

INTRODUCED July 6, 2009
PUBLIC HEARING July 20, 2009, July 30, 2009
COUNCIL ACTION July 30, 2009
EXECUTIVE ACTION August 3, 2009
EFFECTIVE DATE August 3, 2009

County Council of
Howard County, Maryland

2009 Legislative Session

Legislative Day No. 8

Resolution No. 64-2009

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION adopted pursuant to the Maryland Economic Development Revenue Bond Act providing for the issuance by Howard County Maryland, of up to \$10,100,000 of its limited obligation bonds and the loan of the proceeds thereof to Glen Mar United Methodist Church to be used to finance and/or refinance (1) costs of constructing and equipping by Glen Mar United Methodist Church of a facility in the County to be located at 4701 New Cut Road, Ellicott City, Maryland, and (2) costs of issuance and other related costs; reserving certain rights; providing for the issuance of bond anticipation notes for such purposes; authorizing the County Executive to specify, prescribe, determine, provide for or approve certain matters, details, documents or procedures; and specifying and describing various matters in connection therewith.

By the Council, July 6, 2009

Introduced and read first time.

Public Hearings July 20, 2009 and July 30, 2009
Stephen M LeGendre

By Order, Stephen M LeGendre
Stephen LeGendre,
Administrator

ADOPTED:

By the Council, July 30, 2009

Certified, Stephen M LeGendre
Stephen LeGendre,
Administrator

APPROVED: August 3, 2009

Ken Ulman
Ken Ulman,
County Executive

NOTE: Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Recitals**

2 The Maryland Economic Development Revenue Bond Act, Sections 12-101 to 12-
3 118, inclusive, of the Economic Development Article of the Annotated Code of Maryland
4 (the "Act"), provides that in order to accomplish the legislative policy of the Act, in addition
5 to whatever other powers it may have and notwithstanding any limitation of law, any public
6 body (as defined in the Act) may issue and sell its bonds (as defined in the Act), as its
7 limited obligations and not upon its faith and credit or pledge of its taxing power, at any
8 time and from time to time, to finance or refinance the costs of the acquisition or
9 improvement (as defined in the Act) of a facility (as defined in the Act) for a facility user (as
10 defined in the Act) or to refund outstanding bonds, to pay the necessary expenses of
11 preparing, printing, selling, and issuing those bonds, to fund reserves, and to pay interest on
12 the bonds in the amount and for the period the public body deems reasonable.

13 The General Assembly of the State of Maryland (the "State"), in the Act, declares its
14 legislative purpose to:

- 15 (1) relieve conditions of unemployment in the State;
- 16 (2) encourage the increase of industry and commerce and a balanced
17 economy in the State;
- 18 (3) assist in the retention of existing industry and commerce in, and in
19 the attraction of new industry and commerce to the State through, among other things, the
20 development of ports, the control, reduction, or abatement of pollution of the environment
21 and the use and disposal of waste;
- 22 (4) promote economic development;
- 23 (5) protect natural resources and encourage resource recovery; and
- 24 (6) generally promote the health, welfare, and safety of the residents of
25 the State.

26 The Act provides that a public body may acquire or improve a facility with bond
27 proceeds:

- 1 (1) by leasing the facility to a facility user;
- 2 (2) by selling the facility to a facility user under an installment sale
- 3 agreement;
- 4 (3) by lending bond proceeds to a facility user to be used to finance or
- 5 refinance a facility; or
- 6 (4) in any other manner as the public body deems appropriate to
- 7 accomplish the purposes of the Act.

8 The Act provides that to implement the authority conferred upon it by the Act to

9 issue bonds, the legislative body of any county or municipal corporation, or the board of

10 directors of any authority (as defined in the Act), may adopt a resolution that:

- 11 (1) specifies and describes the facility;
- 12 (2) generally describes the public purpose to be served and the financing
- 13 or refinancing transaction;
- 14 (3) specifies the maximum principal amount of bonds that may be
- 15 issued; and
- 16 (4) impose terms or conditions on the issuance and sale of the bonds it
- 17 considers appropriate.

