

**PRELIMINARY RESOLUTION
(Millbrook School Project Series 2021)**

A regular meeting of the Dutchess County Local Development Corporation was convened in public session on July 14, 2021 at 8:10 a.m., local time, at the Dutchess County Local Development Corporation's Offices, Three Neptune Road, Poughkeepsie, New York.

The meeting was called to order by the Chairman, with the following members being:

PRESENT: Timothy Dean, Chairman
Mark Doyle, Vice Chairman
Kathleen M. Bauer, Secretary/ Treasurer
Alfred D. Torreggiani
Donald R. Sagliano
Ronald J. Piccone, II
Amy L. Bombardieri

ABSENT:

ALSO PRESENT: Sarah Lee, Chief Executive Officer
Marilyn Yerks, Chief Financial Officer
Donald Cappillino, Counsel
Elizabeth A. Cappillino, Counsel

On motion duly made by Ronald J. Piccone, II and seconded by Mark Doyle, the following resolution (the "**Resolution**") was placed before the members of the Issuer:

Resolution (i) Taking official action toward the issuance of an amount presently estimated to be approximately \$25,000,000 and in any event not to exceed \$30,000,000 aggregate principal amount of Revenue Bonds (Millbrook School Project) Series 2021; and (ii) Authorizing the execution and delivery of an agreement by and between the Issuer and Millbrook School with respect to the financing of the Project.

WHEREAS, the Issuer was duly formed under §102(a)(5) of the New York Not-for-Profit Corporation Law ("**N-PCL**") as a local development corporation, a Type C Corporation under §201 of the N-PCL, for the purpose of conducting activities that will: relieve and reduce unemployment in Dutchess County, New York (the "**County**"); promote and provide for additional and maximum employment in the County; better and maintain job opportunities in the County; instruct or train individuals in the County to improve or develop their capabilities for such jobs; carry on scientific research for the purpose of aiding the County by attracting new industry to the County; encourage the development of, or retention of, an industry in the County; and lessen the burdens of government and acting in the public interest; and

WHEREAS, the Issuer's corporate powers include, but are not limited to, the power to finance facilities for not-for-profit education corporations, acquire, improve, maintain, equip and furnish projects, to lease such projects and collect rent; to sell and convey any and all of its property, to loan the proceeds of its bonds to not-for-profit corporations and other entities whenever the Board of Directors shall find such action to be in furtherance of the purposes for which it was organized; and to issue bonds for the purpose of carrying out any of its powers; all bonds to be payable solely out of revenues and receipts derived from the leasing or sale by the Issuer of its projects; and

WHEREAS, Millbrook School, a New York not-for-profit corporation (the "**School**") and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "**Code**"), submitted an application to the Issuer (the "**Application**"), a copy of which application is on file at the office of the Issuer, which application requested that the Issuer provide financing for the School in the form of tax-exempt Revenue Bonds in an aggregate principal amount presently estimated to be Twenty-Five Million Dollars (\$25,000,000) but not to exceed an aggregate principal amount of Thirty Million Dollars (\$30,000,000) (the "**Bonds**"), the proceeds of which are to be used for the purposes of financing a project (the "**Project**"), consisting of:

- (1) Paying the costs of: (A) acquisition of real property located on Millbrook School Road between Leavitt Road and US Route 44 and (B) construction, installation, renovation, improvement, furnishing and equipping of certain educational and other facilities located at the School's campus located at 131 Millbrook School Road, Millbrook, New York 12545 (the "**Campus**") (up to \$16,000,000 principal amount of Bonds to be used for such purposes);
- (2) Refunding the Issuer's Revenue Bonds (Millbrook School Project), Series 2013A and Series 2013B (collectively, the "**2013 Bonds**"), the proceeds of which financed and/or refinanced (i) the construction, installation, renovation, improvement, furnishing and equipping of certain educational and other facilities located on the Campus; and
- (3) Funding necessary reserves and paying capitalized interest and certain costs incidental to the issuance of the Bonds;
- (4) The granting of certain other financial assistance with respect to the foregoing, including potential exemptions from mortgage recording taxes (collectively with the Bonds, the "**Financial Assistance**"); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted by the Department of Environmental Conservation of the State of New York (the laws and regulations hereinafter collectively referred to as "**SEQRA**"), the Issuer must determine whether the financing of the Project by the Issuer may have a significant effect on the environment and therefore require the preparation of an Environmental Impact Statement; and

