

INTRODUCED _____
PUBLIC HEARING _____
COUNCIL ACTION _____
EXEC. ACTION _____
EFFECTIVE DATE _____

County Council of Howard County, Maryland

2010 Legislative Session

Legislative Day No. 11

Resolution No. 124 -2010

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

A RESOLUTION for the purpose of authorizing and empowering Howard County, Maryland to issue and sell pursuant to the Maryland Economic Development Revenue Bond Act its Recovery Zone Facility Bonds, Series 2010 B, as its limited obligations and not upon its full faith and credit in the aggregate principal amount of up to \$9,000,000 to be loaned to Merritt Properties, LLC, or such other related entity, for the purposes of financing or refinancing (i) a portion of the costs of the acquisition and construction of an office building in Elkridge, Maryland and (ii) costs of issuance and other related costs; providing that such bonds shall be payable solely from the revenues received from such facility and a deed of trust on the building; providing for the private (negotiated) sale of the bonds; approving the form, manner and tenor of bonds; authorizing the County Executive to specify, prescribe, determine, provide for or approve certain matters, details, documents or procedures; authorizing the establishment of a debt service reserve fund with respect to the bonds; and providing for and determining various matters in connection therewith.

Introduced and read first time _____, 2010. Ordered posted and hearing scheduled.

By order _____
Stephen LeGendre, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2010.

By order _____
Stephen LeGendre, Administrator

This Bill was read the third time on _____, 2010 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Stephen LeGendre, Administrator

Sealed with the County Seal and presented to the County Executive for approval this __day of _____, 2010 at ___ a.m./p.m.

By order _____
Stephen LeGendre, Administrator

Approved by the County Executive _____, 2010.

Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN ALL CAPITALS indicates additions to existing law; ~~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 12-118,
3 inclusive, of the Economic Development Article of the Annotated Code of Maryland, as
4 amended (the "Act"), provides that in order to accomplish the legislative policy of the Act, in
5 addition to whatever other powers it may have and notwithstanding any limitation of law, any
6 public 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 time and
8 from time to time, to finance (as defined in the Act) the costs of the acquisition or improvement
9 (as defined in the Act) of a facility (as defined in the Act) for a facility user (as defined in the
10 Act), to refund outstanding bonds, to pay the costs of preparing, printing, selling, and issuing the
11 bonds, to fund reserves, and to pay the interest on the bonds in the amount and for the period the
12 public body considers 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 economy in the
17 State;
- 18 (3) assist in the retention of existing industry and commerce in, and in the attraction of
19 new industry and commerce to, the State through, among other things, the development
20 of ports, the control or abatement of environmental pollution, and the use and disposal of
21 waste;
- 22 (4) promote economic development;
- 23 (5) protect natural resources and encourage resource recovery; and

1 (6) promote the health, welfare, and safety of the residents of the State.

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

4 (1) by leasing the facility to a facility user;

5 (2) by selling the facility to a facility user under an installment sale agreement;

6 (3) by lending bond proceeds to a facility user to be used to finance a facility; or

7 (4) in any other manner that the public body considers appropriate to accomplish the
8 legislative purposes of the Act.

9 The Act provides that to implement the authority conferred upon it by the Act to issue
10 bonds, the legislative body of a county or municipal corporation, or the board of directors of any
11 authority (as defined in the Act), or the Maryland Industrial Development Financing Authority
12 shall adopt a resolution that:

13 (1) specifies and describes the facility;

14 (2) generally describes the public purpose to be served and the financing transaction;

15 (3) specifies the maximum principal amount of the bonds that may be issued; and

16 (4) imposes terms or conditions on the issuance and sale of the bonds it considers
17 appropriate.

18 The Act provides that the legislative body of a county or municipal corporation, the board
19 of directors of an authority, or the Maryland Industrial Development Financing Authority, by
20 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 (2) its chief executive (as defined in the Act), who shall act by executive order or
23 otherwise; or

1 (3) any other appropriate administrative officer, who shall act by order or otherwise with
2 the approval of its chief executive, to

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

6 (b) create security for the bonds;

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

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

11 Howard County, Maryland (the "County") has been allocated \$18,406,000 in "recovery
12 zone facility bonds" ("Recovery Zone Bond") as defined under Section 1400U-3(b)(1) of the
13 Internal Revenue Code of 1986 (the "Code"), which must be used by the issuance of bonds by
14 the County on or before December 31, 2010. Pursuant to Resolution No. 86-2009 passed by the
15 County Council of the County (the "County Council") and approved by the County Executive of
16 the County (the "County Executive") on November 3, 2009 and Resolution No. 115-2010 passed
17 by the County Council on October ___, 2010 and approved by the County Executive on
18 _____, 2010 (collectively, the "Recovery Zone Resolution") and the requirements of
19 Section 1400U-1(b) of the Code, the County designated a recovery zone (the "Recovery Zone")
20 within the County.

