INTRODUCED_____
PUBLIC HEARING_____
COUNCIL ACTION_____
EXECUTIVE ACTION_____
EFFECTIVE DATE_____

County Council of
Howard County, Maryland

2007 Legislative Session Legislative Day No. 2

Resolution No. 8-2007

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

A RESOLUTION adopted pursuant to the Maryland Economic Development Revenue Bond Act providing for the issuance and sale by Howard County, Maryland, as its limited obligations and not upon its faith and credit or pledge of its taxing power, of up to $44,000,000 of its bonds and the loan of the proceeds thereof to Columbia Vantage House Corporation to be used to (1) finance (a) the costs of the renovation of a multi-building continuing care retirement community located in Columbia, Maryland and (b) costs of issuance, reserves, capitalized interest and other related costs; and (2) refund the outstanding Howard County, Maryland Retirement Community Revenue Bonds (Vantage House Facility) Series 2002A and B; reserving certain rights; providing for the issuance and sale of bond anticipation notes for such purposes; authorizing the County Executive to specify, prescribe, determine, provide for or approve certain matters, details, forms, documents or procedures; and specifying and describing various matters in connection therewith.

By the Council, _____, 2007

Introduced and read first time.

By Order, _____
Sheila M. Tolliver,
Administrator

ADOPTED: By the Council, _____, 2007

Certified, _____
Sheila M. Tolliver,
Administrator

APPROVED: _____, 2007 _____
Ken Ulman,
County Executive

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

Recitals

The Maryland Economic Development Revenue Bond Act, Sections 14-101 to 14-109, inclusive, of Article 41 of the Annotated Code of Maryland (the "Act"), provides that in order to accomplish the legislative policy of the Act, in addition to whatever other powers it may have and notwithstanding any limitation of law, any public body (as defined in the Act) may issue and sell its bonds (as defined in the Act), as its limited obligations and not upon its faith and credit or pledge of its taxing power, at any time and from time to time, for the purposes of financing or refinancing any costs of the acquisition (as defined in the Act) of one or more facilities (as defined in the Act) for one or more facility users (as defined in the Act) or of refunding outstanding bonds, including the necessary expenses of preparing, printing, selling, and issuing those bonds, the funding of reserves, and the payment of interest with respect to financing and refinancing such acquisition in such amounts, or for such period, as the public body deems reasonable.

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

(1) relieve conditions of unemployment in the State;

(2) encourage the increase of industry and commerce and a balanced economy in the State;

(3) assist in the retention of existing industry and commerce and in the attraction of new industry and commerce in the State through, among other things, port development and the control, reduction, or abatement of pollution of the environment and the utilization and disposal of wastes;

(4) promote economic development;

(5) protect natural resources and encourage resource recovery; and

(6) generally promote the health, welfare, and safety of the residents of each of the counties and municipalities of the State.

The Act provides that a public body may accomplish the acquisition of one or more

facilities from the proceeds of the sale of its bonds by one or more of the following methods:

(1) by leasing them to one or more facility users under a lease (as defined in the Act);

(2) by selling them to one or more facility users under a sale agreement (as defined in the Act);

(3) by lending proceeds of the sale of bonds to one or more facility users under a loan agreement (as defined in the Act) to be used to finance or refinance one or more facilities; or

(4) in such other manner as the County deems appropriate to accomplish the purposes of the Act.

The Act provides that to implement the authority conferred upon it by the Act to issue bonds, the legislative body of any county (as defined in the Act) or municipality (as defined in the Act), or the board of directors of any authority (as defined in the Act), may adopt a resolution pursuant to which it shall:

(1) specify and describe the facility or facilities;

(2) generally describe the public purpose to be served and the financing or refinancing transaction to be accomplished under the Act;

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

(4) impose any terms or conditions on the issuance and sale of the bonds it deems appropriate.

The Act provides that the legislative body of any county or municipality, or the board of directors of any authority, by resolution may itself specify and prescribe, or may authorize:

(1) its finance board (as defined in the Act), by resolution; or

(2) its chief executive officer (as defined in the Act), by executive order or otherwise; or

(3) any other appropriate administrative officer, by order or otherwise with the approval of its chief executive officer, to specify, prescribe, determine, provide for or approve such matters, details, forms, documents, or procedures as the legislative body or board of directors deems appropriate to the authorization, sale, security, issuance, delivery or payment of or for the bonds, including, without limitation, creation of security for the bonds and provision for the administration of bond issues such as trust or other agreements with banks or trust companies regarding any countersignature or delivery of bonds or security for bonds.

