

RESOLUTION NO. R 096 82

A PROJECT RESOLUTION AUTHORIZING \$285,000 COMMERCIAL DEVELOPMENT REVENUE BONDS (DELMACO PROJECTS)

WHEREAS, Council of Sussex County (the "County") has heretofore adopted the Sussex County Commercial, Industrial and Agricultural Ordinance, 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, pursuant to the General Ordinance, Delmaco Associates and Delmaco Manufacturing, Inc. (the "Applicants"), have applied to the County for the financing of a project (the "Delmaco Associates Project") consisting of the construction of a plant for the manufacture of springs, metal fabricated parts, assemblies and related products and the financing of a project (the "Delmaco Manufacturing, Inc. Project") consisting of the acquisition of capital equipment for use in the manufacture of springs, metal fabricated parts, assemblies and related products, the two said projects hereinafter collectively referred to as the "Projects"; and

WHEREAS, as required by the General Ordinance, the Applicants have submitted to the County through the County Administrator (the "Administrator") an application for assistance in financing the Projects (the "Application") and have requested the County to finance a portion of the costs of the Projects, an estimate of which is attached as Exhibit A hereto (the "Costs"), through the issuance by the County of its Commercial Development Revenue Bond (Delmaco Associates Project), in a principal amount not to exceed \$160,000 (the "Delmaco Associates Bond") and of its Commercial Development Revenue Bond (the "Delmaco Manufacturing, Inc. Project"), in a principal amount not to exceed \$125,000 (the "Delmaco Manufacturing, Inc. Bond"), the two said bonds are hereinafter collectively referred to as the "Bonds"; and

WHEREAS, as required by the General Ordinance, the Application has been reviewed by a committee comprised of the County Administrator,

Director of Finance, County Attorney and Director of Economic Development (the "Review Committee"); and

WHEREAS, the Review Committee has made the findings and determinations required by the General Ordinance, including the findings that:

(a) the Projects are eligible for financial assistance and the financing thereof will accomplish the public purposes contemplated by the General Ordinance;

(b) the Projects 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 Applicants 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 Projects, 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 has received a commitment for the purchase of the Bonds from Sussex Trust Company, Georgetown, Delaware (the Lender); and

WHEREAS, the County will enter into (a) Bank Loan Agreements (the "Bank Loan Agreements") with the Lender providing for the issuance and sale of the Bonds to the Lender and the application of the proceeds of the Bonds to finance a portion of the Costs of the Projects, and (b) Loan Agreements with the Applicants (the "Loan Agreements") under which the proceeds of the Bonds will be loaned to the Applicants to pay a portion of the Costs of the Projects and the Applicants will execute and deliver to the County (i) promissory notes payable to the County (the "Notes") to evidence such loans, (ii) a mortgage and security

agreement covering all of Delmaco Associates' interest in the real property and personalty included in the Projects to the County, as mortgagee (the "Mortgage"), and (iii) a security agreement covering all of Delmaco Manufacturing, Inc.'s interest in personalty included in the Projects to the County, as secured party (the "Security Agreement"); and

WHEREAS, Delmaco Associates has entered into leases for the Project and may enter into future leases for the Project and portions thereof (collectively the "Leases") and will assign its rights and benefits under the Leases to the County (the "Assignment of Leases"); and

WHEREAS, the obligations of the Applicants under the Loan Agreements will be guaranteed for the benefit of the County by G. Delmar Bennett and Mae Bennett pursuant to a guaranty agreement (the "Guaranty Agreement"); and

WHEREAS, in order to secure the Bonds, the County will execute and deliver to the Lender assignments (the "Assignments") of substantially all of the County's rights and benefits under the Loan Agreements, the Notes, the Mortgage, the Security Agreement, the Assignment of Leases and the Guaranty Agreement; and

WHEREAS, the Bonds will be the limited obligations of the County payable solely from the Revenues of the Projects, 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 Projects 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 the capital costs chargeable to the Projects in accordance with generally accepted accounting principles 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 Projects 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 Applicants 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 Projects or parts 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. Approval of Projects and Findings with Respect Thereto. The Council hereby approves the findings and determinations made by the Review Committee with respect to the Projects, and in conjunction therewith does hereby make the following findings and determinations:

(a) the issuance and sale by the County of Bonds in an aggregate principal amount not to exceed \$285,000 in order to lend the proceeds thereof to the Applicants for the sole and exclusive purpose of financing a portion of the Costs of the Projects 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 Projects as specified in Section 7 of the General Ordinance.

