

RESOLUTION NO. R 016 99

A PROJECT RESOLUTION AUTHORIZING UP TO \$11,500,000 ASSISTED LIVING FACILITY REVENUE BONDS (HERITAGE AT MILFORD PROJECT)

WHEREAS, 9 Del. C. §7001(a) confers upon the government of Sussex County all powers which, under the Constitution of the State of Delaware, it would be competent for the General Assembly to grant by specific enumeration, and which are not denied by statute; and

WHEREAS, 9 Del. C. §7001(c) confers upon the government of Sussex County the power to exercise any of its powers or perform any of its functions and participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or civil divisions or counties or agencies thereof; and

WHEREAS, Sussex County Council (the "County") has heretofore adopted the Sussex County Commercial, Industrial, and Agricultural Revenue Bond 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, Milford ALF, LLC, a Delaware limited liability company (the "Applicant"), has submitted to the County through the County Administrator an application (the "Application") for the financing of a project (the "Project") consisting of the acquisition of (a) a 13 acre site that fronts US Highway 113 in Milford, Sussex County, Delaware (the "Land") and the financing and refinancing of construction of a 71-unit (80-bed) assisted living residence, including a 16-unit (19-bed) wing dedicated to dementia residents (the "Facility"); (b) funding a Debt Service Reserve Fund; (c) funding working capital for the Facility; and (d) paying certain costs and fees of issuing the Bonds (as hereafter defined), said financing to be accomplished through the issuance by the County of Revenue Bonds, in a principal amount not to exceed \$11,500,000 (exclusive of original issue discount) (the "Bonds"); and

WHEREAS, the Application has been reviewed by a committee comprised of the County Administrator, the Director of Finance, the County Attorney, and the Director of Economic Development (the "Review Committee"); and

WHEREAS, after notice published in *The News Journal* on May 24, 1999, and in accordance with 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 June 8, 1999, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, in addition, all interested persons have been given an opportunity to be heard at a public hearing concerning this Resolution conducted by this Council on this 8th day of June, 1999, pursuant to the aforesaid notice and prior to the adoption of this Resolution; and

WHEREAS, the Review Committee has made findings and determinations which are in accordance with the General Ordinance and are appropriate to effectuate the grant of powers to the County by 9 Del. C. §7001(a) and 9 Del. C. §7001(c), including the findings that:

(a) the Project is eligible for financial assistance and the financing thereof will accomplish public purposes which are contemplated by the General Ordinance and are appropriate to effectuate the grant of powers to the County by 9 Del. C. §7001(a) and 9 Del. C. §7001(c);

(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;

(c) the issuance and sale of the Bonds by the County will enable the Applicant, which intends to construct an assisted living facility in the County, to obtain efficient and cost-effective financing, thereby enhancing the Applicant's ability to provide services, and accomplish the aforesaid public purposes; and

(d) the Bonds are to be payable solely from Revenues as specified in Section 7 of the General Ordinance; and

WHEREAS, the County Administrator has advised the Applicant of the Review Committee's findings and determinations; and

WHEREAS, the County 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 desires to approve the Project, to make findings and determinations which are in accordance with the General Ordinance and are appropriate under 9 Del. C. §7001(a) and 9 Del. C. §7001(c) and to authorize the issuance and sale of the Bonds; and

WHEREAS, the Council has determined that the Project be completed at the earliest practicable date, and recognizes that the Applicant requires satisfactory assurances from the County that the proceeds of the sale of the Bonds will be made available to finance the Project; and

WHEREAS, the Bonds will be issued pursuant to a Trust Indenture (the "Indenture") between the County and a commercial banking institution as trustee (the "Trustee"); the proceeds of the Bonds will be loaned to the Applicant pursuant to a Loan Agreement (the "Agreement") between the County and the Applicant; the Bonds will be secured in part by a Mortgage and Security Agreement (the "Mortgage") granting a lien on the Land and the Facility and the Applicant's gross revenues therefrom; and the Bonds will be purchased or placed at negotiated sale pursuant to a Purchase Agreement (the "Purchase Agreement") between the County and Legg Mason or such other investment banking firm as is acceptable to the County officer executing such Purchase Agreement (the "Underwriter"); 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 County 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,

THE COUNTY OF SUSSEX HEREBY RESOLVES:

Section 1.

This Resolution shall be known and cited as the Sussex County Milford ALF Revenue Bond Resolution.

Section 2. Approval of Project; Legislative Findings.