18 The Act provides that the legislative body of a county or municipal corporation, the

19 board of directors of an authority, or the Maryland Industrial Development Financing

20 Authority, by resolution may itself specify and prescribe, or may authorize:

- 21 (1) a finance board (as defined in the Act), which shall act by resolution;
- 22 or
- 23 (2) its chief executive (as defined in the Act), who shall act by executive
- 24 order or otherwise; or
- 25 (3) any other appropriate administrative officer, who shall act by order
- 26 or otherwise with the approval of its chief executive, to

1 (a) specify, determine, prescribe and approve matters, documents and
2 procedures that relate to the authorization, sale, security, issuance, delivery and payment of
3 or for the bonds;

4 (b) create security for the bonds;

5 (c) provide for the administration of bond issues through trust or
6 other agreements with a bank or trust company that cover a countersignature on a bond, the
7 delivery of a bond, or the security for a bond; and

8 (d) take other action it considers appropriate concerning the bonds.

9 Howard County, Maryland, a body politic and corporate and a county of the State of
10 Maryland (the "County") received a letter of intent dated May 27, 2009 (the "Letter of
11 Intent"), from Glen Mar United Methodist Church, a Maryland non-stock, non-profit
12 corporation (the "Facility Applicant"), pursuant to which the Facility Applicant requested
13 the County to issue and sell the County's bonds (defined in the Act), as its limited
14 obligations and not upon its faith and credit or pledge of its taxing power, at any time or
15 from time to time and in one or more series, in an aggregate principal amount not to exceed
16 \$10,100,000, pursuant to and in accordance with the Act, for the purpose of (1) financing
17 and refinancing all or a portion of the cost of construction and equipping of a facility located
18 within the geographical borders of the County (the "Facility"), and (2) paying costs of
19 issuance and other costs related to the transaction. The Facility is and will be located on the
20 approximately 22 acre parcel of land owned by the Facility Applicant at 4701 New Cut
21 Road, in Ellicott City, Maryland (the "Land").

22 The Letter of Intent indicates that the acquisition, construction and equipping of the
23 Facility will consist of and include:

24 (a) construction on the Land of an approximately 33,000 square foot steel and
25 masonry building containing a multipurpose room, class rooms, office space and a kitchen;

1 (b) construction on the Land of an approximately 22,000 square foot masonry and
2 steel building including office space and classrooms;

3 (c) acquisition and installation of necessary or useful furnishings, equipment, and
4 machinery; and

5 (d) acquisition of such interests in land as may be necessary or suitable for the
6 foregoing, including roads and rights of access, utilities and other necessary site
7 preparation facilities.

8 The Letter of Intent states that the Facility Applicant intends to operate a preschool
9 and provides or intends to provide before-and after-school care, day care, summer camps,
10 and other programs at the Facility.

11 The Letter of Intent further expresses the Facility Applicant's intention that the
12 interest payable on such bonds will be excludible from the gross income of the owners
13 thereof for purposes of federal income taxation pursuant to Sections 103 and 145 of the
14 Internal Revenue Code of 1986, as amended (the "Code").

15 The construction of the existing building described in item (a) above was financed
16 with a loan from The Columbia Bank (the "Bank"), and the Bank has issued a commitment
17 letter to provide a loan to the Facility Applicant to finance the construction of the building
18 described in item (b) above.

19 The County, based upon the findings and determinations and subject to the
20 reservation of certain rights, all as set forth below, has determined to issue, sell and deliver,
21 at any time or from time to time and in one or more series, its bonds (as defined in the Act)
22 in an aggregate principal amount not to exceed \$10,100,000 (the "Bonds"), and to lend the
23 proceeds of the Bonds of each series to the Facility Applicant upon the terms and conditions
24 of one or more loan agreements (each, a "Loan Agreement") to be entered into between the

1 County and the Facility Applicant, such proceeds to be used by the Facility Applicant for the
2 purpose of (1) financing and refinancing a portion of the costs of acquisition, construction
3 and equipping of the Facility and (2) paying costs of issuance and other costs related to the
4 transaction.

