

RESOLUTION NO. R 027 03

A PROJECT RESOLUTION AUTHORIZING THE ISSUANCE OF UP TO \$45,000,000 OF ECONOMIC DEVELOPMENT REVENUE BONDS (CADBURY AT LEWES PROJECT)

WHEREAS, 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;

WHEREAS, Sussex County Council (the "County Council") has adopted the Sussex County Commercial, Industrial and Agricultural Revenue Bond Ordinance No. 80, as amended (the "Ordinance") 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;

WHEREAS, Cadbury at Lewes, a Delaware corporation (the "Borrower") has filed an application (the "Application") with the County requesting that the County issue up to \$45,000,000 of its Economic Development Revenue Bonds (the "Bonds") and apply the proceeds thereof to make a loan to the Borrower for the purpose of paying a portion of the Costs (as defined herein) of (a) the purchase of land and the construction of a continuing care retirement community expected to contain approximately 84 independent living apartments, approximately 48 independent living cottages, a community center and a health center with approximately 40 skilled nursing beds, approximately 40 assisted living apartments and a wellness center, (b) development and marketing costs, (c) interest on the Bonds and any bond anticipation notes during the construction period and for a temporary start up period thereafter and (d) provisions for reserves and costs of issuing the Bonds (the "Project");

WHEREAS, pursuant to Section 9 of the Ordinance, a committee comprised of the County Administrator, the Director of Finance, the County Attorney and the Director of Economic Development (the "Review Committee") reviewed the Application;

WHEREAS, the Review Committee made findings and determinations required by the Ordinance and recommended that County Council approve the Project and the issuance of the Bonds;

WHEREAS, a public hearing, after proper notice, was held by the Sussex County Council on Tuesday, November 18, 2003 in the County Council Chambers at which all interested persons were given the opportunity to be heard with respect to the Project;

WHEREAS, the County has received the commitment of Herbert J. Sims & Co., Inc. to underwrite the sale of the Bonds, subject to its normal underwriting review;

NOW, THEREFORE, BE IT RESOLVED:

Section 1. Title of Resolution.

This Resolution shall be known and cited as the Sussex County Cadbury at Lewes Project Resolution.

Section 2. Approval of Project; Legislative Findings.

The County 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 findings that:

(a) the Project is eligible for financial assistance and the financing thereof will accomplish the public purposes contemplated by the Ordinance;

(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 Borrower to obtain efficient and cost-effective financing thereby enhancing the ability of the Borrower to accomplish the aforesaid public purposes in the County; and

(d) the Bonds will be special limited obligations of the County and the County does not pledge its general credit or taxing power to the payment thereof, but such Bonds shall be payable solely and exclusively from Revenues as specified in Section 7 of the Ordinance.

Based upon the foregoing findings and determinations and as a substantial inducement to the Borrower 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 Project Resolution shall have the meanings specified herein or in the preamble hereto or, if not otherwise defined herein, as specified in the Ordinance, 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 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 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 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 Costs shall not include raw materials, work in progress, working capital or stock in trade..

Section 4. Authorization.

This Project Resolution is adopted pursuant to the Ordinance.

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 pay a portion of the Costs of the Project, the County shall issue its Economic Development Revenue Bonds (Cadbury at Lewes Project) in a principal amount not to exceed \$45,000,000.

The Bonds shall be issued in one or more series (including bond anticipation notes which may be refunded by permanent financing bonds as long as the total amount of notes and bonds outstanding at any one time may not exceed \$45,000,000). The County Administrator shall approve the form, substance and final terms of the bonds including the maturity dates and amounts, the interest rates, and the redemption provisions. The Bonds shall be issued only as registered bonds in denominations as approved by the County Administrator.

The Bonds shall be special limited obligations of the County and the County does not pledge its general credit or taxing powers to the payment thereof. The Bonds are payable solely and exclusively from and secured by (i) payments received by the County pursuant to one or more loan agreements to be entered into by the County and the Borrower (the "Loan Agreement"); and (ii) a pledge of the moneys held in the funds and accounts established under the Indenture (as defined herein), together with certain investment earnings thereon.

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 loaned to the Borrower to finance the Project as set forth therein, and any other financing documents as the Underwriter (as defined herein) 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 (as defined herein).

Section 10. Authorization of Indenture.

The County shall enter into one or more trust indentures with a financial institution selected by the Borrower and approved by the County Administrator (the "Trustee"), in such form as shall be approved by the County Administrator (the "Indenture"), 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 one or more bond purchase agreements (the "BPA") with the Borrower and Herbert J. Sims & Co., Inc., or such other underwriter as shall be selected by the Borrower and approved by the County Administrator, (the "Underwriter"), in such form as shall be approved by the County Administrator, in order to provide for the initial sale of or placement of the Bonds to or 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 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; 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, the Loan Agreement and the BPA 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 BPA 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, on 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 Preliminary Official Statement and Official Statement.

The County hereby authorizes the distribution by the Underwriter of one or more preliminary official statements (the "Preliminary Official Statement") in such form as shall be approved by the County Administrator setting forth certain information relating to the County, the Borrower, the Project, the Bonds and the security therefor. The County hereby authorizes the distribution by the Underwriter of one or more final official statements (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 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 the information in the Preliminary Official Statement or the Official Statement that has been supplied by sources other than the County.

Section 15. Binding Effect of Covenants and Agreements.

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 BPA 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 authorized herein. The adoption of this Resolution shall not preclude the County from independently considering (and rejecting) any other applications that may be made in connection with the Project (e.g. land use approvals).

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 027 03 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 18TH DAY OF NOVEMBER, 2003.


Robin A. Griffith
Clerk of the County Council

SYNOPSIS: This Resolution authorizes the County to issue Economic Development Revenue Bonds in one or more series in the principal amount not exceeding \$45,000,000 for the benefit of Cadbury at Lewes, Inc. to finance (a) the purchase of land and the construction of a continuing care retirement community expected to contain approximately 84 independent living apartments, approximately 48 independent living cottages, a community center and a health center with approximately 40 skilled nursing beds, approximately 40 assisted living apartments and a wellness center, (b) development and marketing costs, (c) interest on the Bonds and any bond anticipation notes during the construction period and for a temporary start up period thereafter and (d) provisions for reserves and costs of issuing the Bonds ("Project"). Further this Resolution authorizes the County Administrator to approve, execute, cause the County Clerk to seal and to deliver various documents related to the issuance of the Bonds.