

RESOLUTION NO. R 030 02

**A PROJECT RESOLUTION AUTHORIZING THE ISSUANCE OF UP TO \$78,050,000 OF ECONOMIC DEVELOPMENT REVENUE BONDS (AMERICANA BAYSIDE PROJECT) SERIES 2002**

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, Carl M. Freeman Communities, LLC, a Delaware limited liability company (the "Borrower") has requested that the County issue up to \$78,050,000 of its Economic Development Revenue Bonds (the "Bonds") and lend the proceeds of the Bonds to the Borrower and/or to its affiliates including but not limited to Joshua Freeman, Carl M. Freeman Associates, Inc., Carl M. Freeman Golf, LLC, Carl M. Freeman, Retail, LLC and Freeman Realty, LLC.;

WHEREAS, the Borrower and/or its affiliates will use the proceeds of the Bonds to pay a portion of the Costs (as defined herein) for certain capital expenditures of a commercial project at Americana Bayside development, a Residential Planned Community consisting of up to 1700 residential homes, mixed commercial/retail space, hotel uses, an assisted living facility, a medical facility, a volunteer fire department, State Police facilities and a golf course to be constructed on an 862.5 acre site located along both sides of State Route 54 at its intersection with the southwest side of State Route 20, bounded generally on the northeast by Roy Creek and Little Assawoman Bay, on the south by the Delaware State Line, on the west by the subdivision of Sea Country Estates, including lands along both sides of County Roads 394 and 394A, and the northerly side of County Road 395. Such capital expenditures may include the construction of up to 170,000 square feet commercial/retail/office buildings, construction of up to 178,000 square feet of other use buildings (which may include hotels, an assisted living facility and public use buildings, Fire and Police), infrastructure construction and improvements (including an upgrade to Sussex County Pump Station #30, other sewage disposal facilities, sanitary sewer lines, water plant and distribution system, electric distribution system, CNG/LPG distribution system, telephone/data/television system and a storm water management system) (the "Americana Bayside Project" or 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, the County has received the commitment of Legg Mason Wood Walker, 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 Americana Bayside 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 (Americana Bayside Project) Series 2002 in a principal amount not to exceed \$78,050,000 (exclusive of original issue discount).

The Bonds shall be issued in one or more series, shall mature on the dates and in the amounts set forth in the Indenture (as defined herein), shall bear interest at rates of interest set forth in the Indenture (not to exceed 9% per annum), and shall be subject to the redemption provisions set forth in the Indenture. The Bonds shall be issued only as registered bonds in denominations as set forth in the Indenture.

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 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 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 the loan agreement 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, 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.

The Bonds shall mature no later than 35 years from the date of issuance.

**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 a Trust Indenture 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 a Bond Purchase Agreement (the "BPA") with the Borrower and Legg Mason Wood Walker, 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 a preliminary official statement (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 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 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.

**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 030 02 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 12TH DAY OF NOVEMBER 2002.

  
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Robin A. Griffith  
Clerk of the County Council