5 **Now, therefore, in accordance with the Act:**

6 **Section 1. Be it resolved by the County Council of Howard County, Maryland,**
7 **That the words and terms used in this Resolution (including the Recitals set forth above) that**
8 **are defined in the Act shall have the meanings indicated in the Act, unless the context**
9 **clearly requires a contrary meaning.**

10 **Section 2. And be it further resolved by the County Council of Howard**
11 **County, Maryland, That acting pursuant to the Act, it is hereby found and determined as**
12 **follows:**

13 (1) The County is a "public body" and a "county" within the meaning of
14 the Act.

15 (2) The Facility Applicant is a "facility applicant" and will be a "facility
16 user" within the meaning of the Act.

17 (3) The Facility is a "facility" within the meaning of the Act.

18 (4) The County Executive of the County (the "County Executive") is the
19 "chief executive" of the County within the meaning of the Act.

20 (5) The word "bonds," as defined in the Act, includes bond anticipation
21 notes issued in anticipation of the issuance and sale of bonds.

22 (6) The issuance and sale of the Bonds by the County, pursuant to the
23 Act, for the sole and exclusive purpose of (a) financing and/or refinancing the costs (to the
24 fullest extent permitted by the Act) of the acquisition, construction and equipping of the
25 Facility and (b) paying costs of issuance and other costs related to the transaction will

1 facilitate the financing and/or refinancing of the acquisition, construction and equipping of
2 the Facility.

3 (7) The acquisition, construction and equipping of the Facility and the
4 financing and refinancing thereof as provided in this Resolution will promote the declared
5 legislative purposes of the Act by (a) assisting in the retention of existing industry and
6 commerce and in the attraction of new industry and commerce in the State and in Howard
7 County; (b) promoting economic development in the State and in Howard County; and (c)
8 generally promoting the health, welfare and safety of the residents of the State and Howard
9 County.

10 (8) The Bonds of any series and the interest on them are limited
11 obligations of the County the principal of, premium, if any, and interest on which are
12 payable solely (except for bond anticipation notes) from revenues to be received in
13 connection with the financing and refinancing of the Facility or from any other moneys
14 made available to the County for such purpose. Neither the Bonds of any series nor the
15 interest thereon shall ever constitute an indebtedness or a charge against the general credit or
16 taxing powers of the County within the meaning of any constitutional or charter provision or
17 statutory limitation and neither shall ever constitute or give rise to any pecuniary liability of
18 the County.

19 (9) Neither the proceeds of the Bonds of any series nor the payments of
20 the principal of and premium, if any, and interest on the Bonds of any series will be
21 commingled with the County's funds or will be subject to the absolute control of the County,
22 but will be subject only to such limited supervision and checks as are deemed necessary or
23 desirable by the County to ensure that the proceeds of the Bonds of any series are used to
24 accomplish the public purposes of the Act and this Resolution. The transactions provided for
25 hereby do not constitute any physical public betterment or improvement or the acquisition of
26 property for public use or the purchase of equipment for public use. The public purposes

1 expressed in the Act are to be achieved by facilitating the financing and refinancing of the
2 costs of the acquisition, construction and equipping of the Facility.

3 **Section 3. And be it further resolved by the County Council of Howard**
4 **County, Maryland, that this Resolution, among other things, evidences the present intent of**
5 **the County to issue, sell and deliver the Bonds in accordance with the terms and provisions**
6 **of this Resolution. The County Executive of the County is hereby authorized, empowered,**
7 **and directed to accept the Letter of Intent on behalf of the County in order to further**
8 **evidence the intent of the County to issue and sell the Bonds in accordance with the terms**
9 **and provisions of this Resolution.**

