

RESOLUTION NO. R 026 01

A PROJECT RESOLUTION AUTHORIZING UP TO \$6,735,000 INDUSTRIAL REVENUE BONDS (REHOBOTH MALL PROJECT) SERIES 2001 A and B

RECITALS

A. 9 Delaware Code §7001 (a) confers upon the government of Sussex County (the "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.

B. Sussex County Council (the "Council") has adopted the Sussex County Commercial, Industrial and Agricultural Revenue Bond Ordinance No. 80, as amended (the "Act") to encourage and assist in the financing of the acquisition, construction, 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 in order to refund bonds issued pursuant to the Act.

C. Rehoboth Mall Limited Partnership, a Maryland limited partnership (the "Borrower") has submitted to the County through the County Administrator an application (the "Application") requesting that the County issue up to \$6,735,000 of its Industrial Revenue Bonds (the "Bonds") in two series and lend the proceeds to the Applicant. One series of the Bonds (the "Series A Bonds") in the aggregate principal amount of \$4,000,000 is proposed to be used to refund the Sussex County, Delaware Economic Development Refunding Revenue Bonds (Rehoboth Mall Project), Series 1992 (the "Prior Bonds") which in turn were issued to refund the Sussex County Economic Development Revenue Bond (Rehoboth Mall Project), Series 1984 (the "Original Bond"). The proceeds of the Original Bond were used to finance construction and equipping of a single-level retail shopping center known as "Rehoboth Mall" (the "Project") on a site containing approximately 24 acres located on the southwestern side of Route 1 between Routes 24 and 274 in Sussex County, Delaware. The second series of the Bonds (the "Series B Bonds") in the aggregate principal amount of \$2,735,000 is proposed to be used to reimburse the Borrower for costs of demolishing a portion of the original Project and to pay, or reimburse the Borrower for the payment of, costs of renovating, refurbishing, rehabilitating and redeveloping the remainder of the Project and to pay costs of issuance of the Bonds and other costs of the transaction. It is intended that the interest on the Series A Bonds will be excludible from gross income for federal income tax purposes and that the interest on the Series B Bonds will be taxable.

D. The Borrower has submitted evidence of financing feasibility satisfactory to the County Administrator.

E. The Application was 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").

F. The Review Committee made the findings and determinations required by the Act.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. This Resolution shall be known and cited as the Sussex County Rehoboth Mall Limited Partnership Project Resolution (the "Project Resolution").

Section 2. Approval of Project and Refunding of Prior Bonds; Legislative Findings

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

(a) the original Project was financed with the proceeds of the Original Bond which was refunded with the proceeds of the Prior Bonds, and both the Original Bond and the Prior Bonds were issued pursuant to the Act; and

(b) the Project is eligible for financial assistance, and the refunding of the Prior Bonds and the financing of other Costs of the Project will accomplish the public purposes contemplated by the Act; and

(c) 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

(d) the issuance and sale of the Bonds by the County will enable the Borrower to obtain efficient and cost-effective financing thereby enhancing the Borrower's ability to accomplish the aforesaid public purposes in the County, and

(e) the Bonds will be limited obligations of the County and the County does not pledge the credit or taxing power thereof, but such Bonds shall be payable solely from Revenues as specified in Section 7 of the Act.

Based upon the foregoing findings and determinations and as a substantial inducement to the Borrower to remain or expand within the County, the Project and the refunding of the Prior Bonds are hereby approved and determined to be eligible for financing by the County as provided herein.

Section 3. Definitions

The terms used in this Project Resolution shall have the meanings specified herein or in the preamble hereto or, if not otherwise defined herein, as specified in the Act, unless a different meaning is clearly indicated by the context.

Notwithstanding any other provision to the contrary, "Costs" means with respect to the Project all costs, whether capital or otherwise, and includes 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 land, rights in land, 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 the Bonds, costs of issuance of the Bonds, engineering and inspection costs, trustee fees and expenses, cost of financial, legal, professional and other estimates and advice, organization, administrative, insurance and other expenses of the County or the Borrower 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 for reserves for payment of principal of or interest on the Bonds during or after such financing, acquisition or construction. Without limiting the generality of the foregoing, the County intends to reimburse the Borrower from the proceeds of the sale of the Series B Bonds for Costs of the Project paid prior to the passage of this Project Resolution and prior to the delivery of the Bonds.

Section 4. Authorization

This Project Resolution is adopted pursuant to the Act.

Section 5. Interpretation

All references in this Project Resolution to articles, sections and other subdivisions of this Project Resolution are to the designated articles, section or subdivisions of this Project Resolution as originally adopted. The words "herein" "hereof" "hereby" and "hereafter" and other words of similar import refer to this Project 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 Project Resolution are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions.

Section 7. Severability

In case any one or more of the provisions contained herein 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 Project Resolution, the Bonds or other documents and this Project Resolution, the Bonds and 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 refinance, pay or reimburse a portion of the Costs of the Project, the County shall issue two or more series of its Industrial Revenue Bonds (Rehoboth Mall Project) Series 2001 in an aggregate principal amount not to exceed \$6,735,000. The Series A Bonds in the aggregate principal amount of \$4,000,000 shall be issued to refund the Prior Bonds, and it is intended that the interest on the Series A Bonds will be excludible from gross income for federal income tax purposes. The Series B Bonds in the aggregate principal amount of \$2,735,000 shall be issued to pay or reimburse other Costs of the Project and it is intended that the interest on the Series B Bonds will be taxable.

