

COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND

BILL NO. 2008-05

AN ACT concerning

Swan Point Special Obligation Bonds

FOR the purpose of providing for the issuance of special obligation bonds in an amount not exceeding \$38,000,000 for the purpose of financing public infrastructure improvements; providing for the method and sources of payment for these special obligation bonds; authorizing the President of the County Commissioners of Charles County to specify, prescribe, determine, provide for and approve the details, forms, documents or procedures in connection with the special obligation bonds and any other matters necessary or desirable in connection with the authorization, issuance, sale and payment of these special obligation bonds; and generally relating to the issuance and payment of special obligation bonds.

Recitals

Article 41, Sections 14-201 through 14-214, inclusive, of the Annotated Code of Maryland, as amended (the "Tax Increment Financing Act") authorizes the County Commissioners of Charles County (the "County") to establish a "development district" (as defined in the Tax Increment Financing Act) and a special tax increment fund into which the revenues and receipts from the real property taxes representing the levy on the "tax increment" (as defined in the Tax Increment Financing Act) for the development district are deposited, for the purpose of providing funds for the development of the development district.

Pursuant to a Resolution adopted prior to or simultaneously with this Ordinance (the "Economic Development District Resolution"), the County has:

- (i) designated the Swan Point Economic Development District (the "Economic Development District");
- (ii) created the Swan Point Economic Development District Tax Increment Fund;
- (iii) provided that until special obligation bonds issued with respect to the Economic Development District have been fully paid, the property taxes on real property in the Economic Development District shall be divided as provided in the Tax Increment Financing Act; and
- (iv) made other findings and determinations with respect to the Economic Development District.

Article 24, Section 9-1301 of the Annotated Code of Maryland, as amended (the "Special Taxing District Act") authorizes the County to establish a "special taxing district" (as defined in the Special Taxing District Act) and a special fund into which the special taxes levied in the

special taxing district are deposited, for the purpose of providing financing, refinancing, or reimbursement for the cost of infrastructure improvements.

Pursuant to a Resolution adopted prior to or simultaneously with this Ordinance (the "Special Taxing District Resolution"), the County has:

- (i) designated the Swan Point Special Taxing District (the "Special Taxing District");
- (ii) created the Swan Point Special Taxing District Special Fund;
- (iii) authorized the levy of a special tax on all taxable real property within the Special Taxing District; and
- (iv) made certain other findings and determinations with respect to the Special Taxing District.

The Tax Increment Financing Act authorizes the County, subject to certain requirements, to borrow money by issuing and selling bonds for the purpose of financing and refinancing the development of an industrial, commercial or residential area in the County.

The Special Taxing District Act authorizes the County, subject to certain requirements, to borrow money by issuing and selling bonds for the purpose of providing financing, refinancing, or reimbursement for the cost of infrastructure improvements.

The County wishes to authorize the issuance of special obligation bonds to provide funds for the development of public infrastructure improvements relating to the development of a resort hotel, conference center, spa and other commercial development within the waterfront planned community known as "The Villages at Swan Point" in the Economic Development District and the Special Taxing District.

SECTION 1. BE IT ENACTED BY THE COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND, that the Laws of Charles County, Maryland read as follows:

BOND AUTHORIZATION FOR

SWAN POINT SPECIAL OBLIGATION BONDS

Section 1. For the purposes of this Ordinance, the following terms have the meanings indicated:

(b) "Acts" means the Tax Increment Financing Act and the Special Taxing District Act.

(c) "Board" means the Board of County Commissioners of Charles County.

(d) "Bond" means any bond, note, or other similar instrument issued by the County under the Acts secured by the Tax Increment Revenues and/or the Special Tax Revenues, including without limitation, the bonds authorized by Section 3 of this Ordinance.

(e) "County Expenses" means

(1) the fees and expenses of any fiscal agent or trustee employed by the County in connection with the Bonds;

(2) the expenses of the County in carrying out its duties under the Indenture, including:

(i) the expenses incurred in levying and collecting the Special Tax;

(ii) the expenses incurred in complying with arbitrage rebate requirements and obligated person disclosure requirements associated with applicable federal and state securities law, including the costs of any employees of the County and fees of any professionals retained by the County to provide these services; and

(iii) all other costs and expenses of the County, the bond trustee and the administrator incurred in connection with the discharge of their duties under the Indenture, including legal expenses associated with those duties, and in any way related to the administration of the Special Taxing District.

(f) "Economic Development District" means the Swan Point Economic Development District.