WHEREAS, to aid the Issuer in determining whether the financing, refinancing, construction, installation, furnishing, equipping and improving of the Project may have a

significant impact on the environment, the School has prepared and submitted to the Issuer, along with the application, a Long Environmental Assessment Form (the “EAF”) for the Project; and

WHEREAS, the Issuer has not yet completed its review nor made a determination under SEQRA but shall do so prior to the final approval of financing for the Project; and

WHEREAS, the Issuer has not yet held a hearing pursuant to the Issuer’s existing policy nor pursuant to §147(f) of the Code; and

WHEREAS, although the resolution authorizing the issuance of the Bonds has not yet been presented for approval by the Issuer, a Preliminary Agreement relative to the proposed issuance of the Bonds by the Issuer has been presented for approval by the Issuer.

NOW, THEREFORE, BE IT RESOLVED by the Dutchess County Local Development Corporation, as follows:

1. Based upon the representations made by the School to the Issuer, the Issuer hereby finds and determines that:

- (a) The Project constitutes a project within the scope of the corporate powers of the Issuer and is consistent with its corporate purposes in that the financing of the Project by the Issuer through the issuance of the Bonds will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of Dutchess County, New York, and improve their standard of living; and
- (b) It is desirable and in the public interest to issue the Bonds in the aggregate principal amount presently estimated to be Twenty-Five Million and 00/100 Dollars (\$25,000,000) but not to exceed Thirty Million and 00/100 Dollars (\$30,000,000) for the purpose of financing the Project, together with the necessary expenses in connection therewith; and

2. Subject to the conditions set forth in Section 3 of this Resolution, the Issuer will:

- (a) issue the Bonds in an amount presently estimated to be Twenty-Five Million and 00/100 Dollars (\$25,000,000) but not to exceed Thirty Million and 00/100 Dollars (\$30,000,000), the particular amount, series, maturities, interest rate, redemption terms and other terms and provisions to be determined by a further resolution of the Issuer;
- (b) loan the proceeds of the Bonds to the School pursuant to a loan agreement by and between the Issuer and the School, whereby the School will be obligated under such agreement or loan agreement, as the case may be, among other things to make payments to the

Issuer in amounts and at times so that payments will be adequate to pay the principal of, premium, if any, and interest on all such Bonds; and

- (c) secure the Bonds in such manner as the Issuer, the School or the purchasers of the Bonds mutually deem appropriate. The Issuer shall not be required to incur and shall not incur any financial liability with respect to the Project.

3. The issuance of the Bonds, as contemplated by Section 2 of this Resolution, and the findings and determinations set forth in this Resolution shall be subject to:

- (a) execution and delivery by the School of the Preliminary Agreement attached hereto as Exhibit "A" setting forth certain conditions for the issuance of the Bonds;
- (b) agreement by the Issuer, the School and the purchaser of the Bonds on mutually acceptable terms for the Bonds and for the sale and delivery thereof and mutually acceptable terms and conditions for the security for the payment thereof;
- (c) a determination made by the Issuer under SEQRA that the Project will not have an adverse environmental impact;
- (d) approval of the issuance of the Bonds in accordance with the provisions of §147(f) of the Internal Revenue Code of 1986, as amended; and
- (e) receipt by the Issuer of evidence that all required approvals in connection with the issuance of the Bonds have been obtained.

4. The form and substance of a proposed agreement (in substantially the form presented to this meeting) by and between the Issuer and the School setting forth the undertakings of the Issuer and the School with respect to the issuance of the Bonds and the providing of the Project (the "**Preliminary Agreement**") are hereby approved. The Chief Executive Officer and/or Chairman (or Vice Chairman) of the Issuer are hereby authorized, on behalf of the Issuer, to execute and deliver the Preliminary Agreement and the Secretary (or Assistant Secretary) of the Issuer is hereby authorized to affix the seal of the Issuer hereto and to attest to this meeting, with such changes in terms and conditions as the Chief Executive Officer or Chairman (or Vice Chairman) of the Issuer shall constitute conclusive evidence of such approval.

