

AUTHORIZING RESOLUTION

(Amended and Restated Resolution Approving a Mortgage Recording Tax Exemption for 9-11 Riverdale JBM LLC Project)

A regular meeting of the Yonkers Economic Development Corporation (“Corporation”) was convened in public session, electronically, pursuant to Executive Order No. 202.11 as amended from time to time - Continuing Temporary Suspension and Modification Of Laws Relating To The Disaster Emergency - by Governor Andrew M. Cuomo of the State of New York on September 4, 2020.

The following resolution was duly offered and seconded, to wit:

Resolution No. 09/2020- 09

RESOLUTION OF THE YONKERS ECONOMIC DEVELOPMENT CORPORATION (i) APPROVING THE PROVISION OF FINANCIAL ASSISTANCE TO 9-11 RIVERDALE JBM LLC IN THE FORM OF A MORTGAGE RECORDING TAX EXEMPTION AND (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS, CERTIFICATES AND AGREEMENTS IN CONNECTION WITH SAME

WHEREAS, pursuant to the purposes and powers contained within Section 1411 of the Not-for-Profit Corporation Law of the State of New York (the “State”), as amended, and pursuant to its certificate of incorporation filed on May 31, 2007, the **YONKERS ECONOMIC DEVELOPMENT CORPORATION** (the “Corporation”) was established as a not-for-profit local development corporation of the State with the authority and power to own, lease and sell personal and real property for the purposes of, among other things, acquiring, constructing and equipping certain projects exclusively in furtherance of the charitable or public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest; and

WHEREAS, **ERIN CONSTRUCTION AND DEVELOPMENT, CO., INC.** for itself or on behalf of **9-11 RIVERDALE JBM LLC** (the “Company”) has submitted an application (the “Application”) to the Agency requesting the Agency's assistance with a certain project (the “Project”) consisting of: (i) the acquisition of certain land located at 9-11 Riverdale Avenue, City of Yonkers, New York (collectively, the “Land”) and the existing improvements located thereon consisting principally of vacant land along the Getty Square corridor City of Yonkers, New York (collectively, the “Existing Improvements”); (ii) the construction on the Existing Improvements consisting of an approximately nine story mixed-use residential and commercial building comprising approximately 29 rental apartments including 6 studios, 21 one bedroom units and 2 two-bedroom units; and (b) two ground floor commercial spaces totaling approximately 2,150 square feet (collectively, the “Improvements”); and (iii) the acquisition and installation in and around the Existing Improvements and Improvements of certain items of equipment and other

tangible personal property (the “Equipment”; and, collectively with the Land, the Existing Improvements and the Improvements, the “Facility”); and

WHEREAS, by resolution adopted on July 31, 2019 (“Initial Resolution”), the Corporation authorized the Company to act as its agent for the purpose of undertaking the Project and approved certain financial assistance for the benefit of the Company in connection with the Project consisting of an exemption of mortgage recording tax in the amount of approximately \$85,500, based on a mortgage loan of \$4,750,000; and

WHEREAS, since the passage of the Initial Resolution, the Project has been subjected to construction cost increases, insurance increases, unexpected design revisions and COVID-19 related pricing increases; and

WHEREAS, as a result, the Lender, as defined herein, has agreed to increase the mortgage loan to \$6,300,000; and

WHEREAS, in order to facilitate the completion of the Project, and in furtherance of its corporate mission, the Corporation desires to provide a mortgage recording tax exemption which reflects the new mortgage amount of \$6,300,000; and

WHEREAS, the Company has requested a mortgage recording tax exemption of up to \$94,500 upon the recording of the \$6,300,000 mortgage loan; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as “SEQRA”), the Corporation must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project; and

WHEREAS, these resolutions are an amendment and restatement of the Initial Resolution to provide for the increase in financial assistance; and

NOW, THEREFORE, BE IT RESOLVED BY THE DIRECTORS OF THE YONKERS ECONOMIC DEVELOPMENT CORPORATION AS FOLLOWS:

Section 1. Pursuant to the City of Yonkers Industrial Development Agency (“Agency”) authorizing resolution, dated July 31, 2019 (“Agency Authorizing Resolution”), the Agency determined that the Project will result in no potential significant adverse environmental impacts requiring the preparation of an environmental impact statement for the action, and the Agency issued a Negative Declaration for the action pursuant to SEQRA. The Corporation hereby confirms the findings made by the Agency in the Agency Authorizing Resolution.

