inc., a Maryland corporation (the "Borrower") consisting of the acquisition of three (3) existing buildings located on that tract or parcel of land owned by the County and generally known as Lots 1 through 7, Indian River Avenue, in the Sussex County Industrial Air Park, the purchase of existing and new equipment used or to be used in connection therewith, and the rehabilitation of such buildings and existing equipment, all located in the unincorporated area of the County (the "Project"), which costs are set forth as an estimate on Exhibit A attached hereto (the "Costs").

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 promotion enterprises within the County; and

(c) the Bonds are to be payable solely from the Revenues as defined in the Indenture, as required by Section 7 of the General Ordinance; and

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

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

WHEREAS, the Council desires to reaffirm its Initial Resolution and 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 County, the Borrower, and PNC Capital Markets, Inc., (the "Placement Advisor") intend to enter into a Placement Agreement (the "Placement Agreement"), pursuant to which the County will issue and sell the Bonds to the purchasers arranged through the Placement Advisor in accordance with the Placement Agreement, and pursuant to the Loan Agreement, the County will loan the proceeds from the sale of the Bonds to the Borrower to pay a portion of Costs of the Project, and the Loan Agreement will provide for payments by the Borrower of the principal of, premium, if any, and interest on the Bonds; and

WHEREAS, the Bonds will be special, limited obligations of the County, payable solely from the Revenues of the Project and as set forth in the Indenture, as required by Section 7 of the General Ordinance; and

WHEREAS, the County Administrator has delivered to the County Clerk, 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 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. In addition to initially capitalized terms used and defined in the preamble hereto, the following words and phrases, and others evidently intended as the equivalent thereof, used in this Resolution shall, in the absence of intention to the contrary, be given the following respective interpretations herein, or, if not otherwise defined, as specified in the General Ordinance:

"Act" shall mean Title 9, Chapter 70, Section 7001, Delaware Code Annotated, and Ordinance No. 80, as amended by Ordinance No. 113, heretofore adopted by the County.

"Application" shall mean the Borrower's application to the County, dated July 8, 1997, for assistance in financing a portion of the Costs of the Project.

"Bond Counsel" shall mean Morris, James, Hitchens & Williams, Wilmington, Delaware.

"Costs" shall mean with respect to the Project, all costs, whether capital or otherwise, and include, 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 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 Bonds 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.

"Borrower" shall mean PATS, Inc., a corporation organized under the laws of the State of Maryland, and any surviving, resulting, or transferee legal entity.

"County Administrator" means the duly appointed and qualified County Administrator of the County.

"Indenture" shall mean the Trust Indenture, dated as of October 1, 1997, by and between the County and PNC Bank, Delaware, as Trustee.

"Loan Agreement" shall mean the Loan Agreement, dated as of October 1, 1997, by and between the County and the Borrower.

"Placement Agreement" shall mean the Placement Agreement, dated on or about October 16, 1997, by and among the Authority, the Borrower, and the Placement Advisor.

"Preliminary Private Placement Memorandum" shall mean the preliminary form of the Private Placement Memorandum.

"Private Placement Memorandum" shall mean the Private Placement Memorandum, dated on or about October 16, 1997, relating to the sale of the Bonds.

"Project" shall mean the Project as defined herein.

"State" shall mean the State of Delaware.

"Trustee" shall mean PNC Bank, Delaware, or any successor Trustee under the Indenture.

Section 2. Approval of Findings and Determinations. 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 of \$2,000,000 in order to lend the proceeds thereof to the Borrower 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; and

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

(iii) maintain, diversify or expand employment promoting or redevelopment of the County; and

(b) the Bonds will be special, limited obligations of the County, payable solely from the Revenues of the Project as defined in the Indenture and as required by Section 7 of the General Ordinance.

(c) the County hereby confirms the findings referred to or set forth in the Initial Resolution and in the preamble of this Project Resolution, and incorporates such findings herein as if fully stated herein.

(d) based on the foregoing findings and determinations and as a substantial inducement to the Borrower to locate and expand within the County, the Project is hereby approved and determined to be eligible for financing by the County as provided herein and the General Ordinance.

Section 3. Authorization of Issuance and Sale of the Bonds. In order to provide funds to pay (or refinance) a portion of the Costs of the Project, the County hereby authorizes the execution, delivery, issuance and sale of the Bonds in the aggregate principal amount of \$2,000,000, bearing interest at the rate or rates set forth in the form of Indenture presented herewith to the County, to the purchasers provided for by the Placement Advisor pursuant to the Placement Agreement, at a purchase price equal to \$2,000,000, plus accrued interest, if any, all as set forth in the Placement Agreement. The Bonds shall be dated October 16, 1997, or such other date as initially delivered and authenticated pursuant to the Indenture, shall be issued in registered form without coupons, and shall be in substantially the same form as the form of Bonds presented herewith to the County, and may be issued in typewritten or printed form. The

President of the Council is hereby authorized to execute the Bonds, either by manual or facsimile signature, and the Clerk of the Council is hereby authorized to affix or imprint the official seal of the County thereto and to attest thereto, either by manual or facsimile signature, in substantially such form as presented to Council, with such changes, insertions and omissions as may be approved by the President of the Council or the County Administrator, such approval to be evidenced by the manual or facsimile execution thereof, and to cause the Bonds, after due authentication by the Trustee, to be delivered in accordance with the instructions of the Placement Advisor.

