

RESOLUTION NO. R 049 85

A PROJECT RESOLUTION AUTHORIZING \$2,960,000 ECONOMIC DEVELOPMENT REVENUE BOND (PACKEM ASSOCIATES 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 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, a Delaware general partnership (the Applicant), has applied to the County for the financing of a project consisting of the acquisition of land and building located at 36 Wilmington Avenue, Rehoboth Beach, Delaware; the demolition of the existing building and the construction of a four (4) story hotel consisting of 66 guest rooms, 2 retail stores to be leased to commercial tenants and a restaurant at 32, 34 and 36 Wilmington Avenue and 30 S First Street and the refinancing of a certain outstanding Economic Development Revenue Bond in connection therewith (the Project); 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 Exhibit A hereto (the Costs), through the issuance by the County of an Economic Development Revenue Bond in a principal amount not to exceed \$2,960,000 (the Bond); and

WHEREAS, after notice published in The Delaware State News on September 16, 1985, and as required by the General Ordinance, the Application and the proposed issuance of the Bond were reviewed by a committee comprised of the County Administrator, Director

of Finance, County Attorney and Director of Economic Development (the Review Committee) at a public hearing conducted on September 30, 1985, at which time all interested persons 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 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 Bond is 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 has previously approved the Project and indicated its intent to issue the Bond by adoption of Resolution of Intention No. R 037 85 on October 8, 1985; 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 Bond; and

WHEREAS, the County has received a commitment for the purchase of the Bond from Second National Building and Loan, Inc. (the Lender); and

WHEREAS, the County, the Lender and the Applicant will enter into a Bond Purchase and Loan Agreement pursuant to which (i) the County will issue and sell the Bond to the Lender, (ii) the County will loan the proceeds from the sale of the Bond to pay a portion of the Costs of the Project, (iii) to evidence its obligation to the County, the Applicant will execute and deliver to the County its promissory note (the "Note") in the amount of the Bond, (iv) to provide a source of payment for and to secure its obligations under the Bond, the County will assign to the Lender the Note and substantially all of its rights under the Agreement and (v) to induce the Lender to purchase the Bond, the Applicant will provide, or cause to be provided, to the Lender certain collateral (the "Collateral") as is required by the Lender's commitment to purchase the Bond; and

WHEREAS, the Bond will be a limited obligation 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 Bond 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 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 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 Bond 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 Bond or other documents, and this Resolution, said Bond 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 Bond in an aggregate principal amount not to exceed \$2,960,000 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 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 Bond will be a limited obligation of the County and does 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 Bond. In order to provide funds to pay a portion of the Costs of the Project, the County shall issue its Economic Development Revenue Bond (Packem Associates, II Project) in a principal amount not exceeding \$2,960,000 which shall mature and bear interest substantially as set forth in Exhibit "B" to this Resolution.

The Bond shall be dated on the date of delivery thereof, shall be issued as a single typewritten bond, in fully registered form, payable to the order of the Lender and shall be payable in lawful money of the United States of America at the location designated by the Lender.

The Bond shall be a limited obligation of the County payable solely and exclusively from the payments made by the Applicant under the Note, the Agreement, the Collateral and out of other Revenues derived from the Project and shall be secured by the assignment hereinafter authorized. The Bond 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 Bond shall not be payable out of any funds, revenues or properties of the County other than those specifically pledged therefor.

Section 8. Authorization of Agreement - Sale of Bond; Loan to Applicant; Assignment to Lender. The County shall enter into the Agreement with the Lender and the Applicant setting forth the terms and conditions under which (i) the Bond is to be purchased by the Lender, (ii) the Lender is to advance the proceeds of the Bond as a loan from the County to the Applicant to pay a portion of the Costs of the Project, (iii) the Applicant is to execute and deliver the Note to the County, (iv) the County is to assign to the Lender the Note and substantially all of its rights under the Agreement and (v) the Applicant is to provide, or cause to be provided, the Collateral to the Lender. The Bond is hereby awarded and sold to the Lender at private sale at a price of par and in accordance with all of the terms and conditions set forth in Exhibit "B" to this Resolution and the further terms and conditions specified in the Agreement. The Applicant is hereby authorized to proceed with the Project in accordance with the terms of this Resolution.