10 **Section 4. And be it further resolved by the County Council of Howard**
11 **County, Maryland, That the County shall issue, sell and deliver the Bonds, at any time or**
12 **from time to time and in one or more series, in an aggregate principal amount not to exceed**
13 **\$10,100,000, subject to the provisions of this Resolution. The County will lend the**
14 **proceeds of the Bonds of any series to the Facility Applicant pursuant to the terms and**
15 **provisions of a Loan Agreement, to be used by the Facility Applicant for the purpose of (1)**
16 **financing and refinancing all or a portion of the cost of acquisition, construction and**
17 **equipping of the Facility and (2) funding costs of issuance of the Bonds, reserves,**
18 **capitalized interest on the Bonds and other costs related to the transaction.**

19 Any Loan Agreement entered into with respect to the Bonds of any series will
20 require that (1) the proceeds of the Bonds be used solely to (a) finance and/or refinance all
21 or a portion of the cost of acquisition, construction and equipping of a facility located within
22 the geographical borders of the County (the "Facility") and (b) pay costs of issuance and
23 other costs related to the transaction, and (2) the Facility Applicant makes, or cause to be
24 made, payments which will be sufficient to enable the County to pay the principal of and
25 interest and premium, if any, on the Bonds when and as the same become due and payable.

26 The Facility is specified and described in the Recitals set forth above. The public
27 purpose to be served by the issuance and sale of the Bonds is described in Section 2 of this

1 Resolution, in this Section and in the Recitals set forth above. The maximum principal
2 amount of the Bonds that may be issued is \$10,100,000, provided that bond anticipation
3 notes may be issued and sold as provided in Section 6 of this Resolution.

4 **Section 5. And be it further resolved by the County Council of Howard**
5 **County, Maryland, That the County reserves the right, in its sole and absolute discretion, to**
6 **take any actions deemed necessary by the County in order to ensure that the County (1)**
7 **complies with present federal and State laws and any pending or future federal or State**
8 **legislation, whether proposed or enacted, which may affect or restrict the issuance of private**
9 **activity bonds, and (2) issues its private activity bonds, within the limits imposed by such**
10 **present laws or any such pending or future legislation or any future local laws, to finance**
11 **those facilities which the County determines, in its sole and absolute discretion, will provide**
12 **the greatest benefit to the residents of the County and the State.**

13 Pursuant to the provisions of this Section 5, the County reserves the right in its sole
14 and absolute discretion, to, among other things, (1) never issue the Bonds, (2) issue only a
15 portion of the aggregate principal amount of the Bonds required by the Facility Applicant,
16 (3) restrict the use of the proceeds of the Bonds, (4) delay indefinitely the issuance of the
17 Bonds, or (5) take any other actions deemed necessary by the County, in its sole discretion,
18 in order to ensure that the County achieves the goals set forth in the Act and in this
19 Resolution.

20 **Section 6. And be it further resolved by the County Council of Howard**
21 **County, Maryland, That, as permitted by the Act, the provisions set forth in this Resolution**
22 **for the issuance and sale of the Bonds are intended and shall be deemed to include**
23 **provisions for the issuance and sale of bond anticipation notes without the adoption of any**
24 **further resolution or other action by the legislative body of the County. Accordingly, the**
25 **words "bonds" and "Bonds," as used in this Resolution, shall include such bond anticipation**
26 **notes, unless the context clearly requires a contrary meaning. At no time shall the aggregate**
27 **principal amount of any bond anticipation notes exceed the amount set forth in Section 4 of**

1 this Resolution. It is intended that the aggregate principal amount of issued and outstanding
2 bond anticipation notes when added to the aggregate principal amount of issued and
3 outstanding Bonds in anticipation of which such notes were issued, shall not exceed the
4 aggregate principal amount set forth in Section 4 of this Resolution at any time. The County
5 will agree to pay any bond anticipation notes issued pursuant to this Resolution and the
6 interest and premium, if any, thereon from the proceeds of the Bonds in anticipation of the
7 sale of which such notes are issued, and the County will agree to issue such Bonds when,
8 and as soon as, the reason for deferring the issuance of the Bonds no longer exists. The
9 timely issuance of such Bonds, however, is dependent upon matters not within the control of
10 the County, including (without limitation) the existence of a purchaser or purchasers for
11 such Bonds at the time the reason for deferring the issuance of the Bonds no longer exists
12 and the effectiveness of various actions taken by the Facility Applicant, their officers, agents
13 and employees.

