

BOND RESOLUTION

(Genesee Community College Foundation Housing Services, Inc. Project)

A special meeting of The Genesee County Funding Corporation was convened on April 23, 2019.

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

RESOLUTION AUTHORIZING THE ISSUANCE, EXECUTION, SALE AND DELIVERY OF THE GENESEE COUNTY FUNDING CORPORATION TAX-EXEMPT REVENUE BONDS (GENESEE COMMUNITY COLLEGE FOUNDATION HOUSING SERVICES, INC. PROJECT), SERIES 2019 IN ONE OR MORE SERIES AND IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$6,000,000 AND THE EXECUTION AND DELIVERY OF ALL DOCUMENTS NECESSARY AND INCIDENTAL THERETO.

WHEREAS, pursuant to the purposes and powers contained within Section 1411 of the Not-for-Profit Corporation Law ("N-PCL") of the State of New York (the "State"), as amended (hereinafter collectively called the "Act"), and pursuant to its certificate of incorporation filed on October 30, 2009 (the "Certificate"), **THE GENESEE COUNTY FUNDING CORPORATION** (the "Issuer") 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, **GENESEE COMMUNITY COLLEGE FOUNDATION HOUSING SERVICES, INC.** (the "Company"), 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"), previously submitted an application (the "Application") to the Issuer requesting that the Issuer issue its Tax-Exempt Revenue Bonds (Genesee Community College Foundation Housing Services, Inc. Project), Series 2019 (the "Bonds"), in a principal amount not to exceed \$6,000,000 for the purpose of assisting in financing a certain project (the "Project") consisting of: (1) (a) the renovation of five (5) existing dormitory buildings containing in the aggregate approximately 51,744 square feet and containing approximately fifty (50) living units which house approximately 217 students located at 8170 Batavia-Stafford Townline Road, Town of Batavia, Genesee County, New York (the "Land"), including but not limited to, technology and safety upgrades and improvements, suite renovations, amenity renovations and renovations to address disability access, and (b) the construction of approximately 864 new feet of space on the Land to be used for building access (the collectively, the "Improvements"); (2) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment"; and, together with the Land and the

Improvements, the "Facility"); and (3) the paying of all or a portion of the costs incidental to the issuance of the Bonds, including issuance costs of the Bonds, capitalized interest and any reserve funds as may be necessary to secure the Bonds (the costs associated with items (1) through (3) above being hereinafter collectively referred to as the "Project Costs"); and

WHEREAS, the Issuer is contemplating providing financial assistance to the Company with respect to the Project (collectively, the "Financial Assistance") in the form of (i) the issuance of the Bonds in an amount not to exceed the lesser of the Project Costs or \$6,000,000; and (ii) an exemption from all mortgage recording taxes with respect to any qualifying mortgage to secure the Bonds or the Company's obligations relating to the Bonds; and

WHEREAS, in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amend (the "Code"), the Issuer conducted a public hearing with respect to the issuance of the Bonds on Tuesday, March 5, 2019, at 4:30 p.m., local time, at Batavia Town Hall, Small Conference Room, 3833 West Main Street Rd, Batavia, New York 14020, following the publication in the *Daily News* of a notice of said public hearing; and

WHEREAS, the Bonds are being issued and sold by the Issuer to Five Star Bank or other bond purchaser as identified by the Issuer (the "Bank") pursuant to a certain Bond Purchase Agreement, Loan Agreement and Building Loan Contract, to be dated as May 1, 2019, or such other date acceptable to the Chairperson or the President/Chief Executive Officer of the Issuer (each an "Authorized Officer"), by and among the Issuer, the Company and the Bank (the "Bond Purchase Agreement"); and

WHEREAS, the Issuer will loan the net proceeds derived from the issuance of the Bonds to the Company pursuant to the Bond Purchase Agreement, with the payments made by the Company thereunder being sufficient to pay the principal of, premium, if any, and interest on the Bonds; and

WHEREAS, as security for the Bonds, (i) the Company will grant to the Bank and the Issuer, a mortgage lien on and security interest in the Facility and certain other properties of the Company pursuant to a certain Mortgage and Security Agreement, to be dated as of May 1, 2019, or such other date acceptable to the Authorized Officer, from the Company to the Bank (the "Mortgage"); (ii) the Company has granted a security interest in all of its assets and pledged its Gross Receipts (as such term is defined in the hereinafter defined Pledge and Security Agreement) to the Bank pursuant to a certain Pledge and Security Agreement, to be dated as of May 1, 2019, or such other date acceptable to the Authorized Officer (the "Pledge and Security Agreement"); and (iii) the Company has granted all its right, title and interest in and to all present and future leases and rents of the Project, to the Bank pursuant to a certain Assignment of Leases and Rents, to be dated as of May 1, 2019, or such other date acceptable to the Authorized Officer (the "Assignment of Leases and Rents"); 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 Issuer must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final

determination whether to undertake the Project; and

NOW, THEREFORE, BE IT RESOLVED by the GENESEE COUNTY FUNDING CORPORATION as follows:

Section 1. It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration.

