ORD 13-045

A PROJECT ORDINANCE APPROVING AND AUTHORIZING THE FINANCING OF A PROJECT FOR THE COMMUNITY EDUCATION BUILDING CORP.; MAKING CERTAIN FINDINGS WITH RESPECT THERETO; AUTHORIZING THE ISSUANCE OF CITY OF WILMINGTON REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $35,000,000; AND AUTHORIZING OTHER NECESSARY ACTION.

#3890

Sponsor:

Council Member Freel

WHEREAS, The Council of The City of Wilmington (the "Council") has heretofore adopted the Wilmington Commercial, Financial Service and Industrial Development Ordinance, Wilmington City Code, Chapter 8, Article II (the "General Ordinance") to encourage and assist the financing of the construction, acquisition, sale or lease of industrial, commercial and other facilities related to the maintenance or promotion of employment or to the redevelopment or revitalization of areas within the City of Wilmington (the "City"); and

WHEREAS, the Community Education Building Corp. (the "Borrower"), a qualified organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986 and a Delaware non-stock corporation, has applied to the City for assistance in financing a project and related expenses (the "Project") consisting of the: (a) refinancing of an interim loan from Capital One Bank, proceeds of which were used to renovate, equip, modernize and convert the Bracebridge IV building located at 1200 N. French Street in Wilmington, Delaware (the "Facility") into (i) a facility to house and operate up to four charter schools dedicated to educational activities and (ii) parking spaces for building tenants and visitors; (b) financing a portion of the renovations of and improvements to the Facility; (c) funding a debt service reserve fund; and (d) paying the costs associated with issuing the Bonds (as defined herein);

WHEREAS, as required by the General Ordinance, the Borrower has submitted to the City through the Office of Economic Development (the "OED") an application for assistance in financing the Project (the "Application") and has requested the City to

finance the same through the issuance by the City of its Revenue Bonds (Community Education Building Corp. Project), Series 2014, in one or more series, on a tax-exempt and/or federally taxable basis, in an aggregate principal amount not to exceed $35,000,000 (the "Bonds"); and

WHEREAS, the OED has found that the financing of the Project will accomplish the public purposes contemplated by the General Ordinance by maintaining and providing gainful employment opportunities within the City and will also aid, assist and encourage the economic development and redevelopment of the City, and has approved the Project; and

WHEREAS, the Mayor of this City has concurred in the approval of the OED and has (i) advised the OED of his concurrence and (ii) forwarded the Application and other materials necessary for introduction of this project ordinance (this "Ordinance") to Council; and

WHEREAS, the Council's finance committee has received (i) the prerequisite preliminary written opinion from the outside auditor regarding the accounting treatment of the Bonds and (ii) the preliminary written opinions of the city solicitor and City's bond counsel regarding certain matters with respect to the Bonds; and

WHEREAS, the Borrower or its representative has made a presentation of the proposed Project at a meeting of Council's finance committee in accordance with the General Ordinance; and

WHEREAS, a preliminary cost disclosure statement, an estimate of all costs, has been presented to Council as a part of the Application; and

WHEREAS, this Council also desires to approve the Project, to make the above findings and determinations and to authorize the issuance and sale of the Bonds; and

WHEREAS, the City will enter into a Bond Purchase and Loan Agreement or similar agreement (the "Agreement") with the Borrower and a lender selected by the Borrower (the "Bond Purchaser") pursuant to which (i) the City will issue and sell the

Bonds to the Bond Purchaser; (ii) the City will lend the proceeds of the Bonds to the Borrower; (iii) the Borrower will execute and deliver to the City a promissory note (the "Note") in the aggregate amount of the Bonds; and (iv) the City will assign to the Bond Purchaser the Note and substantially all of its rights under the Agreement to provide a source of payment for and to secure its obligations under the Bonds; and

WHEREAS, if required by the Bond Purchaser, the Borrower, to secure the Note, may execute and deliver to the Bond Purchaser as mortgagee a Mortgage and Security Agreement (the "Mortgage"), granting a mortgage lien on its interest in the Project and a security interest in the gross revenues of the Borrower; and