14
15 **Section 7. And be it further resolved by the County Council of Howard**
16 **County, Maryland, That the Bonds may be issued at any time or from time to time and in**
17 **one or more series, and each series of the Bonds shall be identified by the year of issue or by**
18 **some other or additional appropriate designation; provided, however, that the Bonds must be**
19 **issued within one year from the effective date of this Resolution as set forth in Section 13**
20 **hereof. The provisions in this Resolution providing for the issuance of the Bonds shall**
21 **expire with respect to Bonds which have not been issued within such period, unless, either**
22 **prior to or after such provisions expire, the County Council of Howard County, Maryland**
23 **adopts, and the County Executive approves, a resolution supplemental hereto, which extends**
24 **the period of time during which the Bonds may be issued.**

1 **Section 8. And be it further resolved by the County Council of Howard**
2 **County, Maryland, That the Bonds shall be executed in the name of the County and on its**
3 **behalf by the County Executive, by his manual or facsimile signature, and by the Director of**
4 **Finance of the County, by her manual or facsimile signature, and the corporate seal of the**
5 **County or a facsimile thereof shall be impressed or otherwise reproduced thereon and**
6 **attested by the Chief Administrative Officer of the County, by his manual or facsimile**
7 **signature. At least one signature required or permitted to be placed on the Bonds must be**
8 **manually subscribed. If the Bonds are required to be manually signed by a trustee, issuing**
9 **agent, fiscal agent, registrar, or other agent or custodian, any other signature required or**
10 **permitted to be placed on the Bonds may be executed by facsimile. Any Loan Agreement**
11 **and, where applicable, all other documents as the County Executive deems necessary to**
12 **effectuate the issuance, sale and delivery of the Bonds of any series, shall be executed in the**
13 **name of the County and on its behalf by the County Executive by his manual signature, and**
14 **the corporate seal of the County or a facsimile thereof shall be impressed or otherwise**
15 **reproduced thereon and attested by the Chief Administrative Officer of the County by his**
16 **manual signature. The County Executive, the Director of Finance of the County, the Chief**
17 **Administrative Officer of the County and other officials of the County are hereby authorized**
18 **and empowered to do all such acts and things and execute such documents and certificates**
19 **as the County Executive may determine to be necessary to carry out and comply with the**
20 **provisions of this Resolution, subject to the limitations set forth in the Act and any**
21 **limitations set forth in this Resolution. If any officer whose signature or countersignature or**
22 **a facsimile of whose signature or countersignature appears on the Bonds of any series or any**
23 **of the aforesaid documents ceases to be such officer before the delivery of the Bonds of such**

1 series or any of the other aforesaid documents, such signature or countersignature or such
2 facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such
3 officer had remained in office until delivery.

4 **Section 9. And be it further resolved by the County Council of Howard**
5 **County, Maryland, That, as permitted by the Act, the Bonds of any series shall be sold at**
6 **private (negotiated) sale and at par, unless the County Executive deems it to be in the best**
7 **interests of the County to sell the Bonds of any series at public sale or above or below par, in**
8 **either or both of which events, the Bonds of such series shall be sold in such manner and**
9 **upon such terms as the County Executive deems to be in the best interests of the County.**

10 **Section 10. And be it further resolved by the County Council of Howard**
11 **County, Maryland, That prior to the issuance, sale and delivery of the Bonds of any series,**
12 **regardless of the date on which such Bonds are issued, the County Executive, by executive**
13 **order or otherwise:**

14 (1) shall prescribe the form, tenor, terms and conditions of and security
15 for the Bonds of such series;

16 (2) shall prescribe the principal amounts, rate or rates of interest,
17 denominations, date, maturity or maturities (within the limits prescribed in the Act), and the
18 time and place or places of payment of the Bonds of such series, and the terms and
19 conditions and details under which the Bonds of such series may be called for redemption
20 prior to their stated maturities;

21 (3) if necessary, may appoint a trustee, a bond registrar and a paying
22 agent or agents, for the Bonds of such series;

