

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2010 Legislative Session

Bill No. CB-78-2010
 Chapter No. 77
 Proposed and Presented by The Chairman (by request – County Executive)
 Introduced by Council Member Bland
 Co-Sponsors _____
 Date of Introduction September 28, 2010

BILL

1 AN ACT concerning

2 The Issuance of Special Obligation Tax Increment Financing Bonds
 3 for Brandywine Crossing Development District

4 For the purpose of providing that special obligation tax increment financing bonds may be issued
 5 under the provisions of this Act and Sections 12-201 through 12-213 of the Economic
 6 Development Article of the Annotated Code of Maryland, as amended (the “Tax Increment
 7 Financing Act”) in an aggregate principal amount of Four Million Five Hundred Thousand
 8 Dollars (\$4,500,000) in order for the County to finance costs related to the construction or
 9 acquisition of the public infrastructure improvements as more particularly described herein;
 10 making certain findings and determinations, among others, that prior to the issuance of such
 11 special obligation tax increment financing bonds the criteria set forth in CR-89-2006, as
 12 amended by CR-98-2010 (the “TIF Criteria Resolution”), that includes but are not limited to the
 13 following: the “But-For Test”, the “Trigger Mechanism/Look Back Provision”, LMBE
 14 participation, and the impact of the County credit/bond rating, shall have been satisfied;
 15 providing that such bonds authorized to be issued hereby shall be payable solely from real
 16 property taxes deposited in the Tax Increment Fund established by CR-82-2009 of the County
 17 Council of Prince George’s County, Maryland (the “Formation Resolution”), and that the bonds
 18 shall not constitute a general obligation debt of the County or a pledge of the County’s full faith
 19 and credit or taxing power other than the County’s pledge of the taxes representing the levy on
 20 the Tax Increment (as defined in the Formation Resolution); providing for a proposed agreement
 21 between the County and FCD-Development, LLC, a Maryland limited liability company or its

1 assigns (the “Developer”) and any other governmental entity, if necessary, prior to the issuance
2 and delivery of the bonds in the form of a TIF Proposal consistent with the requirements of this
3 Act and the County TIF Criteria Resolution as well as other conditions for the issuance of the
4 bonds and the construction and acquisition of infrastructure improvements; authorizing the
5 County Executive of the County to specify, prescribe, determine, provide for and approve certain
6 details, forms, documents or procedures in connection with such bonds issued hereunder and any
7 other matters necessary or desirable in connection with the authorization, issuance, delivery and
8 payment of such bonds; authorizing the County Executive to take certain actions, to execute
9 documents and make certain commitments on behalf of the County in connection with the
10 issuance and delivery of such bonds; authorizing the execution and delivery of such bonds and
11 such other documents as may be necessary and desirable to effectuate the financing of the
12 infrastructure improvements and the issuance and delivery of such bonds; and generally
13 providing for, and determining various matters in connection with, the issuance, delivery and
14 payment of such bonds.

15 WHEREAS, the Formation Resolution designated the “Brandywine Crossing Development
16 District” and established a special fund designated the “Brandywine Crossing Development
17 District Tax Increment Fund;” and

18 WHEREAS, the Developer, the owner of the real property in the Brandywine Crossing
19 Development District, plans to develop additional retail and commercial facilities and to acquire,
20 construct and install the infrastructure improvements in the Brandywine Crossing Development
21 District described in Exhibit A attached hereto and made a part hereof (the “Infrastructure”) to
22 serve such development; and

23 WHEREAS, the County has the power under the Tax Increment Financing Act to finance
24 costs related to the construction or acquisition of the Infrastructure through the issuance and
25 delivery to the Developer of bonds, notes or other similar instruments (as hereinafter further
26 defined, the “Bonds”) in compliance with the TIF Criteria Resolution; and

27 WHEREAS, the Bonds will be issued and secured pursuant to the provisions of the Tax
28 Increment Financing Act, this Act, the Formation Resolution and the Trust Indenture hereinafter
29 authorized; and

30 WHEREAS, to the extent that the taxes representing the levy on the Tax Increment
31 collected in any given fiscal year of the County exceed the debt service payable on the Bonds in

1 any such fiscal year, any deferred debt service on the Bonds and any other payment required to
 2 be satisfied by the Tax Increment under the Trust Indenture, such excess will be paid over at the
 3 end of each such fiscal year to the County for deposit in its general fund; and

4 WHEREAS, development of retail and commercial facilities will further economic
 5 development within the County and thus meet the public purposes contemplated by the Tax
 6 Increment Financing Act and the Formation Resolution and will satisfy the criteria set forth in
 7 CR-89-2006, as amended by CR-98-2010, that includes but are not limited to the following: the
 8 “But-For Test”, the “Trigger Mechanism/Look Back Provision”, LMBE participation, and the
 9 impact of the County credit/bond rating; and

