ORDINANCE NO. 90-7

AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS FOR THE PURPOSE OF PROVIDING PERMANENT FINANCING FOR INDUSTRIAL FACILITIES; AUTHORIZING AN INDENTURE OF TRUST SECURING THE BONDS; AUTHORIZING A LOAN AGREEMENT BETWEEN THE CITY OF ATKINS, ARKANSAS AND GREEN BAY FOOD COMPANY; AUTHORIZING THE SALE OF THE BONDS AND THE EXECUTION OF A PLACEMENT AGREEMENT IN CONNECTION THEREWITH; AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Atkins, Arkansas (the "City"), is authorized and empowered under the provisions of Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Act"), to issue revenue bonds and to expend the proceeds thereof to finance the acquisition, construction and equipment of land, buildings or facilities which can be used in securing or developing industry; and

WHEREAS, it is proposed that the City issue its revenue bonds under the Act and loan the proceeds thereof to Green Bay Food Company, a Wisconsin corporation (the "Company"), for the purpose of financing the cost of acquiring, constructing and equipping certain industrial facilities located within the boundaries of the City (the "Project"); and

WHEREAS, pursuant to and in accordance with applicable provisions of Arkansas law and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), a public hearing was held prior to the passage and approval of this Ordinance before the City Council on the question of the issuance of such revenue bonds under the Act; and

WHEREAS, after due consideration, the City is now prepared to proceed with financing the Project and, at the request of the Company, to issue and sell not to exceed $4,000,000 in principal amount of its Tax-Exempt Adjustable Mode Industrial Development Revenue Bonds (Green Bay Food Company Project) Series 1990 (the "Bonds"), to provide such financing; and

WHEREAS, to support the payment of the Bonds, an irrevocable letter of credit will be initially issued by Wachovia Bank and Trust Company, N.A. (in such capacity, the "Bank"), in favor of the Trustee for the benefit of the owners from time to

time of the Bonds; and

WHEREAS, copies of the hereinafter described Indenture of Trust, Loan Agreement and Placement Agreement have been presented to and are before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Atkins, Arkansas:

Section 1. The City hereby finds that the acquiring, constructing and equipping of the Project, and the issuance of the Bonds to finance the same, will provide substantial additional employment and payrolls and will thereby secure and develop industry at the City.

Section 2. That the issuance of the Bonds in the principal amount of $4,000,000, or such lesser amount as shall be requested by the Company, is hereby authorized. The Bonds shall mature in the year 2010, and shall bear interest at a Weekly Rate, Monthly Rate, Semiannual Rate, Money Market Rate, Medium-Term Rate, or Fixed Rate as defined in, and determined as set forth in, the Indenture of Trust (hereinafter authorized), in each case not to exceed the maximum rate permitted by law. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered and shall be subject to redemption prior to maturity all upon the terms and conditions set forth in the Indenture of Trust (hereinafter authorized) securing the Bonds.

Section 3. That the Bonds be sold to the purchaser or purchasers designated by Wachovia Bank and Trust Company, N.A., as placement agent selected by the Company (the "Placement Agent"), for the purchase price of 100% of par, plus accrued interest, if any, from the date of the Bonds to the date of delivery, which price is recommended by the Company, and upon the terms and conditions set forth in a Placement Agreement by and among the City, the Company and the Placement Agent (the "Placement Agreement"). The Mayor is hereby authorized to execute and deliver the Placement Agreement for and on behalf of the City. The Placement Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Company, the Placement Agent and others in order to complete the Placement Agreement in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the documents, their execution to constitute conclusive evidence of such approval.

Section 4. That to prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued,

accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge an Indenture of Trust by and between the City and First-Citizens Bank & Trust Company, Raleigh, North Carolina, which will act as Trustee thereunder (the "Indenture"), and the City Clerk is hereby authorized and directed to execute and acknowledge the Indenture and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Indenture to be accepted, executed and acknowledged by the Trustee. The Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee and others in order to complete the Indenture in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

Section 5. That there be, and there is hereby, authorized the execution and delivery of a Loan Agreement by and between the City and the Company (the "Loan Agreement"), and the Mayor and City Clerk be, and they are hereby, authorized to execute, acknowledge and deliver the Loan Agreement for and on behalf of the City. The Loan Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Company and others in order to complete the Loan Agreement in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

Section 6. That the City is hereby involved with the acquiring, constructing and equipping of industrial facilities, and pursuant to applicable laws of the State of Arkansas, including particularly the Act, competitive bidding is waived.

Section 7. That the City hereby elects to have the provisions of Section 144(a)(4)(A) of the Internal Revenue Code of 1986, as amended, apply to the Bonds.

Section 8. That the Mayor and City Clerk, for and on behalf of the City, be, and they are hereby, authorized and directed to do any and all things necessary to effect the execution and delivery of the Placement Agreement and the performance of all obligations of the City thereunder, the execution and delivery of the Indenture and the performance of all obligations of the City thereunder, the execution and delivery of the Loan Agreement and the performance of all obligations of the City thereunder, the issuance, execution, sale and delivery of the Bonds, and the performance of all acts of whatever nature necessary to effect and

carry out the authority conferred by this Ordinance. That the Mayor and City Clerk be, and they are hereby, further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 9. That the City Clerk is hereby authorized and directed to file in the office of the City Clerk, as a part of the minutes of the meeting at which this Ordinance is adopted, for inspection by any interested person copies of the Indenture, the Loan Agreement and the Placement Agreement, and such documents shall be on file for inspection by any interested person.

Section 10. That the law firm of Friday, Eldredge & Clark be appointed to act as Bond Counsel in connection with the issuance and sale of the Bonds.

Section 11. That the provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

Section 12. That all ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 13. That there is hereby found and declared to be an immediate need for the securing and developing of industry in order to provide substantial employment and payrolls, thereby alleviating unemployment and otherwise benefiting the public health, safety and welfare of the City and the inhabitants thereof, and the issuance of the Bonds authorized hereby and the taking of the other action authorized hereby are immediately necessary for the accomplishing of these public benefits and purposes. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of the public peace, health and safety shall be in force and effect immediately upon and after its passage.

PASSED: July 10, 1990.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

CERTIFICATE

The undersigned, City Clerk of the City of Atkins, Arkansas, hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. 90-7, adopted at a regular session of the City Council of the City of Atkins, Arkansas, held at the regular meeting place in the City at 7:00 o'clock p.m., on the 10th day of July, 1990, ~~and that the Ordinance is of record in Ordinance Record Book~~ No. _____, ~~at page~~ _____, ~~now in my possession~~.

GIVEN under my hand and seal on this 10 day of July, 1990.

Brenda Graves
City Clerk

(SEAL)