5. The School is hereby appointed the true and lawful agent of the Issuer: (i) to undertake the Project; (ii) to make, execute, acknowledge, and deliver any contracts, orders, receipts, writings, and instructions, as the designated agent for the Issuer, and in general to do all things which may be requisite or proper for the acquisition, construction, installation, equipping

and improvement of the Project; and (iii) to prepare, publish and, upon approval by the Chief Executive Officer and/or Chairman (or Vice Chairman) of the Issuer, to distribute a Preliminary Official Statement (or Preliminary Offering Circular or Private Placement Memorandum) of the Issuer with respect to the Bonds, all with the same powers and the same validity as the Issuer could do if acting on its own behalf. In addition, the School is hereby authorized to advance such funds as may be necessary to accomplish such purposes and, to the extent permitted by law, the Issuer agrees to reimburse the School therefor out of the proceeds of the Bonds, when, as and if, the Bonds are issued. The Chief Executive Officer or the Chairman (or Vice Chairman) hereby is authorized to execute a letter to the School attesting to the School's authority to act as agent of the Issuer in this matter in accordance with the standard procedures of the Issuer.

6. The law firm of Ballard Spahr LLP, Philadelphia, Pennsylvania, is hereby appointed Bond Counsel to the Issuer in connection with the issuance of the Bonds.

7. Based upon the information provided by the School to the Issuer in the School's application for financing, the Issuer reasonably expects that expenditures to be incurred by the School in connection with the Project prior to the date of issuance and sale of the Bonds will be reimbursed to the School out of the proceeds of the Bonds. It is intended that this resolution shall constitute a declaration of official intent under United States Treasury Regulation 1.150-2.

8. Counsel to the Issuer and Bond Counsel for the Issuer are hereby authorized to work with counsel to the School and others to prepare for submission to the Issuer, all documents necessary to effect the authorization, issuance, and sale of the Bonds. The School shall be responsible for the fees of Issuer, Issuer's Counsel and Bond Counsel in relation to this Project and the financing thereof.

9. The Chief Executive Officer and/or Chairman (or Vice Chairman) of the Issuer is hereby authorized and directed to distribute copies of this Resolution to the School and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution. The Chief Executive Officer and/or Chairman (or Vice Chairman) of the Issuer is hereby authorized, empowered and directed to cause a public hearing concerning this Project to be conducted after due notice by publication in accordance with law and is further authorized to appoint counsel or co-counsel to the Issuer as designee to conduct the public hearing. The Issuer hereby appoints each Member of the Issuer to serve as an Assistant Secretary of the Issuer for purposes of this transaction.

10. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to vote on roll call, which resulted as follows:

Timothy Dean, Chairman	VOTING	"Aye"
Mark Doyle, Vice Chairman	VOTING	"Aye"

CAPPILLINO,
ROTHSCHILD
& EGAN LLP
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Kathleen M. Bauer, Secretary/Treasurer	VOTING	“Aye”
Alfred D. Torreggiani	VOTING	“Aye”
Donald R. Sagliano	VOTING	“Aye”
Ronald J. Piccone, II	VOTING	“Aye”
Amy L. Bombardieri	VOTING	“Aye”

The Resolution was thereupon declared duly adopted.

Adopted: July 14, 2021

PRELIMINARY AGREEMENT
(Millbrook School Project Series 2021)

THIS PRELIMINARY AGREEMENT (the “Preliminary Agreement”), made as of July 14, 2021, between the **DUTCHESS COUNTY LOCAL DEVELOPMENT CORPORATION**, a not-for-profit corporation, organized and existing under the Not-For-Profit Corporation Law of the State of New York, having offices at Three Neptune Road, Poughkeepsie, New York 12601 (the “**Issuer**”) and **MILLBROOK SCHOOL**, a New York not-for-profit corporation, organized and existing under the Laws of the State of New York, having offices at [] (the “**School**”).