Section 4. Special, Limited Obligations. The Bonds and all sums payable thereon shall be special, limited obligations of the County, and as to the County, shall be payable solely from the Revenues (as defined in the Indenture) of the Project, and any other moneys provided therefor in the Indenture and the Loan Agreement. The Bonds shall not constitute a debt or liability of the State of Delaware or of any political subdivision other than the County, and shall not create or constitute any indebtedness or obligation of the State of Delaware or any other political subdivision other than the County, either legal, moral, or otherwise.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE COUNTY, THE STATE OF DELAWARE OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF IS OR WILL BE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS, NOR IS THE COUNTY OR THE STATE OF DELAWARE OR ANY POLITICAL SUBDIVISION THEREOF IN ANY MANNER OBLIGATED TO MAKE ANY APPROPRIATION FOR PAYMENT THEREOF.

Section 5. Approval of Preliminary Private Placement Memorandum and Private Placement Memorandum. The form of the Preliminary Private Placement Memorandum (insofar as statements therein relate to the County) presented to the County herewith is hereby approved by the County and its prior distribution by the Placement Advisor is hereby ratified and confirmed by the County. The form of the Private Placement Memorandum (insofar as statements herein relate to the County), when prepared in substantially the same form of the Preliminary Private Placement Memorandum presented herewith, with such changes and modifications as the President



may approve, and its distribution by the Placement Advisor in connection with the sale of the Bonds, is hereby approved.

Section 6. Authorization of Documents. The County hereby authorizes the execution and delivery by the County of the Indenture, the Loan Agreement, the Placement Agreement, and the Private Placement Memorandum (if necessary and insofar as statements therein relate to the County) in substantially the forms presented to it herewith. The President and Clerk of the Council, and the County Administrator, as appropriate, are hereby authorized to execute and deliver such documents on behalf of the County with such changes, insertions and omissions as may be approved by the President of the Council, and to affix the seal of the County thereto. The execution of such documents by the President of the Council shall be conclusive evidence of such approval.

Section 7. Election of \$10,000,000 Qualified Small Issue Bond Limit. The County hereby elects the application of the \$10,000,000 qualified small issue bond limit in accordance with Section 144(a)(4) of the Internal Revenue Code of 1986, as amended.

Section 8. Reimbursement of Prior Expenses. The proceeds of the Bonds may be used to reimburse the Borrower for Costs of the Project paid by the Borrower or on its behalf from a source other than the proceeds of the Bonds and prior to the sale and delivery thereof, as provided in the Initial Resolution, but also to the full extent provided in the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

Section 9. Further Action. In accordance with the Act and the General Ordinance, the President of the Council, the Clerk of the Council, the County Administrator, and such other officers or employees of the County as shall be appointed by the President, are hereby authorized and directed to execute and deliver such other documents, and to take such other action as may be necessary or appropriate in order to effect the execution, issuance, and delivery of the Bonds, and the execution and delivery of the Indenture, the Loan Agreement, the Preliminary Private Placement Memorandum, the Private Placement Memorandum, the Placement Agreement, and the performance of the County's obligations thereunder, all in accordance with the foregoing sections hereof, including preparing or causing to be prepared, executing and filing or causing to

be executed and filed on behalf of the County any applications, filings and certifications, and taking or causing to be taken such other action as they, or such one of them, may deem necessary or advisable to provide for the issuance of the Bonds, to establish that the interest on the Bonds is exempt from Federal and State of Delaware income taxes, to comply with the laws of the United States and the State of Delaware, and to implement and carry out the matters authorized or required by the General Ordinance and this Project Resolution. Approval of this Project Resolution shall not preclude the Council from independent consideration (and denial) of any application concerning land use matters relating to the Project (e.g. zoning matters).



**SYNOPSIS:** This Project Resolution authorizes the County to issue its Variable Rate Demand Industrial Development Revenue Bonds in the principal amount of \$2,000,000, and to loan the proceeds thereof to PATS, Inc., a Maryland corporation, in order to pay or refinance a portion of the eligible costs of a project consisting of the acquisition of three (3) existing buildings located on that tract or parcel of land owned by the County and generally known as Lots 1 through 7, Indian River Avenue, in the Sussex County Industrial Air Park, the purchase of existing and new equipment used or to be used in connection therewith, and the rehabilitation of such buildings and existing equipment, all located in the unincorporated area of Sussex County, Delaware (the "Project"). This Project Resolution sets out the detailed terms of the issuance of the Bonds and approves the execution and delivery of the Bonds and the documents involved in the transactions contemplated hereby.

This Project Resolution, inasmuch as it approves an economic or industrial development revenue bond, has no direct, adverse, fiscal impact on the County. The Bonds will be special, limited obligations of the County. The County's financial obligation under the Bonds will be satisfied solely from the proceeds of the sale of the Bonds and the payments to be made by PATS, Inc., a Maryland corporation, as the borrower of the proceeds of the Bonds. The Bonds will not constitute a pecuniary liability of the County other than from the revenues of the Project, which revenues are pledged to the payment of the principal of, premium, if any, and interest on the Bonds.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF RESOLUTION NO. R 032 97 PASSED BY THE COUNTY COUNCIL OF SUSSEX COUNTY ON THE 14TH DAY OF OCTOBER, 1997.

  
Robin A. Griffith  
Clerk of the County Council

EXHIBIT A  
to  
RESOLUTION  
for  
PATS, INC. PROJECT

Total Estimated Costs of Project

Acquisition of Buildings and Equipment, including Acquisition Costs	\$2,100,000.
Rehabilitation of Buildings and Equipment	300,000.
New Equipment and Installation	487,000.
Bond Issuance Costs, Bank Letter of Credit Fees, County's Financing Fee	<u>100,000.</u>
	\$2,987,000.