Section 2. The Corporation agrees to accept a leasehold interest in the Facility on the same terms and conditions as those accepted by the Agency, pursuant to the terms a certain

Lease Agreement by and among the Agency, the Corporation and the Company (or similar document), except that the term of the Corporation's leasehold interest shall expire no later than **December 31, 2020** (or such other date acceptable to the Executive Director, President, Chair or Secretary of the Corporation (each an "Authorized Officer"), and to execute and deliver all documents, certificates and agreements necessary to establish such interest of the Corporation, (collectively, the "Corporation Documents").

Section 3. Each Authorized Officer is hereby further authorized, on behalf of the Corporation, to execute, deliver and record the Mortgage and any assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project and/or finance or re-finance acquisition and Project costs, equipment and other personal property and related transactional costs (the "Lender Documents"; and, together with the Corporation Documents, the "Project Documents") and, where appropriate, the Secretary or Assistant Secretary of the Corporation is hereby authorized to affix the seal of the Corporation to the Project Documents and to attest the same, all with such changes, variations, omissions and insertions as the Authorized Officer shall approve.

Section 4. (a) Each Authorized Officer is hereby authorized, on behalf of the Corporation, to execute and deliver the Project Documents to which it is a party in the forms acceptable to such Authorized Officer. The execution of the Corporation Documents by such Authorized Officer shall constitute conclusive evidence of such approval; provided, in all events, recourse against the Corporation is limited to the Corporation's interest in the Project.

(b) Each Authorized Officer is further hereby authorized, on behalf of the Corporation, to designate any additional authorized representatives of the Corporation.

Section 5. The officers, employees and agents of the Corporation are hereby authorized and directed for and in the name and on behalf of the Corporation to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Corporation with all of the terms, covenants and provisions of the documents executed for and on behalf of the Corporation.

Section 6. The Corporation is hereby authorized to provide the Company with the financial assistance in the form of a mortgage recording tax exemption as permitted by New York State law, which exempts the Corporation from paying certain mortgage recording taxes except for the portion of the mortgage recording tax allocated to transportation districts referenced in Section 253(2)(a) of the New York State Real Property Tax Law due to the Agency's involvement in the Project.

Section 7. Due to the complex nature of this transaction, the Corporation hereby authorizes each Authorized Officer to approve, execute and deliver such further agreements, documents and certificates as the Corporation may be advised by counsel to the Corporation or Transaction Counsel to be necessary or desirable to effectuate the foregoing, such approval to be conclusively evidenced by the execution of any such agreements, documents or certificates by such Authorized Officer.

Section 8. These resolutions shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>
Mayor Mike Spano	[✓]	[]	[]	[]
Peter Kischak	[✓]	[]	[]	[]
Wilson Kimball	[]	[]	[]	[×]
Melissa Nacerino	[]	[]	[]	[×]
Hon. Cecile D. Singer	[✓]	[]	[]	[]

The Resolution was thereupon duly adopted.

INDUCEMENT RESOLUTION

(Issuance of Certain Education Revenue Bonds by the Corporation)

A regular meeting of the Yonkers Economic Development Corporation was convened in public session, electronically, pursuant to Executive Order No. 202.11 as amended from time to time - Continuing Temporary Suspension and Modification Of Laws Relating To The Disaster Emergency - by Governor Andrew M. Cuomo of the State of New York on September 4, 2020.