21 Pursuant to the Act, the Charter of the County (the "Charter"), the Recovery Zone
22 Resolution, and the Code, the County is hereby authorized to issue and sell its Howard County,
23 Maryland Recovery Zone Facility Revenue Bonds, 2010 Series B, as a limited obligation of the

1 County and not upon its full faith and credit, in the aggregate principal amount not to exceed
2 \$9,000,000 (the "Bonds") and to lend the proceeds of the Bonds to Merritt Properties, LLC, a
3 State of Maryland limited liability company, or a related entity (the "Borrower"), in order to
4 finance a portion of the costs of the planning, design, acquisition, construction and equipping of
5 an office building as more particularly described in Appendix A attached hereto (the "Project"),
6 which is a project located within the Recovery Zone.

7 **Now therefore, in accordance with the provisions of Article VI of the Charter of**
8 **Howard County, be it enacted by the County Council of Howard County, Maryland, that:**

9 **Section 1.** All terms used herein which are defined in the Recitals hereof shall have the
10 meanings given such terms therein and shall be incorporated herein by reference.

11 **Section 2.** It is hereby found and determined that

12 (1) The County is a "Public body" within the meaning of the Act.

13 (2) The Borrower will be a "Facility applicant" and a "Facility user" within the meaning
14 of the Act.

15 (3) The Project is a "Facility" within the meaning of the Act.

16 (4) The County Executive is the "Chief executive" of the County within the meaning of
17 the Act.

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

20 (6) The issuance and sale of the Bonds by the County, pursuant to the Act, for the sole
21 and exclusive purpose of (a) financing and/or refinancing the costs (to the fullest extent
22 permitted by the Act) of the acquisition and improvement of the Project and (b) paying

1 costs of issuance and other costs related to the transaction will facilitate the financing of
2 the acquisition and improvement of the Project.

3 (7) The acquisition and improvement of the Project and the financing thereof as provided
4 in this Resolution will promote the declared legislative purposes of the Act by (a)
5 assisting in the retention of existing industry and commerce and in the attraction of new
6 industry and commerce in the State and in the County, thereby reducing or preventing
7 unemployment within the State and the County; (b) subjecting new development to
8 current environmental regulations and standards; (c) promoting economic development in
9 the State and in the County; and (d) generally promoting the health, welfare and safety of
10 the residents of the State and the County.

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

19 (9) Neither the proceeds of the Bonds of any series nor the payments of the principal of
20 and premium, if any, and interest on the Bonds of any series will be commingled with the
21 County's funds or will be subject to the absolute control of the County, but will be subject
22 only to such limited supervision and checks as are deemed necessary or desirable by the
23 County to ensure that the proceeds of the Bonds of any series are used to accomplish the

1 public purposes of the Act, the Code and this Resolution. The transactions provided for
2 hereby do not constitute any physical public betterment or improvement or the
3 acquisition of property for public use or the purchase of equipment for public use. The
4 public purposes expressed in the Act are to be achieved by facilitating the financing of
5 the costs of the acquisition and improvement of the Project.

6 **Section 3.** The Project is located in the Recovery Zone. The County hereby allocates up
7 to \$9,000,000 of its Recovery Zone Bond allocation to the issuance of the Bonds pursuant to this
8 Resolution. The County Executive is hereby authorized to reduce or otherwise modify such
9 allocation in an Executive Order. The County Executive is hereby authorized, empowered, and
10 directed to accept a letter of intent on behalf of the County in order to further evidence the intent
11 of the County to issue and sell the Bonds in accordance with the terms of this Resolution.