(g) "Includes" or "including" means by way of illustration and not by way of limitation.

(h) "Indenture" means the indenture under which the Bonds are issued.

(i) "Infrastructure Improvements" means the following public infrastructure improvements constructed in accordance with all required County approvals:

- (1) the design and construction of new roads, and the widening of existing roads, including removal of existing paving, new paving and installation of curbs, gutters, sidewalks, lighting, landscaping, and utilities (including storm water management, storm drain, and traffic signal work);
- (2) the design and construction of a bridge over Weir Creek, including sidewalks, lighting, landscaping, shoreline stabilization and utilities (including storm water management, storm drain, and traffic signal work);
- (3) the design and installation of a new sanitary sewer vacuum station;
- (4) the design and installation of a new water tank;
- (5) the design, construction and installation of breakwaters, sills and revetments to provide shoreline stabilization in connection with the

construction of the infrastructure improvements described in paragraph (1); and

(6) the acquisition, construction, renovation and development of other related public infrastructure improvements that are necessary for the completion of these infrastructure improvements for their intended public purposes.

(j) "President" means the President of the County Commissioners of Charles County.

(k) "Rate and Method" means the Rate and Method of Apportionment of the Special Taxes attached to the Special Taxing District Resolution as Exhibit 2.

(l) "Special Tax" means the special tax authorized to be levied and collected in the Special Taxing District by the Special Taxing District Resolution.

(m) "Special Tax Fund" means the Swan Point Special Tax Fund.

(n) "Special Tax Revenues" means the revenues and receipts from the Special Tax, including amounts deposited in the Special Tax Fund and any other fund into which all or any of these revenues and receipts are deposited.

(o) "Special Taxing District" means the Swan Point Special Taxing District.

(p) "Special Taxing District Act" means Article 24, Section 9-1301 of the Annotated Code of Maryland, as amended.

(q) "Special Taxing District Resolution" means the Resolution of the Board designating the Special Taxing District.

(r) "Tax Increment" means for any Tax Year, the amount by which the assessable base (as defined in the Tax Increment Resolution) as of January 1 preceding that Tax Year exceeds the original taxable value (as defined in the Tax Increment Resolution), divided by the assessment ratio (as defined in the Tax Increment Resolution) used to determine the original taxable value.

(s) "Tax Increment Financing Act" means Article 41, Sections 14-201 through 14-214, inclusive, of the Annotated Code of Maryland, as amended .

(t) "Tax Increment Fund" means the Swan Point Economic Development District Tax Increment Fund.

(u) "Tax Increment Resolution" means the Resolution of the Board designating the Economic Development District.

(v) "Tax Increment Revenues" means the revenues and receipts from the taxes representing the levy on the Tax Increment that would normally be paid to the County, including

amounts deposited in the Tax Increment Fund or any other fund into which all or any part of these revenues and receipts are deposited.

(w) "Tax Year" means the period from July 1 of a calendar year through June 30 of the next calendar year.

Section 2. The County finds and determines that the issuance of Bonds from time to time for the purpose of providing funds to finance the Infrastructure Improvements:

(1) accomplishes the purposes of the Acts;

(2) serves public purposes, including the direct and indirect enhancement of the taxable base of the County and the facilitation of planned improvements to the waterfront planned community known as "The Villages at Swan Point";

(3) provides an economic development benefit to the County; and

(4) generally promotes the health, welfare, and safety of the residents of the State of Maryland and of the County.

Section 3. (a) Bonds may be issued from time to time in one or more series in an aggregate principal amount not to exceed \$38,000,000.

(b) The proceeds of the Bonds may be utilized solely for the following purposes, as the President determines pursuant to Section 9 of this Ordinance:

(1) to finance all or part of the costs of the Infrastructure Improvements;

(2) to establish a debt service reserve fund for the Bonds;

(3) to fund capitalized interest on the Bonds;

(4) to pay County Expenses; and

(5) to pay costs and expenses of issuing the Bonds.

(c) The Bonds may be issued pursuant to the provisions of an Indenture at any time or from time to time in one or more issues or series. Each issue or series of the Bonds shall be identified by the year of issue or by other designation.

Section 4. (a) The Tax Increment Revenues are pledged to the payment of the principal of and interest on the Bonds. The Tax Increment Revenues may also be pledged by the County to the payment of additional Bonds, subject to the provisions of the Indenture.