Based on the foregoing findings and determinations and as a substantial inducement to the Applicants to locate, remain or expand within the County, the Projects are 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 Projects, the County shall issue its Commercial Development Revenue Bond in an aggregate principal amount not exceeding \$160,000 (Delmaco Associates Project) and its Commercial Development Revenue Bond in an aggregate principal amount not exceeding \$125,000 (Delmaco Manufacturing, Inc. Project), said Bonds to 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 bonds 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 Bonds shall be the limited obligations of the County payable solely and exclusively from the payments made by the Applicants under the Notes and Loan Agreements and out of other Revenues derived from the Projects and shall be secured by the Assignments 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 the debts or liabilities 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 Bank Loan Agreements - Sale of Bonds. The County shall enter into the Bank Loan Agreements with the Lender

to be dated on the date of delivery thereof setting forth the terms and conditions under which the Bonds are being purchased by the Lender and under which the Lender will advance the proceeds of the Bonds for loans to the Applicants to pay a portion of the Costs of the Projects. The Bonds are 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 Bank Loan Agreements.

Section 9. Authorization of Loan Agreements. The County shall enter into the Loan Agreements with the Applicants, to be dated on the date of delivery thereof, providing that the proceeds of the Bonds will be loaned to the Applicants to finance a portion of the Costs of the Projects in the manner set forth therein, providing for the Applicants to execute and deliver the Notes, the Mortgage, the Security Agreement and other documents provided for therein to evidence and secure such loans, and containing covenants by the Applicants for the benefit of the County and the Lender. The Applicants are hereby authorized to proceed with the Projects in accordance with the terms of this Resolution.

Section 10. Authorization of Assignments. In order to secure the Bonds, the County shall enter into Assignments by which it will assign to the Lender substantially all of its rights and benefits under the Loan Agreements, including the Applicants' Notes, the Mortgage, the Security Agreement, the Assignment of Leases, the Guaranty and all amounts payable thereunder.

Section 11. 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 Applicants' Application (as may be modified by the Lender with the consent of the Borrowers 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 Bank Loan Agreements;
- (b) The Bonds;
- (c) The Loan Agreements;
- (d) The Mortgage;
- (e) The Security Agreement;
- (f) The Notes;
- (g) The Assignment of Leases;
- (h) The Guaranty Agreement;
- (i) The Assignments; and

(j) Such other documents as the Administrator determines to be reasonable and appropriate to complete the financing for these Projects 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.

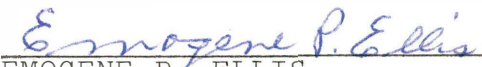
Section 12. Binding Effect of Covenants and Agreements. All covenants, obligations and agreements of the County set forth in this Resolution and in the documents authorized hereby shall be deemed to be the covenants, obligations and agreements of the County to the full extent authorized or permitted by law.

Section 13. 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 14. Repeal of Inconsistent Resolution. All prior Resolutions or portions thereof which are inconsistent with this Resolution are hereby repealed.

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 096 82 PASSED BY THE COUNTY COUNCIL OF SUSSEX COUNTY ON THE 23RD DAY OF NOVEMBER, 1982.


EMOGENE P. ELLIS
CLERK OF THE COUNTY COUNCIL

SYNOPSIS: This Project Resolution authorizes the County to issue commercial development revenue bonds in the aggregate principal amount of \$285,000 for the financing of projects consisting of the construction of a plant for the manufacture of springs, metal fabricated parts, assemblies and related products and the acquisition of capital equipment for use in the manufacture of springs, metal fabricated parts, assemblies and related products.

FISCAL NOTE: This Project Resolution, inasmuch as it is an authorization to issue commercial development revenue bonds, has no direct fiscal impact on Sussex County. The bonds or obligations contemplated by this resolution will be the 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
DELMACO ASSOCIATES PROJECT
and
DELMACO MANUFACTURING, INC. PROJECT

Estimated Costs of
Delmaco Associates Project

Building (construction)	\$180,000.00
Legal Fees	4,650.00
Financial Charges	3,200.00
Contingency	3,400.00
Application Fee	140.00
Fee to County	<u>800.00</u>
Total Estimated Project Costs	\$192,190.00

Estimated Costs of
Delmaco Manufacturing, Inc. Project

Equipment, Machinery	\$125,000.00
Legal Fees	3,630.00
Financial Charges	2,500.00
Contingency	2,645.00
Application Fee	110.00
Fee to County	<u>635.00</u>
Total Estimated Project Costs	\$134,510.00

EXHIBIT B
to
PROJECT RESOLUTION
for
DELMACO ASSOCIATES PROJECT
and
DELMACO MANUFACTURING, INC. PROJECT

Terms of the Delmaco Associates Bond

Principal Amount Not to Exceed: \$160,000
Interest Rate per annum: 70% of Sussex Trust Company's Prime Rate
adjusted quarterly
Maturity: 15 years
Amortization: 15 years
Prepayment Provisions: There shall be no prepayment penalty.

Terms of the Delmaco Manufacturing, Inc. Bond

Principal Amount Not to Exceed: \$125,000
Interest Rate per annum: 70% of Sussex Trust Company's Prime Rate
adjusted quarterly
Maturity: 15 years
Amortization: 15 years
Prepayment Provisions: There shall be no prepayment penalty.