

**FINAL RESOLUTION**  
*(Waverly Phase I Project)*

A regular meeting of the City of Yonkers Industrial Development Agency was convened on June 15, 2020.

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

**Resolution No. 06/2020 - 08**

RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”) (i) ACKNOWLEDGING THE PUBLIC HEARING HELD BY THE AGENCY WITH RESPECT TO WAVERLY SAW MILL RIVER REALTY LLC (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT, FINANCIAL ASSISTANCE AND PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT AND RELATED DOCUMENTS; (iii) AUTHORIZING FINANCIAL ASSISTANCE TO WAVERLY SAW MILL RIVER REALTY LLC IN THE FORM OF A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION, AND EQUIPPING OF THE PHASE I PROJECT.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 83 of the Laws of 1982 of the State of New York, as amended (hereinafter collectively called the “Act”), the **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY** (the “Agency”) was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **WAVERLY PROPERTIES, INC.** for itself or on behalf of an entity which was recently formed, namely **WAVERLY SAW MILL RIVER REALTY 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 1100 Saw Mill River Road, City of Yonkers, New York (collectively, the “Land”) and the existing improvements located thereon consisting principally of vacant land along Saw Mill River Road in the City of Yonkers, New York (collectively, the “Existing Improvements”); (ii) the construction on the Land of a new building for the fabrication and manufacture of metal products (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, on February 19, 2020, the Agency adopted a resolution (the “Initial Resolution”) with respect to the Project (i) accepting the Application of the Company, (ii) directing that a public hearing be held, and (iii) describing the financial assistance, as that term is defined in the Act (the “Financial Assistance”) being contemplated by the Agency with respect to the Project; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on March 10, 2020, at 3:00 p.m., at the offices of Agency at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701, the Agency held a public hearing with respect to the Project and the Financial Assistance being contemplated by the Agency (the “Public Hearing”) whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A copy of the Notice of Public Hearing - published and forwarded to the affected taxing jurisdictions with Notice Letter at least ten (10) days prior to said Public Hearing - is attached hereto as **Exhibit A**, along with the Affidavit of Publication of *The Journal News*, and Minutes of the Public Hearing; and

WHEREAS, the Land is subject to a certain New York State Department of Environmental Conservation (the “DEC”) Order on Consent, dated December 29, 2014 (the “Consent Order”), whereby the Company, as the owner of the Land, is required to remove 75,000 cubic yards of construction and demolition debris (the “CND”) off of the Land; and

WHEREAS, the cost of complying with the Consent Order may exceed \$4,000,000.00, so the Company needs a sales and use tax exemption in the amount of \$2,000,000.00 (the “Partial Sales Tax Exemption”) to aid in the removal of the CND (the “Phase I Project”); and

WHEREAS, the Company cannot proceed with the Project and construct the Facility until such time as the Phase I Project is complete; and

WHEREAS, pursuant to Article 8 of the New York Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended and the regulations adopted pursuant thereto by the DEC, being 6 N.Y.C.R.R. Part 617.1, et. seq., as amended (“SEQRA”), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to approve the Phase I Project; and

WHEREAS, pursuant to SEQRA, to aid the Agency in determining whether the Phase I Project may have a significant adverse impact upon the environment, the Agency has completed, received and/or reviewed: (1) Part 1 of a Short Form Environmental Assessment Form, dated June 1, 2020 (the “EAF”); and (2) other relevant environmental information as well as completing and reviewing the Parts 2 and 3 of the EAF for the Phase I Project (collectively, 1 and 2 shall be referred to as the “Environmental Information”); and

WHEREAS, pursuant to SEQRA, the Agency is required to analyze the Phase I Project to determine whether it has the potential to have a significant adverse impact on the environment and whether an Environmental Impact Statement must be prepared with respect to the Phase I Project; and

WHEREAS, the Phase I Project will not have a significant adverse impact on the environment since (x) the Environmental Information indicates that the Phase I Project will have no or minimal impact on the environment and (y) the Phase I Project is the provision of a Partial Sales Tax Exemption to facilitate compliance with the Consent Order, under the oversight of the DEC, and the City of Yonkers Building Department pursuant to a building permit; and