WHEREAS, the obligations of the Borrower under the Agreement and the Note will be further secured by a continuing guaranty from Longwood Foundation (the "Guaranty") in favor of the City and/or the Bond Purchaser; and

WHEREAS, the Bonds will be special and limited obligations of the City, payable solely from amounts to be paid by the Borrower under the Agreement, the Note, the Guaranty and the Mortgage (if required); and

WHEREAS, the Council desires to authorize the issuance, execution and delivery of the Bonds and the execution and delivery of the other documents required to accomplish the foregoing and to authorize all other necessary action in connection with the Project and the financing thereof.

THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

Section 1. Definitions. The terms used in this Ordinance shall have the meanings specified herein or in the preambles hereto unless a different meaning is clearly indicated by the context.

Section 2. Authorization. This Ordinance is enacted pursuant to the provisions of the Home Rule Enabling Act as effectuated by vote of the electors in the adoption of the Home Rule Charter of the City and in accordance with the provisions of the General Ordinance.

Section 3. Approval of Project and Findings with Respect Thereto. As required by the General Ordinance, the City hereby approves the findings and determinations made by the OED with respect to the Project with which the Mayor concurs, and in conjunction therewith does hereby make the following findings and determinations:

(a) The issuance and sale by the City of the Bonds in an aggregate principal amount not to exceed $35,000,000 in order to finance the costs of the Project will promote the public purposes specified in the General Ordinance and will:

(i) tend to maintain and provide gainful employment opportunities within and for the people of the City;

(ii) aid, assist and encourage the economic development or redevelopment of the City; and

(iii) maintain, diversify or expand employment promoting enterprises within the City;

(b) The Bonds will be payable solely from revenues of the Borrower as contemplated by the General Ordinance;

(c) The revenues from which the Bonds will be payable will be sufficient for such purpose;

(d) The issuance of the Bonds will accomplish the public purposes contemplated by the General Ordinance;

(e) The amount to be financed does not exceed the estimated Costs of the Project; and

(f) The undertaking of the Project in the City is in the best interests of the City.

Based on the foregoing findings and determinations and as a substantial inducement to the Borrower to locate, remain or expand within the City, the Project is

hereby approved and determined to be eligible for financing by the City as provided herein and in the General Ordinance.

Section 4. Authorization of the Bonds. In order to provide funds to pay a portion of the Costs of the Project, the City shall issue its Revenue Bonds (Community Education Building Corp. Project), Series 2014, in one or more series, on a tax-exempt and/or federally taxable basis, in a principal amount not exceeding $35,000,000, which shall mature and bear interest and be in such form as shall be determined in a resolution (the "Resolution") to be adopted by the City's Bond Committee.

The Bonds shall be dated the date determined in the Resolution, shall be issued in denominations determined in the Resolution and shall be payable in lawful money of the United States of America.

The Bonds shall be special obligations of the City payable solely from the payments made by the Borrower under the Agreement and the Note, and shall be secured by the Guaranty and Mortgage (if required) and an assignment of the Agreement, the Note and the Guaranty and all amounts payable thereunder. Except to the extent that the Bonds shall be special obligations of the City payable solely from the payments made by the Borrower under the Agreement, the Note, the Guaranty and the Mortgage (if required), the Bonds are not a debt or liability of the City, the State of Delaware or any other political subdivision thereof.

The Bonds shall not be general obligations of the City, and shall not be payable out of any funds, revenues or properties of the City other than those specifically pledged therefor.

Section 5. Authorization of Agreement. The City shall enter into the Agreement with the Borrower and the Bond Purchaser, in substantially the form to be approved by the City's Bond Committee, setting forth (i) the terms and conditions under which the Bonds are being issued and sold; (ii) the terms under which the proceeds of the Bonds will be loaned to the Borrower to finance the Project in the manner set forth

therein; (iii) the funds, revenues and properties pledged as security for the Bonds; (iv) provisions for the Borrower to execute and deliver the Note and other documents provided for therein all to evidence and secure such loan, and covenants by the Borrower for the benefit of the City and the Bond Purchaser; (v) the terms and conditions under which the proceeds will be advanced in order to provide financing with respect to the Project; and (vi) the assignment of all of the City's right, title and interest in and to the Agreement, the Note and the Guaranty and payments thereunder. The Bond Committee may approve a different form of documentation of the transaction.

