

FINAL RESOLUTION
(Yonkers BV AMS LLC Project)

A regular meeting of the City of Yonkers Industrial Development Agency was convened in public session on February 29, 2024.

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

Resolution No. 02/2024 - 03

RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”) (i) ACKNOWLEDGING THE PUBLIC HEARING HELD BY THE AGENCY WITH RESPECT TO THE YONKERS BV AMS LLC PROJECT, (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT, FINANCIAL ASSISTANCE AND PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, TAX AGREEMENT, TAX AGREEMENT MORTGAGE AND RELATED DOCUMENTS; (iii) AUTHORIZING FINANCIAL ASSISTANCE IN THE FORM OF (A) A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT, (B) AN EXTENSION OF THE EXISTING PARTIAL REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A TAX AGREEMENT, AND (C) A MORTGAGE RECORDING TAX EXEMPTION AS PERMITTED BY NEW YORK STATE LAW; AND (iv) AUTHORIZING THE EXECUTION AND DELIVERY OF A MORTGAGE AND RELATED DOCUMENTS, IF REQUIRED

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 (the “State”), as amended (hereinafter collectively called the “Act”), 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, **YONKERS BV AMS LLC**, for itself or an entity to be formed (the “Company”) has submitted an application (the “Application”) to the Agency requesting the Agency’s assistance with a certain project (the “Project”) consisting of: (A) the acquisition or retention of the land commonly known as 41 Buena Vista Avenue, City of Yonkers (Section 1, Block 512, Lot 11) (the “Land”); (B) the construction, improving and equipping on the Land of a mixed-use transit oriented development, in two phases; (C) phase one will consist of a residential tower containing approximately: (i) 510 residential rental units, (ii) related residential amenities, (iii) 544 parking spaces, (iv) 2,200 square feet of ground level retail and commercial space, and (v) 2/3 of the parking podium component; (D) phase two will consist of residential tower containing approximately: (i) 396 residential rental units, (ii) related residential amenities, (iii) 363 parking spaces, (iv) 700 square feet of ground level retail and commercial space, and (v) the

remaining 1/3 of the parking podium; (E) of the residential rental units, the Company will provide 91 units as affordable housing units (or in the alternative, as permitted by the City of Yonkers Zoning Ordinance, the Company may provide affordable housing units in an amount equal to five percent (5%) of the market rate units if a payment-in-lieu contribution is made to the City's Affordable Housing Trust Fund for the other five percent (5%) not provided on-site. Therefore the Project will provide between 45 and 91 units of affordable housing at the Facility (as defined below) (collectively, the "Improvements"); (F) the acquisition and installation in and around the Land and Improvements of certain items of equipment and other tangible personal property (the "Equipment", which together with the Land and Improvements are the "Facility"); and

WHEREAS, there have been many attempts to develop the Project over the past decade, as detailed in Resolution 02/2019-07 and the Agency and the Company are currently the parties to certain "straight lease", as such term is defined in the Act, transaction documents, dated as of October 29, 2018 (the "2018 Transaction Documents"); and

WHEREAS, on November 18, 2020, the Planning Board declared its intent to, among other things, serve as Lead Agency for the for purposes of a review of the Project as a proposed action under SEQRA (the "Planning Board Review") and issued a Positive Declaration of environmental significance requiring the preparation of the Draft Environmental Impact Statement ("DEIS") for the Project, which DEIS was issued February 9, 2022; and

WHEREAS, at the conclusion of the SEQRA process, the Final Environmental Impact Statement ("FEIS") was issued on September 21, 2022; and

WHEREAS, at its November 9, 2022 meeting, pursuant to SEQRA, the Planning Board, after considering the relevant environmental impacts, facts and conclusions disclosed in the DEIS and FEIS and weighing and balancing the relevant environmental impacts with social, economic and other essential considerations, adopted a resolution adopting its findings ("Findings Statement") determining that (1) that the requirements of 6 NYCRR Part 617 have been met; and (2) that consistent with social, economic, and other essential considerations, from among the reasonable alternatives available, the proposed action is the one that avoids or minimizes adverse environmental effects to the maximum extent practicable by incorporating as conditions to this decision those mitigation measures that are identified as practicable; and

WHEREAS, the Findings Statement Notice was filed on November 10, 2022 and circulated to all "involved agencies", as such term is defined by SEQRA; and

WHEREAS, it is contemplated that the Agency will amend and restate the 2018 Transaction Documents and 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 constructing and equipping the Project (the "Agent Agreement"), (ii) negotiate and enter into an amended and restated lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and an amended and restated tax agreement (the "Tax Agreement") with the Company, and, if required by the Agency, an amended and restated Tax Agreement mortgage (the "Tax Agreement Mortgage"), (iii) take a leasehold interest in the Land, the Improvements and

personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and Tax Agreement (and Tax Agreement Mortgage, if applicable have been negotiated), and (iv) provide “financial assistance”, as such term is defined in the Act, to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project, (b) mortgage recording tax exemption as permitted by State law, and (c) an extension of the existing partial real property tax abatement structured through the Tax Agreement (collectively the “Financial Assistance”); and

WHEREAS, pursuant to General Municipal Law Section 859-a, on January 22, 2024, at 12:30 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 proposed “financial assistance” as such term is defined in the Act, 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 Company has or will obtain a mortgage loan or loans (collectively, the “Mortgage”) to finance all or a portion of the financing or re-financing of the costs of the Facility from a lender to be identified by the Company, which Mortgage will secure an aggregate principal amount of approximately \$303,309,700; and

WHEREAS, the Company has requested a mortgage recording tax exemption upon the recording of the Mortgage in the amount of up to approximately \$4,549,646; and

WHEREAS, the number of jobs to be created, maintained or retained at the Facility are projected to be approximately eighteen (18).