10 WHEREAS, prior to the bonds being issued or sold, FCD-Development, LLC, a Maryland
 11 limited liability company or its assigns (the “Developer”), County Executive and Bond Counsel
 12 shall certify that the provisions of CR-98-2010 have been complied with and that the Minority
 13 Business Enterprise (“MBE”) Plan has been approved by the Compliance Manager; and

14 WHEREAS, prior to the issuance and sale of the bonds, the County Council must review
 15 the TIF proposal and certifications and approve the same by Resolution; now, therefore,

16 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
 17 Maryland, as follows:

18 A. The words and terms used in this Act that are defined in the Tax Increment Financing Act,
 19 or the Formation Resolution shall have the meanings indicated in the Tax Increment Financing
 20 Act and the Formation Resolution, as the case may be, unless the context clearly requires a
 21 contrary meaning.

22 B. It is hereby found and determined that the issuance of the Bonds and the delivery of the
 23 Bonds to the Developer for the purpose of financing the costs of constructing or acquiring the
 24 Infrastructure accomplish the public purposes of the Tax Increment Financing Act and the
 25 Formation Resolution;

26 C. In accordance with Section 12-204(b)(2)(i) of the Tax Increment Financing Act, it is hereby
 27 found that the County Council has complied with the provisions of Sections 12-203 and 12-
 28 208(c) and (d) of the Tax Increment Financing Act by designating the Brandywine Crossing
 29 Development District, receiving a certification of the Supervisor of Assessments, and pledging
 30 the division of property taxes;

31 D. Pursuant to the provisions of the Formation Resolution and in accordance with the Tax

1 Increment Financing Act, so long as the Bonds remain outstanding, the County shall deposit into
2 the Tax Increment Fund all real property taxes on real property within the Brandywine Crossing
3 Development District received by the County for any Tax Year after the effective date of the
4 Formation Resolution equal to that portion of the taxes payable to the County representing the
5 levy on the Tax Increment that would normally be paid to the County. Monies in the Tax
6 Increment Fund are pledged to the payment of the debt service (including any deferred debt
7 service) on the Bonds, and may be applied to pay the administrative expenses of the County.
8 The balance remaining in the Tax Increment Fund at the end of any fiscal year of the County
9 after such payments shall be transferred to the general fund of the County.

10 E. Bonds, notes or other similar instruments may be issued in an aggregate principal amount
11 not to exceed Four Million Five Hundred Thousand Dollars (\$4,500,000) and shall bear interest
12 at a rate of four and one quarter percent (4.25%) per annum (the "Bonds"). The Bonds shall be
13 issued as a single instrument in denomination equal to the aggregate principal amount of the
14 Bonds issued. The Bonds shall be delivered by the County to the Developer in consideration of
15 the Developer's construction of the Infrastructure or acquisition and transfer to the County or
16 other public entity of the Infrastructure. The Bonds will be payable solely from the amounts
17 levied and deposited in the Tax Increment Fund. The Bonds are a special obligation of the
18 County to be issued in accordance with the TIF Criteria Resolution and do not constitute a
19 general obligation debt of the County or a pledge of the County's full faith and credit or taxing
20 power except for the pledge of the taxes representing the levy on the Tax Increment as set forth
21 in the Formation Resolution. The Bonds may not be issued until the Office of Law approves
22 those conditions set by the Administration.

23 F. To the extent that the debt service payable on the Bonds in any fiscal year exceeds the
24 amount then on deposit in the Tax Increment Fund, payment of such debt service shall be
25 deferred and made, without penalty or the accrual of additional interest, to the extent of amounts
26 thereafter deposited in the Tax Increment Fund and available therefor; provided that any such
27 deferred debt service that remains unpaid at the final maturity of the Bonds shall be forgiven.

28 G. The Bonds shall be executed in the name of the County and on its behalf by the County
29 Executive, by manual or facsimile signature, the corporate seal of the County or a facsimile
30 thereof shall be impressed or otherwise reproduced thereon and attested by the Clerk of the
31 County Council or the Chief Administrative Officer by manual or facsimile signature. The TIF