Howard County, Maryland, a body politic and corporate and a political subdivision of the State of Maryland (the "County") received a letter of intent dated January 24, 2007 (the "Letter of Intent"), from Columbia Vantage House Corporation, a Maryland non-stock, non-profit corporation (the "Facility Applicant"), pursuant to which the Facility Applicant requested the County to issue and sell the County's bonds (as defined in the Act), as its limited obligations and not upon its faith and credit or pledge of its taxing power, at any time or from time to time and in one or more series, in an aggregate principal amount not to exceed $44,000,000, pursuant to and in accordance with the Act for the purpose of (1) financing (a) the cost of further renovation of a facility located within the geographical borders of the County (the "2007 Improvements"), and (b) costs of issuance of such bonds, reserves, capitalized interest on such bonds and other costs related to the transactions, and (2) refunding the outstanding Howard County, Maryland Retirement Community Revenue Bonds (Vantage House Facility) Series 2002A and B, the proceeds of the which were used to (a) refund the outstanding Howard County, Maryland Retirement Community Revenue Bonds (Vantage House Facility) Series 2000A, B and C (the “2000 Bonds”), the proceeds of which were used to acquire the 2000 Facility (as defined below) through the acquisition of all of the interests of Vantage House LLC, a limited liability company, the owner of the Property (as defined below) and (b) finance the acquisition of the 2002 Facility (as defined below).

The 2000 Facility consists of and includes:

(1) an approximately four acre campus at 5400 Vantage House Road in Columbia, Maryland (the "Land");

(2) a 13-story brick and steel high rise building containing, as of the date of issuance of the Series 2000 Bonds, 214 independent living units, common areas and facilities and administrative offices and a connected five-story building containing a nursing center, assisted living units, comprehensive care units, common areas and facilities and other administrative offices consisting of approximately 337,940 square feet in the aggregate, all located on the Land (the “Buildings”);

(3) general renovations of the Buildings;

(4) certain necessary or useful furnishings, equipment, and machinery (the “Equipment”);

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

The 2002 Facility consists of and includes:

(1) general renovations and improvements to the Buildings, all located on the Land, which renovation included the addition of 10 independent living units;

(2) the installation of necessary or useful furnishings, equipment and machinery; and

(3) the acquisition of such interests in land as may have been necessary or suitable for the foregoing, including roads and rights of access, utilities and other necessary site preparation facilities.

The Letter of Intent indicates that the acquisition of the 2007 Improvements will consist of and include:

(1) general renovations and improvements to the Buildings, all located on the Land, which renovations include infrastructure improvements consisting of a new

roof, replacement elevators, boilers, a cooling tower, a fire alarm and sprinkler system and an emergency call system;

(2) the installation of necessary or useful furnishings, equipment and machinery;

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

The 2000 Facility, the 2002 Facility and the 2007 Improvements are collectively referred to as the “Facility.”

The Letter of Intent indicates that the Facility will continue to be used as a continuing care retirement community. The Facility Applicant is the operator of the Facility and the sole member of Vantage House LLC, the owner of the Property. The Facility Applicant is the lessee of the Facility under a 99-year lease with Vantage House LLC.

The Letter of Intent further expresses the Facility Applicant's intention that (a) the interest payable on one or more series of such bonds will be excludible from the gross income of the owners thereof for purposes of federal income taxation pursuant to Sections 103 and 145 of the Internal Revenue Code of 1986, as amended (the "Code"), and that the proceeds of such series of bonds would be applied to finance and refinance all costs of the acquisition and funding of the Facility which are eligible for tax-exempt financing; and (b) the costs of acquisition and funding of the Facility which are not eligible for tax-exempt financing would be financed with the proceeds of one or more separate series of such bonds, the interest on which would be subject to federal income taxation.

The County, based upon the findings and determinations and subject to the reservation of certain rights, all as set forth below, has determined to issue, sell and deliver, at any time or from time to time and in one or more series, its bonds (as defined in the Act) in an aggregate principal amount not to exceed $44,000,000 (the "Bonds"), and to lend the

proceeds of the Bonds of each series to the Facility User upon the terms and conditions of one or more loan agreements (each, a "Loan Agreement") to be entered into between the County and the Facility User, such proceeds to be used by the Facility User for the purpose of financing and refinancing a portion of the costs of acquisition of the Facility and funding costs of issuance of the Bonds, reserves, capitalized interest on the Bonds and other costs related to the transaction.

Now, therefore, in accordance with the Act:

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

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

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

(2) The Facility Applicant is a "facility applicant" and will be a "facility user" within the meaning of the Act. The limited liability company referred to the Recitals, which is owned the Facility Applicant, is also a “facility user” within the meaning of the Act.