Section 2. It is among the purposes of the Issuer to construct, acquire, rehabilitate and improve for use by others, facilities in Genesee County, to assist financially in such construction, acquisition, rehabilitation and improvement, to maintain and/or lease such facilities on its behalf or for others in Genesee County.

Section 3. The Issuer hereby ratifies and confirms all actions taken by the Issuer and the Authorized Officer to date, including, without limitation, the publication of the public hearing notice on February 16, 2019, and the holding of the public hearing on March 5, 2019, in compliance with the Code.

Section 4. Based upon representations made by the Company to the Issuer, the Issuer makes the following findings and determinations:

- (a) the Project is in furtherance of the purposes of the Issuer; and
- (b) the issuance of the Bonds will be an inducement to the Company to undertake the Project in Genesee County; and
- (c) it is desirable and in the public interest for the Issuer to issue its Bonds to finance the costs of the Project, together with certain related costs and amounts, in an aggregate amount not to exceed \$6,000,000; and
- (d) the Company is not undertaking the Project in place of, on behalf of, for the benefit of, or at the request of the Issuer; and
- (e) the Project constitutes a "Type II Action" pursuant to 6 N.Y.C.R.R. § 617.5, and, therefore, is exempt from review under SEQRA.

Section 5. In consequence of the foregoing, the Issuer hereby determines to:

- (a) execute the Bond Purchase Agreement with such amendments or modifications as the Authorized Officer deems necessary under the circumstances, provided no such amendment or modification materially alters the risk to the Issuer and issue the Bonds and loan the net proceeds derived therefrom to the Company pursuant to the terms thereto; and
- (b) subject to Sections 7 and 8 hereof, issue and deliver the Bonds to the Bank on or

before December 31, 2019 or such other date acceptable to the Authorized Officer, subject however to the approval of the final terms for the Bonds and the terms and conditions of the Bond Purchase Agreement consistent with this resolution, and the prior written approval of all terms contained therein, and of the terms of the Bonds, by the Authorized Officer and by the Company; and

- (c) execute a certain Building Loan Agreement, to be dated as of May 1, 2019, or such other date acceptable to the Authorized Officer; and
- (d) loan the proceeds of the Bonds to the Company pursuant to the Bond Purchase Agreement to finance a portion of the Project, including payment of a portion of the costs of the Project and to pay necessary incidental expenses in accordance with the Bond Purchase Agreement; and
- (e) execute a Tax Compliance Agreement, dated the date of delivery of the Bonds, between the Company and the Issuer and a completed Internal Revenue Service Form 8038 (Information Return for Private Activity Bonds) relating to the Bonds (the "Information Return") and file the Information Return with the Internal Revenue Service in connection with the issuance of the Bonds; and
- (f) execute and deliver all other certificates and documents required in connection with issuance and sale of the Bonds including the documents identified on the draft closing memorandum and any other documents as may be required to accomplish the Project, and qualify the interest on the Bonds for tax-exempt status under Section 103 of the Code.

Section 6. The Issuer is hereby authorized to assist the Project, to finance the costs of the Project; paying costs of issuance, by the issuance of the Bonds and to grant the other Financial Assistance; and all acts previously taken by the Issuer with respect to the Project by the Company, the undertaking of the Project by the Company, the grant of Financial Assistance with respect to the Project and the issuance of the Bonds are hereby approved, ratified and confirmed.

Section 7. Subject to receipt of the approval of the County Legislature of Genesee County (the "County Legislature") of the issuance of the Bonds pursuant to, and solely for the purposes of, Section 147 of the Code, the Issuer is hereby authorized to issue, execute, sell and deliver the Bonds to the Bank in accordance with the provisions of the Bond Purchase Agreement and this resolution. Each of the Authorized Officers is hereby authorized, on behalf of the Issuer, to execute (by manual or facsimile signature) and deliver the Financing Documents (as defined in the Bond Purchase Agreement), on such terms and conditions as shall be consistent with this resolution and approved by the Authorized Officer, the execution thereof by such Authorized Officer constituting conclusive evidence of such approval.

