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**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**

Legislative Session

1992

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Resolution No. CR-61-

1992

Proposed by The Chairman (by request - County Executive)

Introduced by Council Members MacKinnon and Pemberton

Co-Sponsors

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Date of Introduction May 26,  
1992

**RESOLUTION**

A RESOLUTION concerning

Economic Development Revenue Bonds

FOR the purpose of authorizing and providing for the issuance, sale and delivery by Prince George's County, Maryland (the "County") of its revenue bonds pursuant to the provisions of the Maryland Economic Development Revenue Bond Act or such other statutory authority as may be effective when such revenue bonds are issued, in order to lend or otherwise make available the proceeds thereof to Shadow Point Limited Partnership, a Maryland limited partnership, for the purpose of financing and

refinancing the cost of acquisition of certain manufacturing facilities to be located on a site described as a portion of Lot 5, in Block C of the Collington Center located on Branch Court near Upper Marlboro, Maryland 20772, in the County and expected to be leased by Shadow Point Limited Partnership to Snow Valley, Inc., a Maryland corporation, for use in its business of manufacturing bottled water; authorizing the acceptance of a letter of intent as evidence of the present intent of the County to issue such revenue bonds; providing that the principal amount of such revenue bonds and the interest thereon (a) shall be payable solely from the revenues to be received in connection with the financing and refinancing of such facilities and from any other moneys made available to the County for such purpose, and (b) shall never constitute an indebtedness or a charge against the full faith and credit or taxing powers of the County and shall never constitute or give rise to any pecuniary liability of the County; providing that the maximum aggregate principal amount of revenue bonds that may be issued may not exceed \$1,300,000; and generally providing for and determining various matters in connection with the authorization, issuance, sale and delivery of such revenue bonds and the consummation of the transactions contemplated by this Resolution.

RECITALS

The Maryland Economic Development Revenue Bond Act, Sections 14-101 through 14-109 of Article 41 of the Annotated

Code of Maryland (1990 Replacement Volume and 1991 Cumulative Supplement) (the "Act"), empowers the counties and municipalities of the State of Maryland to borrow money by issuing revenue bonds for the purpose of financing and refinancing the costs of "acquisition" of one or more "facilities" for one or more "facility users" (as such terms are defined in the Act). Among the declared legislative purposes of the Act are to relieve conditions of unemployment in the State of Maryland (the "State"), to encourage the increase of industry and commerce and a balanced economy in the State, to assist in the retention of existing industry and commerce and in the attraction of new industry and commerce in the State of Maryland through, among other things, port development and the control, reduction, or abatement of environmental pollution and disposal of wastes, to promote economic development, to protect natural resources and encourage resource recovery, and generally to promote the health, welfare and safety of the residents of each of the counties and municipalities of Maryland.

Shadow Point Limited Partnership, a Maryland limited partnership (the "Borrower") has submitted a letter of intent (the "Letter of Intent") dated May 12, 1992, a copy of which is attached hereto as Exhibit A, to Prince George's County, Maryland (the "County"), requesting the issuance of revenue bonds in a principal amount not exceeding \$1,300,000 and the loan of the proceeds to the Borrower for the purpose of financing and refinancing the costs of acquisition (within the

meaning of the Act) of certain manufacturing facilities (the "Facilities") to be located on a site described as a portion of Lot 5, in Block C of the Collington Center located on Branch Court near Upper Marlboro, in the County, including (1) the acquisition of a parcel of land containing approximately 4.1 acres, together with all existing improvements thereon, (2) the construction thereon of an approximately 28,000 square foot manufacturing facility to include related office, storage and distribution facilities, (3) the acquisition and installation of certain machinery, equipment, furnishings and other personal property and other useful improvements in connection therewith and (4) the acquisition of such other interests in land as may be necessary or useful in connection with the foregoing, including roads, rights of access and utilities, and other necessary or useful site preparation. The Letter of Intent indicates that the Facilities are expected to be leased by the Borrower to Snow Valley, Inc., a Maryland corporation (the "Lessee"), to be used in its business of manufacturing bottled water. The Borrower recognizes that any revenue bonds issued pursuant to this Resolution will be limited obligations of the County and will not be issued upon the County's faith and credit or taxing powers. The County has determined to authorize the issuance of such revenue bonds.

SECTION 1. NOW, THEREFORE, BE IT RESOLVED by the County Council of Prince George's County, Maryland, that, acting pursuant to the Act, it is hereby found and determined as follows:

(a) When used in this Resolution the following terms shall have the meanings given them by the Act: acquisition; bonds; facility or facilities; facility applicant; and facility user.

