

FINAL RESOLUTION
(Main Street Lofts Yonkers, LLC Project)

A regular meeting of the City of Yonkers Industrial Development Agency was convened in public session on December 28, 2023.

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

Resolution No. 12/2023 - 27

RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) ACKNOWLEDGING THE PUBLIC HEARING HELD BY THE AGENCY WITH RESPECT TO THE MAIN STREET LOFTS YONKERS, 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, AND (B) A PARTIAL REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A TAX AGREEMENT

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, MAIN STREET LOFTS YONKERS, 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 66 Main Street, City of Yonkers (Section 1, Block 501, Lots 101, 201 and 202) (the "Land"); (B) the construction, improving and equipping on the Land of a residential facility containing (i) 170 residential rental units, of which 7 units are provided at or below 40% AMI and 28 units are provided at or below 50% AMI, (ii) related residential improvements and (iii) 21,000 square feet of retail space (the "Improvements"); (C) the renovation, modernization and upgrading of the Improvements; and (D) 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, the Facility was first renovated and improved with the assistance of the Agency in 2007, and is now seeking additional "financial assistance" as such term is defined in

the Act for the purposes of completing critical maintenance, repairs and replacement of building systems, maintenance to elevators, the parking garage and improvements to the commercial tenant space; and

WHEREAS, the significant percentage of affordable units in the Facility (i) promotes economic diversity among residents of the downtown area of the City, (ii) the residents of the “affordable” units include many low income seniors tenants, and (iii) of many residents of the “affordable” units have been residents of the building for five or more years, which supports residential stability in the downtown area; and

WHEREAS, on November 21, 2023, the Agency adopted a 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 hereinafter defined) being contemplated by the Agency with respect to the Project; 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 constructing and equipping the Project (the “Agent Agreement”), (ii) negotiate and enter into a lease agreement (the “Lease Agreement”), leaseback agreement (the “Leaseback Agreement”) and tax agreement (the “Tax Agreement”) with the Company, and, if required by the Agency, a 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, and (b) a 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 December 21, 2023, at 3:00 p.m. local time, 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 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 number of jobs to be created or maintained at the Facility are projected to be eight (8); and

WHEREAS, pursuant Article 8 of the Environmental Conservation Law of the State and the Regulations adopted pursuant thereto by the Department of Environmental Conservation (“Department”) of the State (collectively, “SEQRA”) the Project constitutes a Type II action under

SEQRA and no further action, determination or finding is required under SEQRA, for the following reasons; and

WHEREAS, the Agency has reviewed the Department's 2018 environmental findings associated with the statewide amendments to the SEQRA regulations which expressly state in relevant part that:

“The Department hereby adopts a new Type II category, to be codified at 6 NYCRR § 617.5 (c) (18), to read as follows: “reuse of a residential or commercial structure, or of a structure containing mixed residential and commercial uses, where the residential or commercial use is a permitted use under the applicable zoning law or ordinance, including by special use permit, and the action does not meet or exceeds any of the thresholds in section 617.4 of this Part.”

“Unlike new construction, rehabilitation involves largely labor (usually local), and less materials. Rehabilitation also avoids the disposal of building materials in a landfill that would result from the ultimate demolition of an existing building that is not maintained or restored. Since one-quarter of the material in solid waste facilities is comprised of construction debris (much of which is from building demolition), the minimization or avoidance of building demolition through rehabilitation reduces solid waste. Impacts are limited to construction-related ones (i.e., truck traffic), which are in the case of this adopted rule temporary, minimal and manageable through special use permits or site plan review.”

“The Type II category for reuse presupposes conditions that serve to avoid impacts including that 1) the use is permitted by zoning, 2) it is subject to some type of discretionary review (which would make it subject to SEQRA to begin with), 3) is residential or commercial or mixed use, and 4) cannot include an action that would trigger a Type I threshold. Under these conditions, the Department does not believe the impacts of the Type II category would be significant.”

WHEREAS, the Project does not involve new greenfield construction or expansion and use of the existing building or site is not envisioned to exceed 50% of the thresholds listed in Section 617.4 of SEQRA for it to be considered a Type I Action (i.e. there is no proposed permanent physical alteration of 5 acres or more, no increased use of ground or surface water in excess of 1,000,000 gallons per day, no additional parking proposed for 250 vehicles or more and no added gross floor area in excess of 50,000 square feet); and

WHEREAS, the Project also involves (i) maintenance and repair involving no substantial changes in an existing structure or facility and (ii) the replacement, rehabilitation or reconstruction of a structure or facility which does not exceed any Type I threshold listed in Section 617.4 of SEQRA; and

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

Section 1. The Public Hearing 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, and (iv) will ensure the Facility continues to include a high percentage of affordable units in the County of Westchester, which, according to a 2019 needs assessment, is in need of over 11,000 units of new affordable housing.

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, and (b) a real property tax abatement structured through the Tax Agreement.

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 **\$730,150**, 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 **\$64,801**. 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 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 ("UTEP") or the procedures for deviation have been complied with.

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 upon the Environmental Assessment Form completed by the Company and the Application, the Agency hereby finds that the Project is Type II exempt pursuant to Section 617.5(c) (1), (2), and (18) of SEQRA and that the Project does not exceed any Type I threshold listed in Section 617.4 of SEQRA. Therefore, the Agency hereby determines that no environmental impact statement or any other determination or procedure is required under SEQRA.

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

YIDA Resolution No. 12/2023-27
Final Resolution – Main Street Lofts Yonkers LLC
December 28, 2023
TC: Harris Beach PLLC

Date: December 28, 2023

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	[✓]	[]	[]	[]
Hon. Cecile D. Singer	[✓]	[]	[]	[]
Henry Djonbalaj	[✓]	[]	[]	[]
Roberto Espiritu	[]	[]	[]	[x]
Victor Gjonaj	[✓]	[]	[]	[]

The Resolution was thereupon duly adopted.

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CERTIFICATION
(Main Street Lofts Yonkers, 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 December 28, 2023, 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 28th day of December 2023.



Marlyn Anderson, Secretary

[SEAL]

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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]

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EXHIBIT B

Negative Declaration

[Attached hereto]