Section 8. Subject to receipt of the approval of the County Legislature of the issuance of the Bonds pursuant to, and solely for the purposes of, Section 147 of the Code and other the limitations contained herein, the Issuer, through the Authorized Officer, is hereby authorized to issue, execute, sell and deliver to the Bank the Bonds in the aggregate principal amount of up to \$6,000,000 in the form heretofore approved in Section 5 of this resolution, pursuant to the Act

and in accordance with the Bond Purchase Agreement; provided that:

- (a) the Bonds authorized to be issued, executed, sold and delivered pursuant to this Section 8: (i) shall be issued, executed and delivered at such time as the Authorized Officer shall determine, (ii) shall be in such aggregate principal amount (not to exceed \$6,000,000) as is hereinafter approved by the Authorized Officer, (iii) shall bear interest at such rate or rates as are set forth in the Bonds and the Bond Purchase Agreement or as are hereinafter approved by the Authorized Officer, and (iv) shall be subject to prepayment prior to maturity, and have such other provisions and be issued in such manner and on such conditions as are set forth in the Bonds and the Bond Purchase Agreement, all of which provisions are specifically incorporated herein with the same force and effect as if fully set forth in this resolution; and
- (b) the Bonds shall be issued solely for the purpose of providing funds to assist the Company in financing the Project Costs, and the administrative, legal, financial, and other expenses of the Issuer in connection with such assistance and incidental to the issuance of the Bonds, as such costs are more specifically set forth in the Financing Documents; and
- (c) the Bonds and the interest thereon are not and shall never be a debt of the State of New York or Genesee County, New York, and neither the State of New York nor Genesee County, New York, shall be liable thereon; and
- (d) the Bonds, together with interest payable thereon, shall be special obligations of the Issuer payable solely from the revenues and receipts derived from the payments made by the Company pursuant to the Bond Purchase Agreement or from the enforcement of the security provided by the other Financing Documents.

Section 9. Notwithstanding any other provision of this resolution, the Issuer covenants that it will make no use of the proceeds of the Bonds or of any other funds which, if such use had been reasonably expected on the date of issuance of the Bonds, would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

Section 10. Each of the Authorized Officers is hereby authorized and directed for and in the name and on behalf of the Issuer to do all acts and things required or provided by the provisions of the Financing Documents, and to execute and deliver all such additional certificates, instruments and documents, including the Financing Documents and the Information Return, and to do all such further acts and things as may be necessary or in the opinion of the Authorized Officer acting on behalf of the Issuer, desirable and proper to effect the purposes of this resolution and to cause compliance by the Issuer with all of the terms, covenants, and provisions of the Financing Documents binding upon the Issuer.

Section 11. It is hereby found and determined that all formal actions of the Issuer concerning and relating to the adoption of this resolution were adopted in an open meeting of the Issuer; and that all deliberations of the Issuer and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

Section 12. Due to the complex nature of this transaction, the Issuer hereby authorizes each of its Authorized Officers to approve, execute and deliver such further agreements, documents and certificates as the Issuer may be advised by counsel to the Issuer and/or Bond 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 the Authorized Officer acting on behalf of the Issuer.

Section 13. This Resolution shall constitute the adoption of "official intent" (within the meaning of the United States Treasury Regulations Section 1.150-2) with respect to issuance of the Bonds and the original expenditures which are reasonably expected to be reimbursed from the proceeds of the Bonds.

Section 14. This resolution shall take effect immediately and the Bonds are hereby ordered to be issued in accordance with this resolution.

	Yea	Nay	Abstain	Absent
Tom Turnbull	[]	[]	[×]	[]
Maureen Marshall Torrey	[×]	[]	[]	[]
Hollis Upson	[×]	[]	[]	[]
Dr. William Lapple	[]	[]	[]	[×]
Paul Battaglia	[×]	[]	[]	[]
Peter Zeliff	[×]	[]	[]	[]

The resolution was thereupon duly adopted.

CERTIFICATION

(Genesee Community College Foundation Housing Services, Inc. Project)

STATE OF NEW YORK)
 ss:
COUNTY OF GENESEE)

I, the undersigned, Secretary of THE GENESEE COUNTY FUNDING CORPORATION, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of THE GENESEE COUNTY FUNDING CORPORATION (the "Issuer"), including the resolution contained therein, held on April 23, 2019, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Issuer 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 directors of said Issuer 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 directors of the Issuer 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 Issuer this 23 day of April, 2019.

By: Secretary