The Council hereby approves the findings and determinations made by the Review Committee with respect to the Project, and in conjunction therewith it is hereby determined and declared as a matter of legislative finding that:

(a) the issuance and sale by the County of the Bonds in an aggregate principal amount not to exceed \$11,500,000 (exclusive of original issue discount) in order to lend the proceeds thereof to the Applicant for the sole and exclusive purpose of financing a portion of the Costs (as hereinafter defined) of the Project will accomplish public purposes which are specified in the General Ordinance and are appropriate to effectuate the grant of powers to the County by 9 Del. C. §7001(a) and 9 Del. C. §7001(c), 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 issuance and sale of the Bonds by the County will enable the Applicant, which intends to construct an assisted living facility in the County, to obtain efficient and cost-effective financing, thereby enhancing the Applicant's ability to provide services, and accomplish the aforesaid public purposes, in the County; and

(c) 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 upon 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.

Section 3. 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 includes without limitations, 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 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 agent's 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; working capital; 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.

Section 4. Authorization.

This Resolution is adopted pursuant to the provisions of the General Ordinance.

Section 5. 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 "hereafter" and other words of similar import refer to this Resolution as a whole and not to any particular article, section or subdivision. The use of words in the singular number includes the plural and the use of the plural includes the singular number.

Section 6. 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 7. Severability.

In case of any one or more of the provisions contained in this Resolution or in 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 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 Assisted Living Facility Revenue Bonds (Heritage at Milford Project) in a principal amount not exceeding \$11,500,000 (exclusive of original issue discount).

The Bonds shall mature on the dates and in the amounts set forth in the Indenture, bear interest at rates of interest set forth in the Indenture (a form of which has been presented at this meeting), and shall be subject to the redemption provisions set forth in the Indenture. The Bonds will be issued only as registered bonds in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof.

The Bonds, substantially in the form and substance set forth in the Indenture, and all of the terms set forth therein are hereby approved and are incorporated as part of this Resolution with the same effect as if the entire text thereof were set forth herein in full.

The Bonds shall be limited obligations of the County payable solely and exclusively from and secured by (i) payments received by the County pursuant to the Agreement, (ii) a pledge of the moneys held in the funds and accounts established under the Indenture, together with certain investment earnings thereon, and (iii) the Mortgage. 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.

The Bonds shall mature no later than 31 years from the date of issuance. The Bonds shall bear interest at an average coupon not to exceed 7.5 percent.

Section 9. Authorization of Agreement.

The County shall enter into the Agreement with the Applicant, providing for the proceeds of the Bonds to be lent to the Applicant to finance the Project as set forth therein, providing for the Applicant to execute the Agreement, a note evidencing such loan (the "Note"), the Mortgage, any other financing documents as the Underwriter may require, and such other documents provided for therein to evidence and secure such loan, and containing covenants by the Applicant for the benefit of the County and the Trustee.

Section 10. Authorization of Indenture.

The County shall enter into the Indenture with a Trustee satisfactory to the County Administrator (as evidenced by the County's execution of the Indenture), providing for the issuance of and security for the Bonds, the application of the proceeds of the Bonds, the assignment to the Trustee of the Note, the Agreement, the Mortgage, and any other financing documents as the Underwriter may require, and the application of the payments to be made by the Applicant to the repayment of the Bonds.

Section 11. Authorization of Purchase Agreement.

The County shall enter into a Purchase Agreement with the Underwriter and the Applicant providing for the sale of or placement of the Bonds to or by the Underwriter at negotiated sale, at such price, plus accrued interest, if any, and on such other terms as may be mutually agreed upon by all such parties.

Section 12. Execution of Bonds.

The County Administrator is hereby authorized to execute the Bonds by manual or facsimile signature in substantially the form set forth in the Indenture, with appropriate insertions or variations; and the County Clerk is hereby authorized to attest by manual or facsimile signature, the seal of the County, or a facsimile thereof on the Bonds (which is hereby authorized to be impressed or imprinted on the Bonds); following such execution, the County Administrator is authorized to cause the Bonds to be delivered to the Trustee for authentication and, after such authentication, to cause them to be delivered to the Underwriter against receipt of the purchase price and to apply the proceeds of the Bonds in accordance with the provisions of the Indenture and other financing documents.

Section 13. Approval, Execution and Delivery of Documents.

The County shall enter into the Indenture and Agreement, each substantially in the form presently on file with the County, all of which are hereby approved, subject to such changes as shall be approved by the signing officer as hereinafter provided. The County Administrator is hereby authorized to execute and deliver, in the name of the County and on its behalf, the following documents and to approve the final form and substance thereof, such approvals to be conclusively evidenced by the execution thereof, and the County Clerk is hereby authorized to affix to all of the following documents the seal of the County and to attest to the same, if required;

- (a) The Indenture;
- (b) The Agreement;
- (c) The Purchase Agreement;
- (d) Such other documents as the executing officers determine to be reasonable and appropriate to complete the financing for the Project as authorized by this Ordinance.

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 14. Authorization of Preliminary Official Statement and Approval of Final Official Statement.