12 **Section 4.** The County is hereby authorized and empowered to issue and sell, as limited
13 obligations of the County and not upon its full faith and credit, its revenue bonds designated as
14 “Howard County, Maryland, Recovery Zone Facility Revenue Bonds, 2010 Series B” in the
15 aggregate principal amount not exceeding \$9,000,000 the proceeds thereof to be loaned to the
16 Borrower and used to finance the Project, as more particularly described in Appendix A,
17 including without limitation, the cost of planning, design, construction, reconstruction,
18 furnishing, equipping, improvements, renovations, remodeling, enlargements, engineering
19 services, architects services, surveys and related items, appurtenances and incidental activities as
20 allowed under the Code and the Act. Bond proceeds may also be used to fund a debt service
21 reserve fund and pay costs of issuance of such Bonds.

22 **Section 5.** The Bonds and the interest and premium, if any, thereon shall be limited
23 obligations of the County, payable by the County solely from the funds and revenues from or in

1 connection with the Project or with moneys paid under a letter of credit or other credit
2 enhancement arrangement of or with a bank, insurance company or other institution. The Bonds
3 shall not constitute any indebtedness of the County or a pledge of its full faith and credit or its
4 taxing power.

5 **Section 6.** Bonds shall be issued pursuant to a Trust Agreement between the County and
6 a trustee selected by the County (the “Trust Agreement”), the form and substance of which shall
7 be approved by the County Executive in an Executive Order and shall contain any such
8 covenants not inconsistent with the provisions of this Resolution.

9 **Section 7.** The County shall loan to the Borrower the proceeds of the Bonds to finance
10 the Project (the “Loan”). The Loan shall be made and incurred in accordance with the provisions
11 of a loan agreement between the County and the Borrower substantially in the form as approved
12 by the County Executive in an Executive Order (the “Loan Agreement”). To evidence and
13 secure the payment obligations of the Borrower under the Loan Agreement, the Borrower shall
14 execute and deliver to the County or a designated trustee thereof, a Deed of Trust or such other
15 instrument granting a security interest in the property and improvements subject to the Project
16 (the “Deed of Trust”).

17 **Section 8.** The Bonds shall be sold pursuant to a private (negotiated) sale to
18 Manufacturers and Traders Trust Company or such other underwriter as the County Executive
19 shall determine in the Executive Order (the “Underwriter”) at the price and upon the terms and
20 conditions of the Bond Purchase Agreement (the “Bond Purchase Agreement”) between the
21 County and the Underwriter and shall be in the form and shall contain the provisions approved
22 by the County Executive in the Executive Order. The Bonds hereby authorized may be sold for a
23 price at, above or below par, plus accrued interest to the date of delivery.

1 **Section 9.** The Bonds shall in such form and tenor as the County Executive shall
2 approve in the Executive Order. The Bonds shall be signed by the County Executive and the
3 Director of Finance of the County (the “Director of Finance”) by manual or facsimile signature,
4 and shall bear the corporate seal of the County, or a facsimile thereof, attested by the manual or
5 facsimile signature of the Chief Administrative Officer of the County (the “Chief Administrative
6 Officer”), and authenticated by the Trustee for the Bonds. In the event that an officer whose
7 signature shall appear on the Bonds shall cease to be such officer prior to the delivery of the
8 Bonds, such signature shall nevertheless be valid and sufficient for all purposes, the same as if
9 such officer had remained in office until delivery of the Bonds. The form of Bonds shall contain
10 a statement that the Bonds are limited obligations of the County and shall not constitute an
11 indebtedness of the County or a pledge of its full faith and credit or its taxing power.

12 **Section 10.** The payment of the purchase price of the Bonds shall be made to the Trustee
13 and shall be immediately deposited by the Trustee in the funds and accounts established under
14 the Trust Agreement, to be applied as provided in the Trust Agreement.

15 **Section 11.** In the event that the Underwriter requires an offering circular to be prepared
16 in connection with the issuance of the Bonds, the Director of Finance may cause to be prepared a
17 Preliminary Official Statement and an Official Statement (the “Official Statement”),
18 substantially in the form approved by the County Executive in the Executive Order. The County
19 Executive and Director of Finance are hereby authorized to execute, issue, and deliver the
20 Official Statement with the sale of the Bonds and to do all such things as may be necessary or
21 desirable in the opinion of the County Executive in connection therewith.