1 (4) shall approve the form and contents of, and execute and deliver
2 (where applicable), the Loan Agreement, and such other documents, including (without
3 limitation) trust agreements, assignments, mortgages, deeds of trust, guaranties and security
4 instruments to which the County is a party and which may be necessary to effectuate the
5 issuance, sale and delivery of the Bonds of such series;

6 (5) may prepare and distribute, in conjunction with representatives of the
7 Facility Applicant and the prospective purchasers or underwriters for the Bonds of any
8 series, both a preliminary and a final official statement in connection with the sale of the
9 Bonds of any series, if such preliminary official statement and final official statement are
10 determined to be necessary or desirable for the sale of the Bonds of such series, provided,
11 however, that any such preliminary official statement shall be clearly marked to indicate that
12 it is subject to completion and amendment;

13 (6) may execute and deliver a contract or contracts for the purchase and
14 sale of the Bonds of any series (or any portion thereof) in form and content satisfactory to
15 the County Executive;

16 (7) shall determine the time of execution, issuance, sale and delivery of
17 the Bonds of such series and prescribe any and all other details of the Bonds of such series;

18 (8) shall determine the method, and approve the terms, of the sale of the
19 Bonds of such series, as provided in Section 9 of this Resolution;

20 (9) shall provide that the Facility Applicant shall pay directly, or cause to
21 be paid, all costs, fees and expenses incurred by or on behalf of the County in connection
22 with the issuance, sale and delivery of the Bonds, including (without limitation) costs of
23 printing (if any) and issuing the Bonds, legal expenses (including the fees of bond counsel)

1 and compensation to any person (other than full-time employees of the County) performing
2 services by or on behalf of the County in connection therewith;

3 (10) may provide for the issuance and sale (subject to the passage at the
4 time of an appropriate resolution authorizing the same) of one or more series of additional
5 bonds and one or more series of refunding bonds;

6 (11) may provide for the funding of reserves for the Bonds, for the
7 payment of working capital, and for the payment of interest on the Bonds in such amounts,
8 or for such period, as the County Executive deems reasonable; and

9 (12) may do any and all things necessary, proper or expedient in
10 connection with the issuance, sale and delivery of the Bonds of such series and in order to
11 accomplish the legislative policy of the Act and the public purposes of this Resolution,
12 subject to the limitations set forth in the Act and any limitations prescribed by this
13 Resolution.

14 **Section 11. And be it further resolved by the County Council of Howard**
15 **County, Maryland, That subsequent to the issuance, sale and delivery of the Bonds of any**
16 **series, regardless of the date on which such Bonds are issued, the County Executive, by**
17 **executive order or otherwise, may execute and approve on behalf of the County any**
18 **amendments to the documents executed on behalf of the County in connection with the**
19 **issuance, sale and delivery of the Bonds pursuant to the provisions of such documents,**
20 **subject to any approval by the County Council as may be required pursuant to federal tax**
21 **law in order to preserve the tax-exempt status of any Bonds the interest on which is intended**
22 **to be excludible from gross income for purposes of federal income taxation.**

1 **Section 12. And be it further resolved by the County Council of Howard**
2 **County, Maryland, That the provisions of this Resolution are severable, and if any**
3 **provision, sentence, clause, section or part hereof is held to be illegal, invalid or**
4 **unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or**
5 **unconstitutionality, or inapplicability shall not affect or impair any of the remaining**
6 **provisions, sentences, clauses, sections, or parts of this Resolution or their application to**
7 **other persons or circumstances. It is hereby declared to be the legislative intent that this**
8 **Resolution would have been passed if such illegal, invalid or unconstitutional provision,**
9 **sentence, clause, section or part had not been included herein, and if the person or**
10 **circumstances to which this Resolution or any part hereof are inapplicable had been**
11 **specifically exempted therefrom.**

12 **Section 13. And be it further resolved by the County Council of Howard**
13 **County, Maryland, That this Resolution shall take effect on the date of its approval by the**
14 **County Executive.**