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

(4) The County Executive of the County (the “County Executive”) is the "chief executive officer" of the County within the meaning of the Act.

(5) The Letter of Intent is a "letter of intent" within the meaning of the Act.

(6) The word "bonds," as defined in the Act, includes bond anticipation

notes issued in anticipation of the issuance and sale of bonds.

(7) The issuance and sale of the Bonds by the County, pursuant to the Act, for the sole and exclusive purpose of financing and refinancing the costs (to the fullest extent permitted by the Act) of the acquisition and funding of the Facility will facilitate and expedite the acquisition of the Facility.

(8) The acquisition and funding of the Facility and the financing and refinancing thereof as provided in this Resolution will promote the declared legislative purposes of the Act by (a) sustaining jobs and employment by the creation or retention of a significant number of jobs, thus relieving conditions of unemployment in the State and in Howard County; (b) encouraging the increase of industry and commerce and a balanced economy in the State and in Howard County; (c) assisting in the retention of existing industry and commerce and in the attraction of new industry and commerce in the State and in Howard County by, among other things, the purchase of supplies and services from other businesses in Howard County; (d) promoting economic development in the State and in Howard County by stimulating the local economy; and (e) generally promoting the health, welfare and safety of the residents of the State and Howard County.

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

(10) Neither the proceeds of the Bonds of any series nor the payments of the principal of and premium, if any, and interest on the Bonds of any series will be commingled with the County's funds or will be subject to the absolute control of the County,

but will be subject only to such limited supervision and checks as are deemed necessary or desirable by the County to ensure that the proceeds of the Bonds of any series are used to accomplish the public purposes of the Act and this Resolution. The transactions provided for hereby do not constitute any physical public betterment or improvement or the acquisition of property for public use or the purchase of equipment for public use. The public purposes expressed in the Act are to be achieved by facilitating the financing and refinancing of the Facility.

Section 3. And be it further resolved by the County Council of Howard County, Maryland, that this Resolution, among other things, evidences the present intent of the County to issue, sell and deliver the Bonds in accordance with the terms and provisions of this Resolution. The County Executive of the County is hereby authorized, empowered, and directed to accept the Letter of Intent on behalf of the County in order to further evidence the intent of the County to issue and sell the Bonds in accordance with the terms and provisions of this Resolution. The County reasonably expects that a portion of the costs of acquisition of the 2007 Improvements will be paid by the Facility User prior to the issuance of the Bonds and that certain proceeds of the Bonds will be used to reimburse the Facility User for the costs of acquisition of the 2007 Improvements prior to the issuance of the Bonds. The Bonds will be issued in an amount not to exceed $44,000,000. The County intends that the adoption of this Resolution shall be and constitute an "official intent resolution" within the meaning of Section 1.150-2 of the Income Tax Regulations prescribed by the United States Department of Treasury.

Section 4. And be it further resolved by the County Council of Howard County, Maryland, That the County shall issue, sell and deliver the Bonds, at any time or from time to time and in one or more series, in an aggregate principal amount not to exceed $44,000,000, subject to the provisions of this Resolution. The County will lend the proceeds of the Bonds of any series to the Facility User pursuant to the terms and provisions of a Loan Agreement, to be used by the Facility User for the purpose of financing and

refinancing the costs of acquisition of the Facility and funding costs of issuance of the Bonds, reserves, capitalized interest on the Bonds and other costs related to the transaction.

Any Loan Agreement entered into with respect to the Bonds of any series will require that (1) the proceeds of the Bonds be used solely to finance and refinance the costs (to the fullest extent permitted by the Act) of the acquisition of the Facility and funding costs of issuance of the Bonds, reserves, capitalized interest on the Bonds and other related costs of the transaction, and (2) the Facility User makes, or cause to be made, payments which will be sufficient to enable the County to pay the principal of and interest and premium, if any, on the Bonds when and as the same become due and payable.

The Facility is specified and described in the Recitals set forth above. The public purpose to be served by the issuance and sale of the Bonds is described in Section 2 of this Resolution, in this Section and in the Recitals set forth above. The maximum principal amount of the Bonds that may be issued is $44,000,000, provided that bond anticipation notes may be issued and sold as provided in Section 6 of this Resolution.

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

Pursuant to the provisions of this Section 5, the County reserves the right in its sole and absolute discretion, to, among other things, (1) never issue the Bonds, (2) issue only a portion of the aggregate principal amount of the Bonds required by the Facility User, (3) restrict the use of the proceeds of the Bonds, (4) delay indefinitely the issuance of the

Bonds, or (5) take any other actions deemed necessary by the County, in its sole discretion, in order to ensure that the County achieves the goals set forth in the Act and in this Resolution.