The County hereby authorizes the distribution by the Underwriter of a preliminary offering document in substantially the form presently on file with the County (the "Preliminary Official Statement") setting forth certain information relating to the County, the Applicant, the Project, the Bonds and the security. The County hereby approves and authorizes the distribution by the Underwriter of a final Official Statement (the "Official Statement") in substantially the form as the Preliminary Official Statement except that it shall contain the final terms of the Bonds and such other changes and modifications as shall be approved by the County Administrator as hereinafter provided. The County Administrator is hereby authorized to approve, in the name of the County and on its behalf, the Official Statement.

Section 15. Declaration of Official Intent.

This Resolution is intended to constitute a statement of "Official Intent" pursuant to Treasury Regulations § 1.150-2, T.D. 8476. A portion of the proceeds of the Bonds will be used to reimburse the Applicant for expenditures originally paid prior to the date of issuance of the Bonds. All capitalized terms used herein and not otherwise defined have the same meaning as ascribed to them in Treasury Regulation § 1.150-2. All original expenditures to be reimbursed will be capital expenditures (as defined in Treasury Regulation § 1.150-1(b)) and other amounts permitted to be reimbursed pursuant to Treasury Regulation § 1.150-2(d)(3) and (f). The County intends to reimburse the original expenditures of the Applicant through the County's incurrence of debt to be evidenced by the Bonds.

The description of the type and use of the property for which the original expenditure to be fully or partially reimbursed is to be paid is: a portion of the costs relating to the Project as defined in the fourth recital to this Resolution. The maximum principal amount of the Bonds to be issued for reimbursement with respect to the Project is \$11,500,000, including the costs of issuance of the Bonds, but exclusive of original issue discount.

Once the Bonds are issued, the County shall allocate, or cause to be allocated, Bond proceeds to reimburse a prior qualifying expenditure by making the allocation on its books and records maintained with respect to the Bonds; provided that, except as permitted under Treasury Regulation § 1.150-2(f) such costs to be reimbursed were paid not more than 60 days prior to the date hereof. Such allocation shall specifically identify the actual original expenditure to be reimbursed. Such allocation shall occur not later than 18 months after the later of (i) the date on which the original expenditure is paid, or (ii) the date the Project is placed in service or abandoned, but in no event more than 3 years after the original expenditure is paid. If the Bonds are issued before the expiration of the period prescribed in the preceding sentence, then the reimbursement allocation shall occur not later than the date the Bonds are issued.

The Bond proceeds used to reimburse the Applicant for original expenditures will not be used within 1 year after the allocation in a manner that results in the creation of replacement proceeds (as defined in Treasury Regulation § 1.148-1) for the Bonds or for other bonds.

Section 16. 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, and all such covenants, obligations and agreements shall be binding upon the County and its successors from time to time and upon any board or body to which any powers or duties affecting the same shall be transferred by, or in accordance with, law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the County or the members thereof by the provisions of this Resolution or the documents authorized hereby shall be exercised or performed by such members, officers or other representatives of the County as may be required or permitted by law to exercise or perform the same. No covenant, obligation or agreement herein contained in any document authorized hereby shall be deemed to be a covenant, obligation or agreement of any member, officer, agent or employee of the County in his or her individual capacity and neither the members of the County nor any officer executing the Indenture, the Bonds, the Agreement, the Purchase Agreement, or other documents authorized by this Resolution shall be liable personally thereunder or be subject to any personal liability or accountability by reason of the execution and deliver thereof.

Section 17. 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 issuance of the Bonds or the intent and purpose of this Resolution or any document herein authorized.

Section 18. Repeal of Inconsistent Resolutions.

All prior Resolutions of this County or portions thereof which are inconsistent with this Resolution are hereby repealed.

Section 19. 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 016 99 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 8TH DAY OF JUNE, 1999.



Robin A. Griffith
Clerk of the County Council

SYNOPSIS: This Resolution authorizes the County to issue Assisted Living Facility Revenue Bonds in a principal amount not exceeding \$11,500,000 (exclusive of original issue discount) for the financing of a project for Milford ALF, LLC, consisting of the acquisition of a 13 acre site that fronts US Highway 113 in Milford, Sussex County, Delaware (the "Land") and the financing and refinancing of construction of a 71-unit (80-bed) assisted living residence, including a 16-unit (19-bed) wing dedicated to dementia residents.

FISCAL NOTE: This Resolution, inasmuch as it is an authorization to issue Assisted Living Facility 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

Heritage at Milford Project

Estimated Costs

Sources of Funds:

1999 Bonds	\$8,885,000
Members' Equity Contribution	252,788

Subordinate Loan:	<u>750,000</u>
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Total Sources of Funds	<u><u>\$9,887,788</u></u>
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Uses of Funds:

Project Costs*	\$7,928,662
Debt Service Reserve Fund	735,381

Working Capital	766,550
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Costs of Issuance	<u>457,195</u>
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Total Uses of Funds	<u><u>\$9,887,788</u></u>
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* Includes construction of the Facility.