WHEREAS, the Issuer was duly formed under §102(a)(5) of the New York Not-for-Profit Company Law (“**N-PCL**”) as a local development corporation, a Type C Company under §201 of the N-PCL, for the purpose of conducting activities that will relieve and reduce unemployment in Dutchess County, New York (the “**County**”); promote and provide for additional and maximum employment in the County; better and maintain job opportunities in the County; instruct or train individuals in the County to improve or develop their capabilities for such jobs; carry on scientific research for the purpose of aiding the County by attracting new industry to the County; or by encouraging the development of, or retention of, an industry in the County; and lessening the burdens of government and acting in the public interest; and

WHEREAS, the Issuer’s corporate powers include, but are not limited to, the power to finance facilities for not-for-profit corporations, acquire, improve, maintain, equip and furnish projects, to lease such projects and collect rent; to sell and convey any and all of its property whenever the Board of Directors shall find such action to be in furtherance of the purposes for which it was organized; and to issue bonds for the purpose of carrying out any of its powers; all bonds to be payable solely out of revenues and receipts derived from the leasing or sale by the Issuer of its projects; and

WHEREAS, the School submitted an application to the Issuer (the “**Application**”), a copy of which application is on file at the office of the Issuer, which application requested that the Issuer provide financing for the School in the form of tax-exempt Revenue Bonds in an aggregate principal amount presently estimated to be Twenty Five Million Dollars (\$25,000,000) but not to exceed an aggregate principal amount of Thirty Million Dollars (\$30,000,000) (the “**Bonds**”), the proceeds of which are to be used for the purposes of financing a project (the “**Project**”), consisting of:

(1) Paying the costs of: (A) acquisition of real property located on Millbrook School Road between Leavitt Road and US Route 44 and (B) construction, installation, renovation, improvement, furnishing and equipping of certain educational and other facilities located at the School’s campus located at 131 Millbrook School Road, Millbrook, New York 12545 (the “**Campus**”) (up to \$16,000,000 principal amount of Bonds to be used for such purposes);

(2) Refunding the Issuer’s Revenue Bonds (Millbrook School Project), Series 2013A and Series 2013B (collectively, the “**2013 Bonds**”), the proceeds of which financed and/or

refinanced (i) the construction, installation, renovation, improvement, furnishing and equipping of certain educational and other facilities located on the Campus; and

(3) Funding necessary reserves and paying capitalized interest and certain costs incidental to the issuance of the Bonds;

(4) The granting of certain other financial assistance with respect to the foregoing, including potential exemptions from mortgage recording taxes (collectively with the Bonds, the “**Financial Assistance**”); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted by the Department of Environmental Conservation of the State of New York (the laws and regulations hereinafter collectively referred to as “**SEQRA**”), the Issuer must determine whether the financing of the Project by the Issuer may have a significant effect on the environment and therefore require the preparation of an Environmental Impact Statement; and

WHEREAS, to aid the Issuer in determining whether the financing, refinancing, construction, installation, furnishing, equipping and improving of the Project may have a significant impact on the environment, the School has prepared and submitted to the Issuer, along with the application, a Long Environmental Assessment Form (the “**EAF**”) for the Project; and

WHEREAS, the Issuer has not yet completed its review nor made a determination under SEQRA but shall do so prior to the final approval of financing for the Project; and

WHEREAS, on July 14, 2021, the Issuer adopted a Preliminary Resolution (the “Preliminary Resolution”) authorizing the Project and the execution of this Preliminary Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Issuer and the School agree as follows:

1. Undertakings of the Issuer. Based upon the statements, representations, and undertakings of the School and subject to the conditions set forth herein and in the Preliminary Resolution, the Issuer agrees as follows:

(a) The Issuer shall authorize, sell, and deliver the Bonds, pursuant to the terms of the Act as then in force, in an aggregate principal amount presently estimated to be Twenty-Five Million and 00/100 Dollars (\$25,000,000.00) but not to exceed Thirty Million and 00/100 Dollars (\$30,000,000) for the purpose of financing the Project and paying necessary incidental expenses in connection therewith, and funding any debt service reserve fund to be pledged to secure the Bonds.