1 Proposal; a trust indenture between the County and a bank or trust company to be approved by
2 the County Executive, as trustee (the "Trust Indenture"); and, where applicable, all other
3 documents as the County Executive deems necessary to effectuate the issuance and delivery of
4 the Bonds, shall be executed in the name of the County and on its behalf by the County
5 Executive by manual signature, and the corporate seal of the County or a facsimile thereof shall
6 be impressed or otherwise reproduced thereon and attested by the Clerk of the County Council or
7 the Chief Administrative Officer by manual signature. If any officer whose signature or
8 countersignature or a facsimile of whose signature or countersignature appears on the Bonds or
9 on any of the aforesaid documents ceases to be such officer before the delivery of the Bonds or
10 any of the other aforesaid documents, such signature or countersignature or such facsimile shall
11 nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in
12 office until delivery. The County Executive, the Clerk of the County Council and other officials
13 of the County are hereby authorized and empowered to do all such acts and things and execute
14 such documents and certificates as the County Executive may determine to be necessary to carry
15 out and comply with the provisions of this Act, subject to the limitations set forth in the Tax
16 Increment Financing Act and this Act. Prior to the issuance of the Bonds as required by the
17 County TIF Criteria Resolution, the Developer, County Executive, and Bond Counsel to the
18 County shall certify to the County Council that the provisions of the County's TIF Criteria
19 Resolution have been complied with and that the MBE Plan has been approved by the
20 Compliance Manager in conformance with the MBE Plan Guidelines promulgated by the
21 Compliance Manager.

22 H. Subject to the provisions of this Act, the County Executive by executive order and/or by the
23 Trust Indenture which shall be approved by executive order:

24 (1) shall specify the principal amount of the Bonds;

25 (2) shall specify the manner and terms of the delivery of the Bonds to the Developer;

26 (3) shall specify the form and terms of the Bonds;

27 (4) shall prescribe the date, maturity or maturities (within the limits prescribed in the Tax
28 Increment Financing Act), and the time and place or places of payment of the Bonds, and the
29 terms and conditions and details under which the Bonds may be called for redemption prior to
30 their stated maturities;

31 (5) may appoint a trustee, a bond counsel and a financial advisor;

1 (6) shall approve the forms and contents of the TIF Proposal, the Trust Indenture and such
2 other documents to which the County is a party and which may be necessary to effectuate the
3 issuance and delivery of the Bonds and the construction or acquisition of the Infrastructure;

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

6 (8) shall provide for the direct or indirect payment of all costs, fees and expenses incurred
7 by or on behalf of the County in connection with the issuance and delivery of the Bonds and the
8 acquisition of the Infrastructure, including (without limitation) costs of printing (if any) and
9 issuing the Bonds, the funding of reserves, legal expenses (including the fees of bond counsel)
10 and compensation to any person performing services by or on behalf of the County in connection
11 therewith; and

12 (9) shall do any and all things necessary, proper or expedient in connection with the
13 issuance and delivery of the Bonds and the construction or acquisition of the Infrastructure in
14 order to accomplish the legislative policy of the Tax Increment Financing Act and the public
15 purposes of this Act, subject to the limitations set forth in the Tax Increment Financing Act and
16 any limitations prescribed by this Act.

17 This delegation of authority to the County Executive is subject to his discretion and to the
18 extent he does not exercise such discretion pursuant to the provisions of this Act, neither such
19 officer nor the County shall be subject to any liability.

20 SECTION 2. BE IT FURTHER ENACTED, that the Bonds and the construction costs of
21 the public improvements for which said Bonds are authorized and issued are not deemed to be
22 construction, monetary contributions or procurement for purposes of Subtitle 10A of the Prince
23 George's County Code and public improvements funded in whole or part by said Bonds are
24 specifically exempted from the provisions of Subtitle 10A.

25 SECTION 3. BE IT FURTHER ENACTED, that the provisions of this Act are severable,
26 and if any provision, sentence, clause, section or part hereof is held or determined to be illegal,
27 invalid or unconstitutional or inapplicable to any person or circumstances, such illegality,
28 invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining
29 provisions, sentences, clauses, sections or parts of this Act or their application to other persons or
30 circumstances. It is hereby declared to be the legislative intent that this Act would have been
31 passed if such illegal, invalid, unconstitutional or inapplicable provision, sentence, clause,

1 section or part had not been included herein, and as if the person or circumstances to which this
2 Act or any part hereof are inapplicable had been specifically exempted herefrom.

3 SECTION 4. BE IT FURTHER ENACTED, that this Act shall take effect 45 days from the
4 date it becomes law.

Adopted this 26th day of October, 2010.

COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Thomas E. Dernoga, Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Jack B. Johnson
County Executive

THE COUNTY EXECUTIVE HAVING FAILED TO RETURN THIS BILL WITH EITHER HIS APPROVAL OR VETO WITHIN TEN (10) DAYS AFTER THE DATE OF ITS PRESENTATION TO HIM, THIS BILL BECAME LAW ON 11/29/2010.

TO BECOME EFFECTIVE ON 1/14/2011.

EXHIBIT A

DESCRIPTION OF IMPROVEMENTS

The improvements include, but are not limited to, parking facilities, road improvements, storm water management facilities, utilities, lighting and related infrastructure improvements within the Development District as may be authorized by the Tax Increment Financing Act.