(b) If any Bonds are outstanding, the Tax Increment Revenues may not be used for the purposes set forth in Section 6 of the Tax Increment Resolution unless the amount in the Tax Increment Fund exceeds:

(1) the debt service payable on the Bonds in that fiscal year and any debt service payable on the Bonds in any prior fiscal year that remains unpaid;

(2) the amount required to replenish any debt service reserve fund established for the Bonds; and

(3) the amount of County Expenses due and payable and to become due and payable in that fiscal year.

Section 5. (a) Provision may be made for municipal bond insurance or any other type of financial guaranty of the Bonds.

(b) The Bonds may be secured, as the President determines under Section 9 of this Ordinance, through:

(1) the establishment of debt service reserve funds;

(2) the establishment of additional sinking funds; or

(3) the pledge of other assets and revenues toward the payment of the principal and interest on the Bonds.

(c) The Bonds are special obligations of the County. They do not constitute a general obligation debt of the County or a pledge of the County's full faith and credit or taxing power.

Section 6. The Bonds will be payable:

(a) first, from capitalized interest and any other available amount in the funds and accounts created by the Indenture;

(b) second, from the Tax Increment Revenues; and

(c) third, to the extent the Tax Increment Revenues are not sufficient to pay debt service on the Bonds, to replenish any debt service reserve fund for the Bonds, and to pay County Expenses, from the Special Tax Revenues.

Section 7. (a) No Special Tax shall be levied unless the Tax Increment Revenues are not sufficient to pay debt service on the Bonds, to replenish any debt service reserve fund for the Bonds, and to pay the County Expenses. The amount of the Special Tax required to be levied in any Tax Year to provide for the payment of County Expenses may be reduced to the extent that amounts are held under the Indenture and are available for the payment of County Expenses in that Tax Year.

(b) The County covenants to levy the Special Tax, in accordance with the Rate and Method, up to the maximum special tax provided in the Rate and Method, at a rate and amount at least sufficient to pay the principal of and interest on the Bonds, to replenish any debt service reserve fund for the Bonds and to pay County Expenses, to the extent capitalized interest

and other amounts available under the Indenture, the Tax Increment Revenues, and any amounts in the Special Tax Fund are insufficient. The Special Tax also may be levied with respect to refunding bonds issued under the Special Taxing District Act without notice to or the consent of the property owners in the Special Taxing District, so long as the maximum special tax to be levied on any class of property within the Special Taxing District pursuant to the Rate and Method is not increased.

(c) The Special Tax Revenues are pledged to the payment of the principal of and interest on the Bonds. The Special Tax Revenues may also be pledged by the County to the payment of additional Bonds issued by the County, subject to the provisions of the Indenture, including refunding bonds described in paragraph (b) above.

Section 8. (a) The Bonds shall be executed in the name of the County and on its behalf by the President, by manual or facsimile signature. The corporate seal of the County or a facsimile of it shall be impressed or otherwise reproduced on the Bonds and attested by the Clerk to the Board by manual or facsimile signature.

(b) Each of the following documents shall be executed in the name of the County and on its behalf by the President, by manual signature and, if necessary, the corporate seal of the County or a facsimile of it shall be impressed or otherwise reproduced on the documents and attested by the Clerk to the Board, by manual signature:

(1) the Indenture to be entered into between the County and a trustee to be selected;

(2) the acquisition and funding agreement(s) to be entered into among the County, any other governmental entity, if necessary, and the developer(s) of the Economic Development District to provide for the construction by the developer(s) of the Infrastructure Improvements; and

(3) any other documents the President considers necessary for the issuance, sale and delivery of the Bonds.

(c) If any officer whose signature or countersignature or a facsimile of whose signature or countersignature appears on the Bonds or any other document ceases to be an officer before the delivery of the Bonds or any other document, the signature or countersignature or the facsimile shall nevertheless be valid and sufficient for all purposes, as if the officer had remained in office until delivery.

(d) The President, the County Administrator, Director of Fiscal and Administrative Services, the Clerk to the Board, the Treasurer, and other officials of the County are authorized and empowered to do all acts and things and execute all documents and certificates as the President determines to be necessary to carry out the provisions of this Ordinance, subject to the limitations set forth in the Acts, the Tax Increment Resolution, the Special Taxing District Resolution, and this Ordinance.