(b) When used in this Resolution the term "Authorized Officer" shall mean the County Executive or, to the extent heretofore or hereafter provided by order of the County Executive or otherwise, the Chief Administrative Officer or other duly authorized officer.

(c) The County intends to issue and sell its bonds (the "Bonds") in an aggregate principal amount not to exceed \$1,300,000 in order to lend or otherwise make available the proceeds thereof (the "Loan") to the Borrower, for the purpose of financing and refinancing the acquisition of the Facilities.

The Facilities shall include such land, interests in land, buildings, structures, machinery, equipment, furnishings and other real or personal property as may be necessary or desirable in connection with the construction of the Facilities and approved by the Authorized Officer as hereinafter provided.

(d) The Facilities constitute "facilities" and the Borrower constitutes a "facility applicant" and a "facility user" and the Lessee constitutes a "facility user", all as evidenced by the Letter of Intent.

(e) The issuance, sale and delivery of the Bonds will expedite the acquisition of the Facilities. The accomplishment of the transactions contemplated and authorized by this Resolution, including (without limitation) the acquisition of the Facilities and the financing and refinancing thereof, shall

promote the declared legislative purposes of the Act by relieving conditions of unemployment in the County and the State; encouraging the increase of industry and commerce and a balanced economy in the County and the State; assisting in the retention of existing industry and commerce and in the attraction of new industry and commerce in the County and the State through, among other things, promoting economic development; and generally promoting the health, welfare and safety of the residents of the County and the State.

(f) The principal of and premium, if any, and interest on the Bonds shall never constitute an indebtedness or a charge against the full faith and credit or taxing powers of the County within the meaning of any constitutional or charter provision or statutory limitation and shall never constitute or give rise to any pecuniary liability of the County. The Bonds shall be limited obligations of the County, the principal of and premium, if any, and interest on which shall be payable solely from the revenues received in connection with the financing and refinancing of the Facilities and from any other moneys made available to the County for such purpose.

(g) Neither the proceeds of the Bonds nor the payments on account of the principal of and premium, if any, and interest on the Bonds will be commingled with the County's funds or will be subject to the absolute control of the County, but will be subject only to such limited supervision and checks as are deemed necessary or desirable to insure that the proceeds of the Bonds are used to accomplish the public purposes of the Act

and this Resolution. The transactions contemplated by this Resolution do not constitute the acquisition of any physical public betterment or improvement of property for public use.

(h) The Borrower recognizes that the tax exempt status of the Bonds, if issued, will be determined under federal and state laws which are not subject to the County's control and which may be changed without the County's knowledge or consent and that, consequently, the County can give no assurance and makes no representation that the income from the Bonds, if issued, will be tax exempt.

(i) The Borrower also recognizes (1) that current federal tax law limits the total amount of tax exempt industrial development bonds (the "Maryland State Ceiling") which the State of Maryland (the "State") and the County can issue in each calendar year , (2) that the County can give no assurance and makes no representation that any portion of the Maryland State Ceiling will be reserved, or will be available for the Bonds at the time of the proposed issuance of the Bonds, and (3) that the County Executive or the Secretary of the Maryland Department of Economic and Community Development (the "Secretary") shall make the allocation of the Maryland State Ceiling pursuant to one or more executive orders or reservations to be promulgated subsequent to the approval of this Resolution, upon such terms or conditions as shall be established by the County Executive and the Secretary.

(j) The Borrower recognizes that the imposition of the Maryland State Ceiling complicates the County's ability to

utilize economic development bonds in its overall economic development planning and the Borrower agreed in the Letter of Intent that the County may determine whether to give final approval of the issuance of the Bonds in accordance with the County's policies in effect at the time of the request for final approval, including any policies adopted in response to federal tax law or in response to any steps taken by the State government as a result of federal tax law.

SECTION 2. BE IT FURTHER RESOLVED that the County Executive of the County is hereby authorized to accept, on behalf of the County, the Letter of Intent to evidence the County's intent to issue the Bonds as provided in this Resolution. The County contemplates that the Borrower may proceed with the acquisition of the Facilities prior to the issuance of the Bonds. The County intends that the adoption of this Resolution and the acceptance of the Letter of Intent shall be and constitute "official action" within the meaning of Section 1.103-8(a)(5) of the Income Tax Regulations prescribed by the United States Department of the Treasury pursuant to Section 103 of the Internal Revenue Code

