

RESOLUTION NO. R 059 86

A PROJECT RESOLUTION AUTHORIZING \$3,950,000 ECONOMIC DEVELOPMENT 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 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), has applied to the County for the financing of a project consisting of the acquisition of land at 32, 34 and 36 Wilmington Avenue and 30 S. First Street, Rehoboth, Delaware and the construction thereon of a mixed use commercial facility including a four story, 66 room hotel and related commercial facilities (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 Economic Development Revenue Bonds in the aggregate principal amount not to exceed \$3,950,000 (the Bonds); and

WHEREAS, after notice published in The Morning News on June 5, 1986, 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 June 19, 1986, 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 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 Bonds; and

WHEREAS, this Council has given its preliminary approval of the Project and the issuance of the Bonds by Resolution adopted June 24, 1986; and

WHEREAS, this Council desires to clarify its policy with respect to providing bond financing under the General Ordinance for hotels and motels included as a part of a mixed use commercial facility such as the Project; and

WHEREAS, the County has received an offer to purchase the bonds (the "Bond Purchase Contract") from Newman & Associates, Inc. (the "Underwriter"); and

WHEREAS, the County will enter into a Trust Indenture (the "Indenture") dated as of December 1, 1986 with Delaware Trust

Company, as Trustee, (the "Trustee") and a Loan Agreement dated as of December 1, 1986 (the "Agreement") with the Borrower pursuant to which the County will issue the Bonds and lend the proceeds thereof to the Applicant, the Applicant will agree to repay the loan in amounts and at the times required to make all payments on the Bonds, to secure its obligations under, and provide a source of payment for, the Bonds, the County will assign to the Trustee substantially all of its rights under the Agreement and to provide additional security for its obligations under the Agreement, the Applicant will deliver, or cause to be delivered, certain additional collateral to the Trustee (the "Collateral"); and

WHEREAS, the 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 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 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 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.

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. Bond Financing For Multi Use Commercial Facilities. It is the County's policy generally to provide bond financing under the General Ordinance for motels and hotels only if they are operated year round. The County hereby clarifies that this policy does not apply to projects for mixed use commercial facilities which include a hotel or motel, such as the Project.

Section 7. 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 an aggregate principal amount not to exceed \$3,950,000 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 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 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 8. Authorization of the Bonds. 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 Limited Partnership Project) in the aggregate principal amount not exceeding \$3,950,000 which shall mature and bear interest substantially as set forth in Exhibit "B" to this Resolution.

The Bonds shall be dated on the date of delivery thereof, shall be issued as typewritten or printed bonds, in fully registered form, payable to the order of the registered owners thereof and shall be payable in lawful money of the United States of America at the principal corporate trust office of the Trustee.

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

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

Section 9. Authorization of Indenture and Agreement; Sale of Bonds; Loan to Applicant; Assignment to Trustee. The County shall enter into the Indenture with the Trustee and the Agreement with the Applicant setting forth the terms and conditions under which (i) the Bonds will be issued by the County; (ii) the proceeds from the sale thereof will be loaned to the Applicant to pay for a portion of the Costs of the Project; (iii) the Applicant will repay the loan to the County; (iv) the County will assign substantially all of its rights under the Agreement to the Trustee; and (v) the Applicant will provide the Collateral to the Trustee. The Bonds shall be sold at par to the Underwriter pursuant to the Bond Purchase Agreement in accordance with the terms and conditions set forth in Exhibit B to this Resolution and the further terms and conditions specified in the Indenture.

Section 10. 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 Purchase Agreement 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 Bond Purchase Agreement;
- (b) The Indenture;
- (c) The Agreement;
- (d) The Bonds; and

(e) 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 11. 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 12. 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 13. Repeal of Inconsistent Resolution. All prior Resolutions or portions thereof which are inconsistent with this Resolution are hereby repealed.

Section 14. Private Activity Bond Limit. Approval of this Resolution does not obligate the County to allocate to the Applicant any of its private activity bond limit under Internal Revenue Code Section 146.

Section 15. 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 059 86 PASSED BY THE COUNTY COUNCIL OF SUSSEX COUNTY ON THE 2ND DAY OF DECEMBER, 1986.

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

SYNOPSIS: This Project Resolution authorizes the County to issue economic development revenue bonds in the aggregate principal amount of \$3,950,000 for the financing of a project for Packem Associates Limited Partnership, consisting of the acquisition of land at 32, 34 and 36 Wilmington Avenue and 30 S. First Street, Rehoboth, Delaware and the construction thereon of a mixed use commercial facility, including a four story, 66 room hotel and related commercial facilities. This Resolution also clarifies that the County's general policy of providing bond financing under the General Ordinance for hotels and motels only if they are operated on a year round basis does not apply to projects for mixed use commercial facilities which include a hotel or motel, such as the Packem Associates Limited Partnership Project.

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 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

Estimated Costs of Project

Land Acquisition	\$ 892,500
Land Development	40,000
Engineering and Architectural Fees	135,000
Building Construction	2,287,892
Furniture, Fixtures and Equipment	456,300
Construction Period Interest	281,438
Costs of Issuance and Other Costs	<u>285,000</u>
	\$4,378,130

EXHIBIT B
to
PROJECT RESOLUTION
for
PACKEM ASSOCIATES LIMITED PARTNERSHIP PROJECT

Terms of the Bond

Principal Amount Not to Exceed: \$3,950,000

Interest Rate per annum: 9.5%

Amortization: Interest shall be payable semiannually. Principal shall be payable in 27 annual installments on January 1 of each year commencing January 1, 1991 with the final principal installment being due January 1, 2017. The principal payments shall be in such amounts as shall result in substantially equal annual debt service payments commencing January 1, 1991.

Optional Redemption: The Bonds will be subject to optional redemption on and after January 1, 1993 at the following redemption prices expressed as a percentage of the principal amount being redeemed:

<u>Redemption Period</u> <u>(Both Dates Inclusive)</u>	<u>Redemption Price</u>
January 1, 1993 - December 31, 1993	102.5%
January 1, 1994 - December 31, 1994	101.5
January 1, 1995 - December 31, 1995	100.5
January 1, 1996 and Thereafter	100.0