The following resolution was duly offered and seconded, to wit:

Resolution No. 09/2020- 10

RESOLUTION OF THE YONKERS ECONOMIC DEVELOPMENT CORPORATION (1) TAKING OFFICIAL ACTION TOWARD THE ISSUANCE OF UP TO \$15,000,000 PRINCIPAL AMOUNT TAX-EXEMPT AND/OR TAXABLE EDUCATIONAL REVENUE BONDS IN ONE OR MORE SERIES FOR THE PURPOSE OF UNDERTAKING A CERTAIN PROJECT FOR THE BENEFIT OF LAMARTINE/WARBURTON LLC AND ITS SOLE MEMBER, THE CHARTER SCHOOL OF EDUCATIONAL EXCELLENCE; (2) AUTHORIZING A PUBLIC HEARING WITH RESPECT TO SUCH BONDS AND RELATED FINANCIAL ASSISTANCE; AND (3) MAKING CERTAIN FINDINGS IN COMPLIANCE WITH THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT

WHEREAS, Yonkers Economic Development Corporation (the "Issuer" or "Corporation") a not-for-profit local development corporation duly organized and validly existing pursuant to Section 1411 of the Not-for-Profit Corporation Law ("N-PCL") of the State of New York (the "State"); and

WHEREAS, pursuant to the N-PCL the Issuer was established as a not-for-profit corporation for the purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities and lessening the burdens of government and acting in the public interest, and has the powers, among other things, to construct, acquire, rehabilitate and improve for use by others industrial or manufacturing plants, to assist financially in such construction, acquisition, rehabilitation and improvement, to acquire real or personal property and to issue bonds, notes and other obligations thereof; and

WHEREAS, the N-PCL authorizes the Issuer to lease and sell any or all of its facilities, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such bonds so issued and any agreements made in connection therewith, to pledge

the revenues and receipts from the lease or sale thereof to secure the payment of such bonds and interest thereon; and

WHEREAS, Charter School of Educational Excellence (the “School”), a New York not-for-profit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), has submitted an application (the “Application”) to the Issuer, on behalf of itself and its wholly-owned subsidiary Lamartine/Warburton LLC (the “Company” and, collectively with the School, the “Applicant”), to issue its Tax-exempt and/or Taxable Educational Revenue Bonds (Charter School of Educational Excellence Project) Series 2020, in the principal amount of not to exceed \$15,000,000.00 (the “Bonds”) pursuant to the provisions of a trust indenture or amendment thereof (the “Indenture”) by and between the Issuer and a trustee for the holders of the Bonds issued under the Indenture in connection with the undertaking by the Issuer of a project (the “Project”), which Project consists of the (A) Refunding of the Issuer’s Educational Revenue Bonds (Charter School of Educational Excellence Project) Series 2010A Bonds (the “2010 Bonds”); (B) paying capitalized interest on the portion of the Series 2020 Bonds allocable to the Project, if any; (C) funding a reserve fund, if any and such other and necessary funds for the Bonds as described in and required by the Indenture; (D) financing various expenditures incidental to the financing, including costs of issuance; (E) financing all or a portion of the costs associated with acquisition of a leasehold interest in and renovation of the premises at 244 Warburton Avenue (the “Expansion Facility”); and

WHEREAS, the proceeds of the Series 2010A Bonds were used to finance or refinance (i) the acquisition, construction, installation and equipping of an approximately 29,000 square foot modular classroom facility (the “2010 New Facility”), constituting an addition to an approximately 22,000 existing facility (the “2010 Existing Facility”), all to be operated as a charter school and located on an approximately 2.50 acre parcel of land located at 260 Warburton Avenue in the City of Yonkers, Westchester County, New York (the “Land”; and together with the 2010 New Facility and the 2010 Existing Facility, the “2010 Facility” and together with the “Expansion Facility”, the “Facility”), (ii) the refinancing of certain existing indebtedness of the School previously incurred in connection with the 2010 Existing Facility, (iii) the funding of a portion of the interest to become due on the Series 2010 Bonds, (iv) the funding of a Reserve Fund for the Series 2010 Bonds, and (v) the financing of certain costs incurred in connection with the issuance of the Series 2010 Bonds; and

WHEREAS, the 2010 Facility is subject to a certain Lease Agreement, between 260 Warburton Partners LLC, as landlord, and the School, as tenant (the “Facility Lease Agreement”); and

WHEREAS, the School contemplates entering into an amendment of the Facility Lease to include the Expansion Facility.