Section 6. And be it further resolved by the County Council of Howard County, Maryland, That, as permitted by the Act, the provisions set forth in this Resolution for the issuance and sale of the Bonds are intended and shall be deemed to include provisions for the issuance and sale of bond anticipation notes without the adoption of any further resolution or other action by the legislative body of the County. Accordingly, the words "bonds" and "Bonds," as used in this Resolution, shall include such bond anticipation notes, unless the context clearly requires a contrary meaning. At no time shall the aggregate principal amount of any bond anticipation notes exceed the amount set forth in Section 4 of this Resolution. It is intended that the aggregate principal amount of issued and outstanding bond anticipation notes when added to the aggregate principal amount of issued and outstanding Bonds in anticipation of which such notes were issued, shall not exceed the aggregate principal amount set forth in Section 4 of this Resolution at any time. The County will agree to pay any bond anticipation notes issued pursuant to this Resolution and the interest and premium, if any, thereon from the proceeds of the Bonds in anticipation of the sale of which such notes are issued, and the County will agree to issue such Bonds when, and as soon as, the reason for deferring the issuance of the Bonds no longer exists. The timely issuance of such Bonds, however, is dependent upon matters not within the control of the County, including (without limitation) the existence of a purchaser or purchasers for such Bonds at the time the reason for deferring the issuance of the Bonds no longer exists and the effectiveness of various actions taken by the Facility User, their officers, agents and employees.

Section 7. And be it further resolved by the County Council of Howard County, Maryland, That the Bonds, or any bond anticipation notes authorized by this Resolution, may be issued at any time or from time to time and in one or more series, and

each series of the Bonds shall be identified by the year of issue or by some other or additional appropriate designation; provided, however, that the Bonds must be issued within one year from the effective date of this Resolution as set forth in Section 13 hereof. The provisions in this Resolution providing for the issuance of the Bonds shall expire with respect to Bonds which have not been issued within such period, unless, either prior to or after such provisions expire, the County Council of Howard County, Maryland adopts, and the County Executive approves, a resolution supplemental hereto, which extends the period of time during which the Bonds may be issued.

Section 8. And be it further resolved by the County Council of Howard County, Maryland, That the Bonds shall be executed in the name of the County and on its behalf by the County Executive, by his manual or facsimile signature, and by the Director of Finance of the County, by her manual or facsimile signature, and the corporate seal of the County or a facsimile thereof shall be impressed or otherwise reproduced thereon and attested by the Chief Administrative Officer of the County, by his manual or facsimile signature. At least one signature required or permitted to be placed on the Bonds must be manually subscribed. If the Bonds are required to be manually signed by a trustee, issuing agent, fiscal agent, registrar, or other agent or custodian, any other signature required or permitted to be placed on the Bonds may be executed by facsimile. Any Loan Agreement and, where applicable, all other documents as the County Executive deems necessary to effectuate the issuance, sale and delivery of the Bonds of any series, shall be executed in the name of the County and on its behalf by the County Executive by his manual signature, and the corporate seal of the County or a facsimile thereof shall be impressed or otherwise reproduced thereon and attested by the Chief Administrative Officer of the County by his manual signature. If any officer whose signature or countersignature or a facsimile of whose signature or countersignature appears on the Bonds of any series or any of the aforesaid documents ceases to be such officer before the delivery of the Bonds of such series or any of the other aforesaid documents, such signature or countersignature or such

facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. The County Executive, the Director of Finance of the County, the Chief Administrative Officer of the County and other officials of the County are hereby authorized and empowered to do all such acts and things and execute such documents and certificates as the County Executive may determine to be necessary to carry out and comply with the provisions of this Resolution, subject to the limitations set forth in the Act and any limitations set forth in this Resolution.

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

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

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

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

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

(4) shall approve the form and contents of, and execute and deliver

(where applicable), the Loan Agreement, and such other documents, including (without limitation) trust agreements, assignments, mortgages, deeds of trust, guaranties and security instruments to which the County is a party and which may be necessary to effectuate the issuance, sale and delivery of the Bonds of such series;

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

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

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

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

(9) shall provide that the Facility User shall pay directly, or cause to be paid, all costs, fees and expenses incurred by or on behalf of the County in connection with the issuance, sale and delivery of the Bonds, including (without limitation) costs of printing (if any) and issuing the Bonds, legal expenses (including the fees of bond counsel) and compensation to any person (other than full-time employees of the County) performing services by or on behalf of the County in connection therewith;

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

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

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

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

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

specifically exempted therefrom.

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