(b) The Issuer shall adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be necessary or advisable for (i) the authorization, issuance, and sale of the Bonds, and (ii) the loaning of the proceeds of the Bonds to

the School, all as shall be authorized by law and be mutually satisfactory to the Issuer and the School.

(c) The Issuer shall loan the proceeds of the Bonds to the School pursuant to a loan agreement by and between the Issuer and the School (the “Loan Agreement”), whereby the School will be obligated under such Loan Agreement, among other things to make payments to the Issuer in amounts and at times so that payments will be adequate to pay the principal of, premium, if any, and interest on all such Bonds.

(d) The Issuer shall take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

2. Representations of the School. The School hereby represents to the Issuer that:

(a) The Project is located in Dutchess County, New York;

(b) The financing of the Project through the issuance of the Bonds will encourage and assist the School in providing the Project;

(c) The proposed financing will contribute to preserving existing employment opportunities in the Dutchess County, New York; and

(d) The School intends that the Project will comply with all applicable federal, state, and local laws, ordinance, rules, and regulations and the School shall have obtained all necessary approvals and permits required thereunder.

3. Undertakings of the School. Based upon the statements, representations, and undertakings of the Issuer and subject to the conditions set forth herein and in the Preliminary Resolution, the School agrees as follows:

(a) The School shall use all reasonable efforts to find, or cause to be found, one or more purchasers for the Bonds.

(b) The School shall use all reasonable efforts necessary or desirable to enter into a contract or contracts to borrow the proceeds of the Bonds from the Issuer and execute the Loan Agreement.

(c) The School shall contemporaneously with the delivery of the Bonds, enter into the Loan Agreement with the Issuer containing the terms and conditions described in Paragraph 1(c) hereof.

(d) (i) The School shall defend and indemnify the Issuer and hold the Issuer harmless from all losses, expenses, claims, damages and liabilities arising out of or based

on labor, services, materials and supplies, including equipment, ordered or used in connection with the financing and refinancing (including any expense incurred by the Issuer in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the School acting as agent for the Issuer pursuant to this Preliminary Agreement or otherwise.

(ii) The School shall not permit to stand, and shall at its own expense take all steps reasonably necessary to remove, any mechanic's or other liens against the Project for labor or constructing, furnishing, equipping, improving and renovating of the Project.

(iii) The School shall indemnify and hold the Issuer harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project, including any expenses incurred by the Issuer in defending any claims, suits or actions which may arise as a result of the foregoing, except that the School shall not be required to indemnify the Issuer for the willful misconduct or grossly negligent conduct of the Issuer.

(e) The School shall take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

4. General Provisions.

(a) This Preliminary Agreement shall take effect on the date of execution hereof until the Loan Agreement becomes effective. It is the intent of the Issuer and the School that this Preliminary Agreement be superseded in its entirety by the Loan Agreement.

(b) It is understood and agreed by the Issuer and the School that the issuance of the Bonds and the execution of the Loan Agreement and related documents are subject to: (i) obtaining all necessary governmental approvals, (ii) approval of the members of the Issuer; and (iii) agreement by the Issuer, the School and the purchasers of the Bonds upon mutually acceptable terms for the Bonds and for the Loan Agreement.

(c) The School agrees that it will reimburse the Issuer for all reasonable and necessary direct out-of-pocket expenses which the Issuer may incur as a consequence of executing this Preliminary Agreement or performing its obligations hereunder, including but not limited to, the cost of causing a notice of any public hearing held with respect to the Project to be published, the cost of making and transcribing records of said hearings and the reasonable fees and expenses charged and incurred by Bond Counsel and Issuer's Counsel in connection with their representation of Issuer in this matter and their preparation of any documents pertaining to the issuance of the Bonds.

(d) All commitments of the Issuer under Paragraph 1 hereof and of the School under Paragraphs 2 and 3 hereof (excepting the obligations of the School set forth in subparagraphs 3(d) and 4(c) hereof, which shall survive the termination of this Preliminary Agreement) are

subject to the condition that the Bonds have been issued no later than fifteen (15) months from the date hereof (or such other date as shall be mutually satisfactory to the Issuer and the School).

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