WHEREAS, the School wishes to sublease the Facility to the Company or assign the Facility Lease to the Company and the Company wishes to sublease or sub-sublease the Facility to the School (the “School Lease”); and

WHEREAS, payments made by the School to the Company under the School Lease will secure the Series 2020 Bonds.

WHEREAS, pursuant to the Indenture, the proceeds of the sale of the Bonds (the “Bond Proceeds”) will be deposited into various trust funds held by the Trustee under the Indenture and will be disbursed by the Trustee from time to time to pay the costs of the Project, but only upon satisfaction of the requirements for making such disbursements set forth in the Indenture; and

WHEREAS, the School will execute and deliver to a custodian (the “Custodian”) and the Trustee a custody agreement or an amendment and/or restatement of an existing custody agreement (the “Custody Agreement”), which Custody Agreement will provide the agreement of the School to direct School Districts (as defined in the Indenture) to pay Education Aid (as defined in the Indenture) to the Custodian for the benefit of the Bonds; and

WHEREAS, pursuant to the Pledge and Assignment, loan payments made by the Company under the Loan Agreement (as defined in the Indenture) are to be paid directly to the Trustee; and

WHEREAS, as further security for the Bonds and the Company's obligations under the Financing Documents (as defined in the Indenture), the Company and the School will execute and deliver to the Issuer, and the Issuer will assign to the Trustee (A) a mortgage (the “Mortgage”), which mortgage will, among other things, grant to the Trustee a first mortgage lien on, and security interest in, the Project and (B) an assignment of leases and rents for the Project (the “Assignment of Rents”) which assigns to the Trustee all leases affecting the Project and the rents payable thereunder; and

WHEREAS, the Bonds will be offered for sale pursuant to an official statement (the “Official Statement”) of the Issuer and will be sold to Robert W. Baird Incorporated (the “Underwriter”) pursuant to the terms and provisions of a bond purchase agreement (the “Bond Purchase Agreement”) among the Issuer, the Company and the Underwriter; and

WHEREAS, to demonstrate compliance with the provisions of the Internal Revenue Code (the “Code”) related to the issuance of tax-exempt obligations, (A) the Issuer will (1) execute a completed Internal Revenue Service Form 8038 (Information Return for Private Activity Bonds) relating to the Bonds (the “Information Return”) pursuant to Section 149(e) of the Code, and (2) file the Information Return with the Internal Revenue Service, (B) the Company will execute a tax compliance agreement

dated the date of delivery of the Bonds (the “Tax Compliance Agreement”) relating to the requirements in Section 145, 146, 147, 148 and 149 of the Code relating to the Bonds, and (C) the Underwriter will execute a letter (the “Issue Price Letter”) confirming the issue price of the Bonds for purposes of Section 148 of the Code; and

WHEREAS, to assure compliance with the continuing disclosure requirements impose by the Securities and Exchange Commission, the Applicant will execute and deliver to the Trustee a continuing disclosure undertaking (the “Continuing Disclosure Agreement”);

WHEREAS, the Company intends to use a portion of the proceeds from the 2020 Bond to reimburse the Applicant for certain expenditures related to the Project that the Applicant has paid prior to the date of the issuance of the 2020 Bonds from the Applicant’s funds; and

WHEREAS, the United States Treasury Department has issued regulations (the “Treasury Regulations”) which provide rules which must be satisfied in order for the reimbursement of capital expenditures with bond proceeds to qualify as an expenditure of bond proceed; and

NOW, THEREFORE, BE IT RESOLVED BY THE ISSUER AS FOLLOWS:

Section 1. The Issuer hereby finds and determines:

(a) Pursuant to the Issuer's certificate of incorporation filed on June 5, 2007 with the Department of State (the "Certificate") and the purposes and powers contained within Section 1411 of the N-PCL, the Issuer is empowered to undertake the Project, issue the Bonds, and undertake the various transactions contemplated herein.