Section 9. The President shall specify and prescribe by executive order or otherwise any of the following as it deems appropriate to finance the infrastructure improvements:

- (1) the principal amount of the Bonds to be issued;
- (2) the rate or rates of interest the Bonds are to bear, which shall not exceed eight and one-half percent (8.5%) per annum, or the method for determining the same;
- (3) the manner in which and the terms upon which the Bonds are to be sold;
- (4) the manner in which and the times and places that the interest on the Bonds is to be paid;
- (5) the time or times that the Bonds may be executed, issued, and delivered;
- (6) the form and tenor of the Bonds and the denominations in which the Bonds may be issued;
- (7) the manner in which and the times and places that the principal of the Bonds is to be paid, within the limitations set forth in the Acts;
- (8) provisions pursuant to which any or all of the Bonds may be called for redemption prior to their stated maturity dates;
- (9) the terms and provisions of any Indenture, development agreement(s) or other documents to be executed by or on behalf of the County and any person in connection with the issuance of the Bonds, including, provisions providing for additional security for the Bonds;
- (10) provisions establishing sinking funds or debt service reserve funds for the Bonds;
- (11) provisions pledging other assets and revenues towards the payment of the principal of and interest on the Bonds;
- (12) provision for municipal bond insurance or any other type of financial guaranty of the Bonds; and
- (13) any other provisions not inconsistent with the Acts, the Tax Increment Resolution, the Special Taxing District Resolution, this Ordinance and other applicable law as the President determines to be necessary or desirable to finance the Infrastructure Improvements.

Section 10. (a) Before the Bonds are issued, the County shall record among the Land Records of the County, at the cost of the Special Taxing District, a declaration that:

- (1) encumbers all real property located in the Special Taxing District, except for property exempt by law or the Special Taxing District Resolution; and
- (2) designates that property as subject to the Special Taxing District.

(b) The declaration shall terminate when the County records a release stating that all Bonds are fully repaid or have been defeased.

Section 11. (a) This Section 11 applies to Bonds issued and sold on the basis that the interest on the Bonds will be excludable from gross income for federal income tax purposes. Notwithstanding anything in this Ordinance to the contrary, Bonds may be issued and sold on the basis that the interest on them will not be excludable from gross income for federal income tax purposes.

(b) The County covenants that it will take, or refrain from taking, any and all actions necessary to comply with the provisions of § 103 and §§ 141 through 150, inclusive, of the Internal Revenue Code of 1986, as amended, applicable to the Bonds in order to preserve the status of the interest on the Bonds as excluded from gross income for federal income tax purposes.

(c) Without limiting the generality of subsection (b), the County:

(1) will not use or permit the use of any of the proceeds of the Bonds in any manner that would cause the interest on the Bonds to be included in gross income for federal income tax purposes;

(2) periodically will determine the rebate amount and timely pay any rebate amount or installment of any rebate amount, to the United States of America; and

(3) will prepare and timely file Internal Revenue Service Form 8038-G, Information Return for Tax-Exempt Governmental Obligations, or any successor or additional form required by the Internal Revenue Service.

(d) The Director of Fiscal and Administrative Services may prepare, execute and deliver:

(1) a tax regulatory agreement and no arbitrage certificate with respect to the Bonds, in the form the Director of Fiscal and Administrative Services approves; and

(2) any other documents the Director of Fiscal and Administrative Services considers necessary to assure the registered owners of the Bonds that interest on the Bonds will be and remain excludable from gross income for federal income tax purposes.

Section 12. Any approvals, authorizations, or activities provided in this Ordinance do not constitute and may not be deemed to constitute or imply that the County, the Board, or any department, office or agency of the County has given or will give, any approval, authorization or consent to any action or activity within or required for the development of the Economic Development District or the Special Taxing District, including any land use approval, requirements for the provision of public utilities or services, or any other administrative, judicial, quasi-judicial, or legislative approval, authorization or consent.

Section 13. The provisions of this Ordinance are severable. If any provision, sentence, clause, section or other part of this Ordinance is held or determined to be illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, that illegality, invalidity, unconstitutionality, or inapplicability does not affect or impair any of the remaining provisions,

sentences, clauses, sections, or parts of this Ordinance or their application to other persons or circumstances. It is the intent of the County that this Ordinance would have been passed even if the illegal, invalid, unconstitutional, or inapplicable provision, sentence, clause, section, or other part had not been included in this Ordinance, and as if the person or circumstances to which this Ordinance or part are inapplicable had been specifically exempted.

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Section 14. This Act shall take effect on the date it is enacted.

ENACTED, this 25th day of March, 2008.

[Absent for Vote]

Wayne Cooper, President



Edith J. Patterson, Vice President



Reuben B. Collins, II



Samuel N. Graves, Jr.



Gary V. Hodge



Denise Ferguson, Clerk

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