

RESOLUTION NO. R 061 85

A PROJECT RESOLUTION AUTHORIZING \$6,000,000 ECONOMIC DEVELOPMENT REVENUE BONDS (ROUTE 113 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, Route 113 Limited Partnership, a Delaware limited partnership (the Applicant), has applied to the County for the financing of a project consisting of the acquisition of approximately 12.2 acres of land at the intersection of U.S. Route 113 and Delaware Route 9, Georgetown, Delaware and the construction thereon of a shopping center consisting of approximately 100,000 square feet of buildings to be leased to various commercial tenants (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 its Economic Development Revenue Bonds in the aggregate principal amount not to exceed \$7,000,000; 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 Bonds 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 Bonds are to be payable solely from Revenues as specified in Section 7 of the General Ordinance; and

WHEREAS, on October 8, 1985 this Council adopted Resolution of Intention No. R 039 85 approving the Project and indicating its intent to issue its bonds to assist in financing the Project; and

WHEREAS, the County has received a commitment from Ferris & Company, Incorporated (the Placement Agent) for the placement of the County's bonds in the aggregate principal amount not to exceed \$6,000,000 (the Bonds) to assist in financing the Project; and

WHEREAS, this Council desires to reaffirm its approval of the Project and authorize the issuance and sale of the Bonds; and

WHEREAS, the County, the Placement Agent and the Applicant will enter into a Placement Agreement (the Placement Agreement) pursuant to which (i) the County will enter into a Trust Indenture (the Indenture) with Dominion Trust Company, as Trustee (the Trustee) providing for the issuance of and security for the Bonds, (ii) the County and the Applicant will enter into a Loan Agreement

(the Agreement) providing for the loan of the proceeds from the sale of the Bonds to the Applicant to pay a portion of the Costs of the Project, (iii) the Applicant will execute and deliver to the Trustee such additional collateral documents (the Collateral) as the Placement Agent may require to market the Bonds; and (iv) the Placement Agent will make the initial placement of the Bonds and assist in remarketing the Bonds when any Bonds are tendered for purchase as provided therein; 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, 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 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 reaffirms its approval of the findings and determinations previously made 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 \$6,000,000 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 7. 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 Bonds (Route 113 Limited Partnership Project) in an aggregate principal amount not exceeding \$6,000,000 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 in typewritten or printed form, 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 as provided in the Indenture.

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 8. Authorization of Indenture Agreement, and Placement Agreement - Sale of Bonds; Loan to Applicant; Assignment to Trustee. The County shall enter into the Placement Agreement with the Placement Agent and the Applicant, the Indenture with the Trustee and the Loan Agreement with the Applicant, pursuant to which the County will issue and sell the Bonds and loan the proceeds thereof to the Applicant, the Applicant will agree to repay the loan directly to the Trustee for the benefit of the owners of the Bonds and the Applicant will execute and deliver the Collateral to the Trustee.

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 such form as he shall determine to be appropriate and in accordance with the provisions of this Resolution and consistent with the terms of the Placement Agent's commitment letter hereinbefore described (as may be modified by the Placement Agent with the consent of the Applicant and the County Administrator) 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 Placement Agreement;
- (b) The Indenture;
- (c) The Agreement;
- (d) The Bonds;

(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 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 Resolutions. 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 061 85 PASSED BY THE COUNTY COUNCIL OF SUSSEX COUNTY ON THE 10TH DAY OF DECEMBER, 1985.

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

SYNOPSIS: This Project Resolution authorizes the County to issue its economic development revenue bonds in the aggregate principal amount of \$6,000,000 for the financing of a project for Route 113 Limited Partnership, consisting of the acquisition of approximately 12.2 acres of land at the intersection of U.S. Route 113 and Delaware Route 9, Georgetown, Delaware and the construction thereon of a shopping center consisting of approximately 100,000 square feet of buildings to be leased to various commercial tenants.

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 bond.

EXHIBIT A
to
PROJECT RESOLUTION
for
ROUTE 113 LIMITED PARTNERSHIP PROJECT

Estimated Costs of Project

Land Acquisition	\$ 338,844
Buildings	4,000,000
Equipment, Machinery, Utilities, Roads and Appurtenant Facilities	380,000
Engineering/Architectural Fees	340,000
Costs of Issuance	367,500
Construction Period Interest	840,000
Contingency	<u>718,000</u>
Total Estimated Costs	\$6,984,344

EXHIBIT B

to

PROJECT RESOLUTION

for

ROUTE 113 LIMITED PARTNERSHIP PROJECT

Terms of the Bond

Principal Amount Not to Exceed: \$6,000,000

Maturity: December 1, 2016

Amortization: 30 Years

Interest Rate: The initial interest rate (to be set on or about December 11, 1985) shall be the coupon equivalent rate for United States Treasury Bills maturing on or about 90 days after the issuance of the Bonds. Thereafter, the interest rate will be adjusted as of each Reset Date to 85% of the coupon equivalent rate of United States Treasury Bills purchased on the day prior to the Reset Date and maturing on the next Reset Date. The Reset Dates shall be on or about 90 days after the issuance of the Bonds and each monthly anniversary thereof through January 1, 1987. On each Reset Date, the Issuer will have the option, upon 10 days prior notice, of providing additional or substitute collateral and changing the interest rate to that rate (fixed or variable) which permits the Bonds to be remarketed at par as determined by the Placement Agent. The owners of the Bonds will have the option, upon 10 days prior notice, of tendering any Bond for redemption on a Reset Date by the Issuer or purchase by a subsequent owner pursuant to a remarketing by the Placement Agent.