(b) The Issuer, in undertaking the Project pursuant to the purposes and powers set forth within N-PCL Section 1411 and the Certificate is acting in the public interest by lessening the burdens of government and, further, is promoting urban redevelopment initiatives in the City of Yonkers, Westchester County, New York.

Section 2. The proposed financial assistance being contemplated by the Issuer includes: (i) financing all or a portion of the costs of the Project (“Project Costs”) by the issuance of the Bonds in an amount not to exceed the lesser of the Project Costs or \$15,000,000 and (ii) an exemption from all New York State and local mortgage recording taxes with respect to the Mortgage.

Section 3. The issuance of the Bonds and the granting of the financial assistance as contemplated by Paragraph 2 of this Resolution, shall be subject to:

(a) agreement by the Issuer, the Company and the Underwriter of the Bonds on mutually acceptable terms for the Bonds and for the sale and delivery thereof and mutually acceptable terms and conditions for the security for the payment thereof; and

(b) approval by the Mayor of the City of Yonkers, New York, of the issuance of the Bonds in accordance with the provisions of Section 147(f) of the Code; and

(c) holding a public hearing as required by Section 147(f) of the Code (as authorized by Section 5 below).

Section 4. Based upon the review by the Issuer of the Short Environmental Assessment Form (the "EAF") and related documents delivered by the Company to the Issuer and other representations made by the Company to the Issuer in connection with the Project, the Issuer hereby finds that the action is appropriately classified as a "Type II" action under State Environmental Quality Review Act ("SEQRA"), since it involves the interior replacement, rehabilitation or reconstruction of the Expansion Facility (6 N.Y.C.R.R. § 617.5 [c][2]) and routine activities of educational institutions, including expansion of existing facilities by less than 10,000 square feet of gross floor area (6 N.Y.C.R.R. § 617.5 [c][8]). The Issuer has determined that the action does not have a significant impact on the environment and no further action under SEQRA is required.

Section 5. This resolution shall authorize the Issuer to hold a public hearing as required by Section 147(f) of the Code.

Section 6. The Company and School are hereby authorized to conduct such feasibility and other studies and preliminary planning and budgetary processes necessary or convenient to enable the Issuer to make its final determination whether to approve the issuance of the Bonds, and the Company and School are further authorized to advance such funds as may be necessary for such purpose, subject, to the extent permitted by law, to reimbursement from the proceeds of the sale of the Bonds, if the Bonds are issued.

Section 7. Counsel to the Issuer and Harris Beach PLLC, as Bond Counsel for the Issuer, are hereby authorized to work with counsel to the Company and School and others to prepare for submission to the Issuer, all documents necessary to effect the authorization, issuance and sale of the Bonds and reimbursement of the cost of all such work prior to the date hereof is hereby authorized to the extent permitted by the Code.

Section 8. This Resolution shall constitute the adoption of "official intent" (within the meaning of the United States Treasury Regulations Section 1.150-2(d) with respect to issuance of the Series 2020 Bonds and the original expenditures which are reasonably expected to be reimbursed from the proceeds of the Series 2020 Bonds.

Section 9. The Chairman (or Vice Chairman), President and CEO and/or Secretary of the Issuer are hereby authorized and directed to distribute copies of this

YEDC Resolution No.:09/2020 -10

Inducement Resolution: Issuance of Certain Education Revenue Bonds – Charter School for Education Excellence

TC: Harris Beach PLLC

September 4, 2020

Resolution to the Company and School and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 10. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>
Mayor Mike Spano	[✓]	[]	[]	[]
Peter Kischak	[✓]	[]	[]	[]
Wilson Kimball	[]	[]	[]	[×]
Melissa Nacerino	[]	[]	[]	[×]
Hon. Cecile D. Singer	[✓]	[]	[]	[]

The Resolution was thereupon duly adopted.

