

FINAL RESOLUTION
(Miroza Tower LLC Project – Sales and Use Tax Exemption)

A regular meeting of the City of Yonkers Industrial Development Agency (the “Agency”) was convened in public session on May 25, 2023.

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

Resolution No. 05/2023 - 12

RESOLUTION OF THE AGENCY (i) ACKNOWLEDGING THE PUBLIC HEARING HELD BY THE AGENCY WITH RESPECT TO THE MIROZA TOWERS LLC PROJECT, (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT, FINANCIAL ASSISTANCE AND PROJECT AGREEMENT AND RELATED DOCUMENTS; AND (iii) AUTHORIZING FINANCIAL ASSISTANCE IN THE FORM OF A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE 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 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, **MIROZA TOWERS LLC**, for itself or on behalf of 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: (i) the acquisition of certain land located at 44 Hudson Street, Yonkers, New York (Section 1, Block 502, Lot 1.10) (the “Land”) consisting principally of vacant land in the City of Yonkers, New York; (ii) the construction on the Land of a new twenty-five (25) story multi-family residential building containing approximately two hundred seventy-nine (279) residential units and up to approximately one hundred fifty-three (153) parking spaces and other improvements (the “Improvements”); and (iii) the acquisition and installation in and around the 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, on August 17, 2021, 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 such term is defined in the Act, being contemplated by the Agency with respect to the Project; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on September 9, 2021, 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 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, in connection with the Project, the Company desires to commence acquisition of material for the acquisition, construction, and equipping of the Improvements and the Equipment for use at the Facility; and

WHEREAS, prior to the authorization, execution and delivery of final documents and agreements in connection with the Project, the Company has requested that the Agency enter into a preliminary 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”), and (ii) provide “financial assistance”, as such term is defined in the Act, to the Company in the form of a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project (the “Financial Assistance”); 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 Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project; and

WHEREAS, the City of Yonkers Zoning Board of Appeals (the “Zoning Board”), as an involved agency under SEQRA in connection with land use review, designated itself to act as Lead Agency for purposes of a review of the Project as a proposed action under SEQRA and conducted a review of the Project (the “Zoning Board Review”); and

WHEREAS, at the conclusion of the Zoning Board Review, on November 16, 2021, the Zoning Board determined that the Project was an “Unlisted” action (the “Zoning Board SEQRA Findings”), and issued a negative declaration, attached hereto as **Exhibit B**, after finding that the Project will not have a significant adverse effect on the environment (the “Zoning Board Negative Declaration”); and

WHEREAS, the number of jobs to be created, maintained or retained at the Facility are projected to be twelve (12).

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 of New York (“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.

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).

Section 4. Based upon the representation and warranties made by the Company in its Application for “financial assistance”, as such term is defined in the Act, 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 approximate amount of **\$15,000,000**, 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 **\$1,331,250**. 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 the Agent Agreement and to execute and deliver any and all related Financial Assistance documents.

Section 7. 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 8. The Agency concurs with the Zoning Board SEQRA Findings and the Zoning Board Negative Declaration and hereby finds and determines as follows: (i) the Project is an Unlisted Action under SEQRA; (ii) the requirements of SEQRA have been met; and (iii) the Agency concurs with the Zoning Board SEQRA Findings and Zoning Board Negative Declaration and finds that the Project will result in no significant adverse impacts on the environment, and therefore, an environmental impact statement need not be prepared.

Section 9. 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	[✓]	[]	[]	[]
Victor Gjonaj	[✓]	[]	[]	[]
Marlyn Anderson	[✓]	[]	[]	[]
Melissa Nacerino	[✓]	[]	[]	[]
Hon. Cecile D. Singer	[✓]	[]	[]	[]
Henry Djonbalaj	[✓]	[]	[]	[]
Roberto Espiritu	[✓]	[]	[]	[]

The Resolution were thereupon duly adopted.

YIDA Resolution No. 05/2023-12
Final Resolution – Miroza Tower LLC – Sales and Use Tax Exemption
May 25, 2023
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]

YIDA Resolution No. 05/2023-12
Final Resolution – Miroza Tower LLC – Sales and Use Tax Exemption
May 25, 2023
TC: Harris Beach PLLC

EXHIBIT B

Negative Declaration

[Attached hereto]