Section 6. Execution and Delivery of Documents. The Mayor, and the City Treasurer and the City Auditor are hereby authorized to execute (by manual or facsimile signature) and deliver, in the names of the City and on its behalf, the Bonds. The Mayor or the City Treasurer or the Director of Finance of the City is hereby authorized to execute and deliver, in the name of the City and on its behalf, the following documents and to approve the final form and substance thereof, including the dates thereof (provided that such documents are substantially in the forms approved by the City's Bond Committee with only such changes therein as shall have been approved by the City Solicitor or the City's Bond Counsel), such approvals to be conclusively evidenced by the execution thereof, and the City Clerk and Deputy Clerk are each hereby authorized to affix to all of the following documents, as well as to the Bonds, the seal or facsimile seal of the City to attest to the same by his or her manual or facsimile signature: (a) the Agreement; (b) the assignment of the Note; and (c) such other documents as the executing officers determine to be reasonable and appropriate in connection with the issuance of the Bonds or the financing of the Project.. Copies of the foregoing documents, together with the other documents relating to the transactions authorized hereby, in final form as executed and delivered by the parties thereto, shall be filed in the official records of the City.

Section 7. Binding Effect of Covenants and Agreements. All covenants, obligations and agreements of the City set forth in this Ordinance and in the documents authorized hereby shall be deemed to be in the covenants, obligations and agreements of the City to the full extent authorized or permitted by law.

Section 8. Further Action. The proper officers of the City are hereby authorized and directed to execute such further documents and do such further things as may be necessary or proper to carry out the intent and purpose of this Ordinance or any document herein authorized.

Section 9. Descriptive Headings. The descriptive headings of the sections of this Ordinance are inserted for convenience only and shall not control or affect the meaning or construction of any of its provisions.

Section 10. Severability. In case any one or more of the provisions contained in this Ordinance or in any Bonds or other document executed and delivered pursuant hereto or in connection with the Project or the Application shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Ordinance or of said Bonds or other documents and this Ordinance, said Bonds or other documents shall be construed and enforced as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

Section 11. Inconsistent Provisions. In the event that any prior ordinances or portions thereof (including the General Ordinance) are inconsistent with this Ordinance, the provisions hereof shall be controlling with respect to the Project and the Bonds. The City hereby approves the Application in the form in which it was submitted to OED, and finds that it is in compliance with the requirements of the General Ordinance. The City hereby approves all the procedural steps taken by OED, the Finance Committee and the Mayor's office in connection with the Application and the Project, including, without limitation, the Finance Committee's acceptance of the written statement of the City's

outside auditor, regardless of any inconsistencies with the requirements of the General Ordinance. Any inconsistencies between provisions of this Ordinance and the General Ordinance shall not be deemed to be amendments of such General Ordinance.

Section 12. Effective Date. This Ordinance shall become effective upon its passage by Council and approval by the Mayor.

First Reading.....December 12, 2013
Second Reading....December 12, 2013
Third Reading..... January 9, 2014

Passed by City Council, January 9, 2014

President of City Council

ATTEST: Maribel Feijo
City Clerk

Approved as to form this 9th
day of December, 2013

Thomas P Carney
Assistant City Solicitor

Approved this 13th day of
January, 2014

Dennis P Williams
Mayor

SYNOPSIS: This Ordinance will enable the City to issue tax-exempt and/or federally taxable revenue bonds for the financing of a project for the Community Education Building Corp. (the "Borrower"). The Bonds will be special revenue obligations of the City, payable exclusively from payments made by the Borrower under the Agreement, the Note and the Mortgage (if required) and from available funds under the Guaranty.