SECTION 3. BE IT FURTHER RESOLVED that the County is hereby authorized to issue, sell and deliver the Bonds at any time and from time to time in one or more series, in the maximum aggregate principal amount of One Million Three Hundred Thousand Dollars (\$1,300,000), in order to lend or otherwise make available the proceeds thereof to the Borrower for the purpose of financing and refinancing the acquisition of the

Facilities, including (without limitation) the expenses of preparing, printing, selling and issuing the Bonds, the funding of any reserves in connection with the Bonds and the payment of interest prior to and during the period of acquisition of the Facilities and for such limited period thereafter as may be determined by the Authorized Officer in accordance with the provisions of this Resolution and the Act. The principal of and premium, if any, and interest on the Bonds shall be payable solely from the revenues to be received in connection with the financing and refinancing of the Facilities and from any other moneys made available to the County for such purpose-- all as more particularly specified, prescribed and determined by the Authorized Officer in accordance with the provisions of this Resolution.

The authority to issue the Bonds is intended to and shall include the authority to issue revenue refunding bonds. References herein to the "Bonds" shall include revenue refunding bonds where appropriate. In the event that any revenue refunding bonds are issued pursuant to this Resolution, the outstanding principal amount of any "refunded bonds" (as hereinafter defined) shall not be taken into account in determining the aggregate principal amount of Bonds issued, sold and delivered hereunder. The term "refunded bonds" means any Bonds (i) for the payment of which (both principal and interest) provision has been made from the proceeds (including any earnings on the investment thereof) of Bonds issued pursuant to this Resolution or (ii) which have been paid from

such proceeds, whether such provision for payment, or such payment, is made at or prior to the maturity of such Bonds.

SECTION 4. BE IT FURTHER RESOLVED that the Authorized Officer is hereby authorized to specify, prescribe, determine, provide for and approve--all within the limitations of this Resolution and the Act--all matters, details, forms, documents and procedures pertaining to the sale, security, issuance, delivery and payment of or for the Bonds, including (without limitation):

(a) the principal amount of the Bonds to be issued at any one time and from time to time; the rate or rates of interest thereon; the date or dates of maturity thereof; provisions for the payment, prepayment and redemption thereof; provisions for a sinking fund; the designation or designations of the Bonds and of any series; and the date or dates of issuance thereof;

(b) the form, tenor, terms and conditions of the Bonds and provisions for the registration and transfer of the Bonds;

(c) the form and contents of, and provisions for the execution and delivery of, such financing documents as the Authorized Officer shall deem necessary or desirable to evidence, secure or effectuate the Loan and the issuance, sale and delivery of the Bonds, including (without limitation) any loan agreements, trust agreements or indentures, notes, mortgages, security agreements, assignments, guarantees, financing agreements or escrow agreements;

(d) provision for the payment directly by the Borrower, whether or not the proposed financing is consummated, of all

expenses of preparing, printing and selling the Bonds (including, without limitation, any and all costs, fees and expenses incurred by or on behalf of the County in connection with the authorization, issuance, sale and delivery of the Bonds) and of all costs incurred in connection with the development of the appropriate legal documents (including the fees of counsel to the County and bond counsel and compensation to any persons, other than full-time employees of the County, or entities performing services for or on behalf of the County in connection therewith and in connection with all other transactions contemplated by this Resolution);

(e) the creation of security for the Bonds and provision for the administration of the Bonds, including (without limitation) the appointment of such trustees, escrow agents, paying agents, registrars or other agents as the Authorized Officer shall deem necessary or desirable to effectuate the transactions authorized hereby;

(f) the preparation and distribution, in conjunction with representatives of the Borrower and the prospective purchasers of or underwriters for the Bonds of any series, of both preliminary and final official statements, placement memoranda or offering circulars in connection with the sale of the Bonds of any series, if such preliminary and official statements, placement memoranda or offering circulars are determined to be necessary or desirable for the sale of the Bonds of such series;

(g) the form and contents of, and provisions for the

execution and delivery of, a contract or contracts for the purchase and sale of the Bonds of any series (or any portion thereof); and

(h) such other matters in connection with the authorization, issuance, execution, sale, delivery and payment of the Bonds, the security for the Bonds and the Loan, and the consummation of the transactions contemplated by this Resolution as may be deemed appropriate and approved by the Authorized Officer, including (without limitation) establishing procedures for the execution, acknowledgement, sealing and delivery of such other and further agreements, documents and instruments, and the authorization of the officials of the County to take any and all actions, as may be necessary or appropriate to consummate the transactions contemplated by this Resolution in accordance with the Act and this Resolution.