22 **Section 12.** Subject to and in accordance with the provisions of this Resolution, the
23 County Executive shall determine by Executive Order, for each and every Bond or series of

1 Bonds issued pursuant to and in accordance with this Resolution, all matters relating to the sale,
2 issuance, delivery and payment of the Bonds, including (without limitation) the purposes for
3 which such Bonds are issued, the date or dates of sale of the Bonds, the designation of the
4 Bonds, the date of delivery of the Bonds, the authorized denominations for the Bonds, the
5 redemption provisions, if any, pertaining to the Bonds, the manner of authentication and
6 numbering of the Bonds, the date from which interest on the Bonds shall accrue, the rate or rates
7 of interest borne by the Bonds or the method of determining the same, the interest payment and
8 maturity dates of the Bonds, including provisions for mandatory sinking fund redemption of any
9 term bonds, the forms of the Bonds, whether the Bonds are to be issued in book-entry form and
10 all matters incident to the issuance of Bonds in book-entry form and the provisions for the
11 registration of Bonds. The execution and delivery of Bonds as herein provided shall be
12 conclusive evidence of the approval of all terms and provisions of such Bonds on behalf of the
13 County.

14 **Section 13.** In connection with the issuance of the Bonds pursuant to this Resolution, the
15 County is hereby authorized to enter into one or more agreements as the County Executive shall
16 deem necessary or appropriate for the issuance, sale, delivery or security of such Bonds, which
17 may include (without limitation) (i) the Bond Purchase Agreement, (ii) the Trust Agreement or
18 other trust agreements with commercial banks or trust companies providing for the issuance and
19 security of such Bonds, (iii) the Loan Agreement, (iv) the Deed of Trust or other instrument, (v)
20 any dealer, remarketing or similar agreements providing for the placement or remarketing of
21 such Bonds, (vi) agreements with commercial banks or trust companies providing for the deposit
22 of proceeds of any Bonds, (vii) agreements with fiscal agents providing for the issuance of
23 Bonds, their authentication, registration or payment or other similar services, and (viii) such

1 other documents or agreements as the County Executive shall deem necessary and appropriate.
2 Each such agreement shall be in such form as shall be determined by the County Executive by
3 Executive Order. The execution and delivery of each such agreement by the County Executive
4 shall be conclusive evidence of the approval of the form of such agreement on behalf of the
5 County.

6 **Section 14.** The County reserves the right in its sole and absolute discretion, to among
7 other things, (1) never issue the Bonds, (2) reduce or withdraw its Recovery Zone Bond
8 allocation, (3) issue only a portion of the aggregate principal amount of the Bonds required by
9 the Borrower, (4) restrict the use of the proceeds of the Bonds, (5) delay indefinitely the issuance
10 of the Bonds, or (6) take any other actions deemed necessary by the County, in its sole
11 discretion, in order to ensure that the County achieves the goals set forth in the Act and this
12 Resolution.

13 **Section 15.** The County Executive, the Chief Administrative Officer, the Director of
14 Finance and other officials of the County are hereby authorized and empowered to do all such
15 acts and things and to execute, acknowledge, seal and deliver such documents and certificates, as
16 the County Executive may deem appropriate.

17 **Section 16.** The County covenants that it will not make any use of the proceeds of any of
18 the Bonds or any moneys, securities or other obligations on deposit to the credit of the County or
19 otherwise which may be deemed by the Internal Revenue Service to be proceeds of any of the
20 Bonds pursuant to the Internal Revenue Code of 1986, as amended, and the Income Tax
21 Regulations thereunder (hereinafter, collectively, the “Code”), which would cause any of the
22 Bonds to be “arbitrage bonds” within the meaning of the Code.

1 The County further covenants that it will comply with those provisions of the Code which
2 are applicable to the Bonds on the date of issuance of the Bonds and which may subsequently
3 lawfully be made applicable to the Bonds. To the extent that provisions of the Code apply to
4 only a portion of the Bonds, proceeds of the Bonds or other moneys, securities or other
5 obligations deemed to be proceeds, it is intended that the covenants of the County contained in
6 this Resolution be construed so as to require the County to comply with the provisions of the
7 Code only to the extent of such applicability.

8 The County further covenants that it will not (i) take any action, (ii) fail to take any
9 action, or (iii) make any use of the proceeds of any of the Bonds which would cause the interest
10 on any of the Bonds to be or become includible in the gross income of the holders thereof for
11 purposes of federal income taxation.

12 **Section 17.** The Bonds shall not be subject to the provisions of Article 31, Sections 9, 10
13 and 11 of the Annotated Code of Maryland, as amended, and any successor provision of law.

14 **Section 18.** This Resolution shall take effect on the date of its approval by the County
15 Executive.

Project Description

The Project includes the construction of a two-story office building located at 6514 Meadowridge Road, Elkridge, Maryland 21075.