WHEREAS, it is contemplated that the Agency enter into an agent, financial assistance and project agreement, pursuant to which the Agency will designate the Company as its agent for the purpose of acquiring, constructing and equipping the Phase I Project (the “Agent Agreement”), (ii) negotiate and enter into a lease agreement (the “Lease Agreement”) and leaseback agreement (the “Leaseback Agreement”), (iii) take a leasehold interest in the Land constituting the Phase I Project (once the Lease Agreement and Leaseback Agreement have been negotiated), and (iv) provide a portion of the Financial Assistance to the Company in the form of the Partial Sales Tax Exemption for purchases and rentals related to the acquisition, construction and equipping of the Phase I Project (collectively, the “Phase I Project Financial Assistance”); and

WHEREAS, the Agent Agreement, Lease Agreement, Leaseback Agreement, and related documents with respect to the Phase I Project are being negotiated and will be presented to the Agency for execution upon approval of this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The public hearing held by the Agency on March 10, 2020, at 3:00 p.m., at the offices of Agency at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701, concerning the Project, of which the Phase I Project is an essential component, and Financial Assistance, which includes the Phase I Project Financial Assistance, was duly held in accordance with the Act, including, but not limited to, the giving of at least ten (10) days published notice of the Public Hearing (such notice also provided to the Chief Executive Officer of each affected tax jurisdiction), affording interested parties a reasonable opportunity, both orally and in writing, to present their views with respect to the Project, which includes the Phase I Project.

Section 2. Intentionally Omitted.

Section 3. Subject to the Company executing an Agent Agreement (in a form to be approved by Counsel to the Agency and/or Transaction Counsel) and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Phase I Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Phase I Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and equip the Phase I Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and

subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Phase I Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Agent Agreement shall expire on **December 31, 2020** (unless extended for good cause by the Executive Director of the Agency) if the Lease Agreement, Leaseback Agreement, and related documents contemplated have not been executed and delivered.

Section 4. Based upon the representation and warranties made by the Company in its Application for financial assistance, the Agency hereby authorizes and approves the Company as its agent to make purchases of goods and services relating to the Phase I Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$2,000,000.00**, which result in New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) not to exceed **\$177,500.00**. The Agency agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services.

Section 5. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Phase I Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Phase I Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Phase I Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Phase I Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Phase I Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Phase I Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Phase I Project. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Phase I Project, must (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 6. The Chairman, Vice Chairman, President, Executive Director, Secretary and/or the CFO of the Agency the Agency are hereby authorized, on behalf of the Agency, to negotiate and enter into (A) the Agent Agreement, (B) the Lease Agreement (C) Leaseback Agreement and (D) related documents, certificates, instruments and agreements related to the Phase I Project.

Section 7. Intentionally Omitted.

Section 8. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency 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 Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 9. The Agency, having reviewed the Environmental Information, and for the reasons set forth in the recitals, hereby determines that the Phase I Project does not pose a potential significant adverse environmental impact and thus adopts a Negative Declaration pursuant to 6 N.Y.C.R.R. § 617.7.

Section 10. This resolution shall take effect immediately upon adoption.

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	[ ✓ ]	[    ]	[    ]	[    ]
Henry Djonbalaj	[ ✓ ]	[    ]	[    ]	[    ]
Roberto Espiritu	[ ✓ ]	[    ]	[    ]	[    ]

The Resolutions were thereupon duly adopted.

**CERTIFICATION**  
*(Waverly Phase I Project)*

STATE OF NEW YORK                    )  
COUNTY OF WESTCHESTER        ) ss.:

I, the undersigned, Secretary of the City of Yonkers Industrial Development Agency DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the City of Yonkers Industrial Development Agency (the “Agency”), including the resolution contained therein, held June 15, 2020, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law) and Executive Order 202 of 2020, as amended (“Executive Order”), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7 and the Executive Order.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 25th day of June, 2020.

  
\_\_\_\_\_  
Wilson Kimball, Secretary

[SEAL]

IDA Resolution No.: 06/2020-08  
Final Resolution: Waverly Phase I  
TC: Harris Beach PLLC  
June 15, 2020

**EXHIBIT A**

Notice of Public Hearing  
Notice Letter  
Evidence of Mailing Notice Letter  
Affidavit of Publication of *The Journal News*  
Minutes of Public Hearing

[Attached hereto]