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 Lender's commitment letter submitted with the Applicant's Application (as may be modified by the Lender with the consent of the Borrower and the County Administrator) and is further authorized to approve the final form thereof, and to approve the exact principal amount of the 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 Agreement;
- (b) The Bond;
- (c) The Note, including the County's assignment thereof;

and

(d) Such other documents as the Administrator determines to be reasonable and appropriate to complete the financing for this Project 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. Private Activity Bond Limit. Approval of this Resolution does not obligate the County to allocate to the Applicants any of its private activity bond limit under Internal Revenue Code Section 103(n).

Section 14. 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 049 85 PASSED BY THE COUNTY COUNCIL OF SUSSEX COUNTY ON THE 5TH DAY OF NOVEMBER, 1985.

Emogene P. Ellis
EMOGENE P. ELLIS
CLERK OF THE COUNTY COUNCIL

SYNOPSIS: This Project Resolution authorizes the County to issue an economic development revenue bond in the principal amount of \$2,960,000 for the financing of a project for Packem Associates, consisting of the acquisition of land and building located at 36 Wilmington Avenue, Rehoboth Beach, Delaware; the demolition of the existing building and the construction of a four (4) story hotel consisting of 66 guest rooms, 2 retail stores to be leased to commercial tenants and a restaurant at 32, 34 and 36 Wilmington Avenue and 30 S First Street and the refinancing of a certain outstanding Economic Development Revenue Bond in connection therewith.

FISCAL NOTE: This Project Resolution, inasmuch as it is an authorization to issue an economic development revenue bond, has no direct fiscal impact on Sussex County. The bond or obligation contemplated by this resolution will be a limited obligation 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 bond.

EXHIBIT A
to
PROJECT RESOLUTION
for
PACKEM ASSOCIATES PROJECT (SERIES 1985)

Estimated Costs of Project

Acquisition of Land	\$ 920,000
Buildings (Construction)	1,480,000
Refinancing 1983 Bond	520,000
Equipment, Machinery, Utilities, Roads and Appurtenant Facilities	290,000
Engineering and/or Architectural Fees	100,000
Construction Period Interest	160,200
Contingency	35,000
Closing Costs	<u>154,800</u>
Total Estimated Project Costs	\$3,660,000

EXHIBIT B

to

PROJECT RESOLUTION

for

PACKEM ASSOCIATES PROJECT (SERIES 1985)

Terms of the Bond

Principal Amount Not to Exceed: \$2,960,000

Interest Rate per annum: Commencing from the date of the Bond until the first day of the 85th month from the date of issuance the interest rate on the Bond shall be 11% per annum. Thereafter, the interest rate shall in no event be less than 11% but may be more than 11% as follows: on the first day of the 85th, 145th, 205th, 265th and 325th month following the date of the Bond the interest rate shall be adjusted to a fixed rate equal to one and one-half (1-1/2) percent above the average Prime Rate of Interest of Mercantile Safe Deposit and Trust Company, Baltimore, Maryland ("Mercantile") for the 12-month period preceding the 1st day of respectively, the 85th, 145th, 205th and 325th month.

Maturity and
Amortization:

Interest only on principal amounts advanced from the date of advance shall be due and payable on the fifth day of each month commencing December 5, 1985 until and including November 5, 1987 (the "Construction Period"). Thereafter, principal and interest on the Bond shall be payable in 336 consecutive monthly installments on the first day of each month commencing December 1, 1987 and on the first day of each month thereafter, until and including November 1, 2015. The first 335 installments of principal and interest shall be in the amount of \$28,459.81 each. The 336th and final payment shall be a payment of all remaining principal and all accrued but unpaid interest. Effective as of December 1, 1992 and on every fifth December 1 thereafter, until the Bond is paid in full, the owner of the Bond may adjust the monthly payment amount to an amount which will insure that the entire principal is amortized with substantially equal installments based on the interest rate in effect (but not less than 11% per annum) and the principal remaining outstanding as of the December 1 adjustment date.

Each payment shall be applied first to interest accrued and the balance shall be applied to principal.

Prepayment Provisions:

The Bond is subject to a 2% prepayment penalty on the then outstanding principal balance for the first 84 months of the Bond, thereafter, no prepayment penalty.