The Bonds shall be issued in two series, shall be dated as of the first day of the month in which the date of issue of the Bonds of such series occurs (or such other date as may be provided in the Bonds) (the "Date of Issue"). Each series of the Bonds shall mature, for the Series A Bonds, on or before the maturity date of the Prior Bonds, and, for the Series B Bonds, on or before the first business day of the month in which the thirtieth anniversary of the Date of Issue of the Bonds occurs. The Bonds of each series shall bear interest at a variable rate of interest determined by the Placement Agent (hereinafter defined) on the Date of Issue and thereafter by the Remarketing Agent (hereinafter defined) on each Friday (or, if any Friday is not a business day, the immediately succeeding business day) (or such other day of the week as may be provided in the Bonds) and shall be subject to the redemption provisions set forth in the forms of the Series A Bonds and the Series B Bonds previously delivered to the County Administrator (each, a "Form of Bond"). The Bonds shall be issued only as registered bonds in denominations of \$100,000 or multiples of \$5,000 in excess thereof.

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

The Bonds shall be special limited obligations of the County. The County does not pledge its credit or taxing power therefor, and the Bonds are payable solely and exclusively from and secured by (i) payments received by the County pursuant to the loan agreement to be entered into by the County and the Borrower (the "Loan Agreement"); (ii) a pledge of the moneys held in the funds and accounts established under the trust indenture to be entered into by the County and the Trustee (hereinafter defined) (the "Indenture"), together with certain investment earnings thereon; and (iii) payments under any letter of credit or other credit facility provided by the Borrower to secure one or both series of the Bonds.

The Bonds shall not be payable out of any funds, revenues or properties of the County other than those specifically pledged therefor.

Section 9. Authorization of Loan Agreement

The County shall enter into the Loan Agreement with the Borrower in such form as shall be approved by the County Administrator, in order to provide for the proceeds of the Bonds to be lent to the Borrower to finance the refunding of a portion of the Prior Bonds and other Costs of the Project as set forth therein, and any other financing documents as the Underwriter (as hereinafter defined) may require and such other documents provided for in the Loan Agreement to evidence and secure such loan and containing covenants by the Borrower for the benefit of the County and the Trustee.

Section 10. Authorization of Indenture

The County shall enter into the Indenture with Allfirst Trust Company National Association (the "Trustee") in such form as shall be approved by the County Administrator, in order to provide for the issuance of and security for the Bonds, the application of the proceeds of the Bonds, the assignment to the Trustee of certain rights of the County and any other financing documents as the Underwriter may require and the application of the payments to be made by the Borrower for the repayment of the Bonds.

Section 11. Authorization of Bond Purchase Agreement

The County shall enter into a Bond Purchase Agreement (the "Bond Purchase Agreement") with the Borrower and Allfirst Bank, as Underwriter (the "Underwriter"), in such form as shall be approved by the County Administrator, in order to provide for the initial sale of the Bonds of each series by the Underwriter at a 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 of each series 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, and to impress the seal of the County, or a facsimile thereof, on the Bonds of each series; following such execution, the County Administrator is authorized to cause the Bonds of each series to be delivered to the Trustee for authentication and, after such authentication, to cause them to be delivered as directed by 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, the Loan Agreement, the Bond Purchase Agreement and such other documents as the County Administrator determines to be reasonable and appropriate to complete the financing for the Project as authorized by this Project Resolution. 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: the Indenture, the Bonds, the Loan Agreement, the Bond Purchase Agreement and such other necessary documents in order to complete the financing for the Project. The County Clerk is hereby authorized to affix the seal of the County and to attest to the same, if required, the foregoing documents which the County Administrator is authorized to execute and deliver. Copies of the documents so executed, sealed, attested and delivered shall be filed in the official record of the County.

Section 14. Authorization of Official Statement

The County hereby authorizes the distribution by the Underwriter of an Official Statement (the "Official Statement") setting forth certain information relating to the County, the Borrower, the Project, the Bonds and the security therefor, in such form as shall be approved by the County Administrator.

The County, however, shall not make any representation or warranty, either express or implied, regarding the accuracy or completeness of any information to be contained in the Official Statement that has been supplied by sources other than the County.

Section 15. Binding Effect of Covenants and Agreement

All covenants, obligations and agreements of the County set forth in this Project 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. No covenant, obligation or agreement herein contained or in the documents 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 Council nor any officer executing the Indenture, the Bonds, the Loan Agreement, the Bond Purchase Agreement or other documents authorized by this Project Resolution shall be liable personally thereunder or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

Section 16. 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 Project Resolution or any document herein authorized.

Section 17. Effective Date

This Project 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 026 01 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 25TH DAY OF SEPTEMBER, 2001.



Robin A. Griffith
Clerk of the County Council

SYNOPSIS: This Resolution authorizes the County to issue two or more series of its Industrial Revenue Bonds, (one tax-exempt and one taxable) in an aggregate principal amount not exceeding \$6,735,000 for the benefit of Rehoboth Mall Limited Partnership in order to finance the refunding of the Sussex County, Delaware Economic Development Revenue Bonds (Rehoboth Mall Project), Series 1992 and the payment or reimbursement of costs of demolishing a portion of the single-level retail shopping center known as "Rehoboth Mall" located on Route 1 between Routes 24 and 274 in Sussex County, Delaware and the payment or reimbursement of costs of renovating, refurbishing, rehabilitating and redeveloping the remainder of such shopping center and the payment of costs of issuance of such Industrial Revenue Bonds and other costs of the transaction.