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Public Hearing held concerning the Project and the 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. The Agency hereby determines that the Project is a “commercial” project under the Act, and that undertaking and providing financial assistance to the Project: (i) will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the City of Yonkers and the State and improve their standard of living; (ii) will preserve the competitive position of the Project and will not result in the removal of an industrial, manufacturing or commercial plant of the Company or any occupant of the Project from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company

or any occupant of the Project except as permitted by the Act; and (iii) is authorized by the Act and will be in furtherance of the policy of the State as set forth therein.

Section 2. The Agency is hereby authorized to provide to the Company the Financial Assistance in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the Project, (b) an extension of the existing real property tax abatement structured through the Tax Agreement, and (c) a mortgage recording tax exemption in the approximate amount of **\$4,549,646** for the Mortgage as permitted by New York State Law, except for an amount representing the “additional tax” imposed on each mortgage of real property situated within the state imposed by paragraph (a) of subdivision (2) of Section 253 of the Tax Law.

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 Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and equip the 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 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, 2025** (unless extended for good cause by the Executive Director of the Agency) if the Lease Agreement, Leaseback Agreement, Tax Agreement and Tax Agreement Mortgage 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 Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately **\$145,631,882**, which result in New York State and local sales and use tax exemption benefits (“Sales and Use Tax Exemption Benefits”) in the approximate amount of **\$12,924,830**. 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 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 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 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 Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the 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 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 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 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 are hereby authorized, on behalf of the Agency, to negotiate and enter into: (A) the Agent Agreement, (B) the Lease Agreement, pursuant to which the Company leases the Project to the Agency, (C) the related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, and (D) the Tax Agreement and Tax Agreement Mortgage; *provided, that*, (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the Tax Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with and (iii) the foregoing documents are all amendments and restatements of the 2018 Transaction Documents.

Section 7. The Chairman, Vice Chairman, Executive Director and/or the Secretary of the Agency are hereby authorized, on behalf of the Agency, to execute, deliver and record any mortgage, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any reputable lender identified by the Company, up to a maximum principal amount necessary to refinance existing Company debt and to undertake the Project, acquire the Facility and/or finance or refinance the Facility or equipment and other personal property and related transactional costs (hereinafter, with the Agent Agreement, Lease Agreement, Leaseback Agreement, Tax Agreement and Tax Agreement Mortgage, collectively called the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Executive Director and/or the Secretary of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman, Executive Director and/or the Secretary of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

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. Based on the DEIS, the FEIS and the Findings Statement, attached hereto as **Exhibit B**, the Agency hereby finds and determines as follows: (i) Agency concurs with the Planning Borad that the “proposed action” is a “Type I” action, as that term is defined in under SEQRA; (ii) that the environmental review of the “proposed action” pursuant to SEQRA was conducted by the Planning Board, (iii) the requirements of SEQRA have been met, and (iv) the Agency concurs with the Findings Statement, and adopts said findings as its own.

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

Date: February 29, 2024

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	[✓]	[]	[]	[]
Marlyn Anderson	[✓]	[]	[]	[]
Melissa Nacerino	[]	[]	[]	[x]
Hon. Cecile D. Singer	[✓]	[]	[]	[]
Henry Djonbalaj	[✓]	[]	[]	[]
Roberto Espiritu	[]	[]	[]	[x]
Victor Gjonaj	[✓]	[]	[]	[]

The Resolution was thereupon duly adopted.

CERTIFICATION
(Yonkers BV AMS LLC Project)

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

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

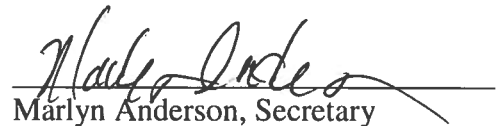
That I have compared the annexed extract of minutes of the meeting of the City of Yonkers Industrial Development Agency (the “Agency”), including the resolution contained therein, held February 29, 2024, with the original thereof on file in my office, and that the same is a true and correct copy of the 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), 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.

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 29 day of February, 2024.


Marlyn Anderson, Secretary

[SEAL]

YIDA Resolution No. 02/2024-03
Final Resolution – Yonkers BV AMS LLC
February 29, 2024
TC: Harris Beach PLLC

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]

EXHIBIT B

**Draft Environmental Impact Statement,
Final Environmental Impact Statement, and
Planning Board Findings Statement**

[Attached hereto]