The Authorized Officer is hereby authorized to prescribe procedures to facilitate the prompt determination and approval of one or more of the matters set forth above. Such procedures may include telephonic approval and subsequent telegraphic or written confirmation of one or more of such matters by a designated officer of the County within guidelines or parameters prescribed by the Authorized Officer. The Authorized Officer is further authorized (1) to establish procedures for the utilization of variable or floating rates of interest, (2) to enter into arrangements with a bank or other appropriate institution to facilitate the purchase, repurchase, sale, transfer or payment of Bonds, including (without

limitation) the use of general or standby letters of credit, revolving credit facilities, repurchase agreements or other similar arrangements and (3) to take such actions as may be necessary to implement a program for the issuance of Bonds in the nature of commercial paper, demand notes or floating rate obligations.

Orders issued pursuant to this Resolution shall be deemed to be of an administrative nature and shall be effective upon the effective date specified therein.

SECTION 5. BE IT FURTHER RESOLVED that, as permitted by the Act, the Bonds of each series shall be sold at private (negotiated) sale and at par, unless the Authorized Officer deems it to be in the best interests of the County to sell the Bonds of any series at public sale or at above or below par, in which event the Bonds of such series shall be sold in such manner, at such price or prices and upon such terms as the Authorized Officer deems to be in the best interests of the County. The Bonds of each series shall be sold at such times, on such dates and to such persons, firms or corporations (including, without limitation, banks or other financial institutions) as shall be determined by the Authorized Officer.

SECTION 6. BE IT FURTHER RESOLVED that the Bonds shall be executed in the name of the County and on its behalf by the manual or facsimile signature of the Authorized Officer and attested by the manual or facsimile signature of the Clerk of the County Council or the acting Clerk of the County Council, and the seal of the County shall be affixed thereon. The

County Executive, the Chief Administrative Officer, the Clerk of the County Council and other officials of the County are hereby authorized and empowered to do all such acts and things and to execute, acknowledge, seal and deliver such documents and certificates as the Authorized Officer may determine to be necessary to consummate the transactions contemplated by this Resolution, subject to the limitations set forth in the Act and the provisions of this Resolution.

SECTION 7. BE IT FURTHER RESOLVED that the Bonds shall never constitute or give rise to any pecuniary liability of the County and, notwithstanding any provision of any agreement or document to which the County may become a party or may become subject in connection with the transactions contemplated by this Resolution, neither the Borrower nor the bondholders nor any other person shall have any claim against the County or any of its officers, officials, agents or employees for damages suffered as a result of the County's failure to perform in any respect any covenant, undertaking or obligation under the Bonds or under any agreement, document, instrument or certificate executed, delivered or approved in connection with the issuance, sale and delivery of the Bonds (collectively, the "Bond Documents") nor as a result of the incorrectness of any representation in or any omission from any of the Bond Documents. Nothing contained in any of the Bond Documents shall be construed to preclude any action or proceeding (other than that element in any action or proceeding involving a claim for monetary damages) in any court or before any governmental

body, agency or instrumentality against the County or any of its officers, officials, agents or employees to enforce the provisions of any of the Bond Documents.

SECTION 8. BE IT FURTHER RESOLVED that the provisions of this Resolution are severable, and if any provision, sentence, clause, section or part thereof shall be held to be illegal, invalid or unconstitutional or inapplicable to any person, entity or circumstances, such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Resolution or their application to other persons, entities or circumstances. It is hereby declared to be the legislative intent that this Resolution would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included herein and if the person, entity or circumstances to which this Resolution or any part hereof is inapplicable had been specifically exempted herefrom; provided, however, that neither the principal of nor the premium, if any, or interest on the bonds shall ever constitute an indebtedness of the County or a charge against the general credit or taxing powers of the County within the meaning of any constitutional or charter provision or statutory limitation or shall ever constitute or give rise to any pecuniary liability of the County.

SECTION 9. BE IT FURTHER RESOLVED that in the event that the financing transactions contemplated by this Resolution

shall not have occurred on or before December 31, 1992, the County's authorization under this Resolution shall terminate unless otherwise extended by Resolution of the County Council, approved by the County Executive.

SECTION 10. BE IT FURTHER RESOLVED that this Resolution shall take effect upon its approval by the County Executive.

Adopted this 16th day of June, 1992.

COUNTY COUNCIL OF PRINCE  
GEORGE'S COUNTY, MARYLAND

BY:

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Richard J. Castaldi  
Chairman

ATTEST:

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Joyce T. Sweeney  
Acting Clerk of the Council

APPROVED:

DATE: \_\_\_\_\_

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BY:

Parris N. Glendenning

**NOTE:** The attached Exhibit A is available in hard copy only.