

**A RESOLUTION, DATED NOVEMBER 15, 2016, OF THE BOARD OF EDUCATION OF THE KENMORE-TOWN OF TONAWANDA UNION FREE SCHOOL DISTRICT, ERIE COUNTY, NEW YORK (THE "DISTRICT"), APPROVING AND AUTHORIZING THE DISTRICT'S ISSUANCE OF UP TO \$1,124,070 OF QUALIFIED ZONE ACADEMY BONDS FOR THE FINANCING OF CAPITAL IMPROVEMENTS TO THE FACILITIES OF THE DISTRICT'S PREVIOUSLY-ESTABLISHED QUALIFIED ZONE ACADEMY, AND DELEGATING ALL POWERS REGARDING THE DISTRICT'S ISSUANCE OF SUCH OBLIGATIONS TO THE PRESIDENT OF THE BOARD OF EDUCATION.**

WHEREAS, pursuant to a resolution by the Board of Education (the "Board") of the Kenmore-Town of Tonawanda Union Free School District (the "District") that was adopted by the Board on June 11, 2013 (the "Zone Academy Resolution") the Board created within the District a "qualified zone academy," as defined in the Internal Revenue Code of 1986, as amended (the "Zone Academy"); and

WHEREAS, pursuant to a bond resolution that was adopted by the Board of Education (the "Board") of the District on March 10, 2015 (the "Bond Resolution"), following a special meeting and vote of the qualified voters of the District that was held on December 9, 2014, the District authorized the issuance of up to \$23,840,000 of obligations of the District to finance, over multiple years, a portion of the cost of a capital improvements project (collectively, the "Project") consisting of the reconstruction and renovation of, and the construction of improvements, additions and upgrades to, various District buildings and facilities (and the sites thereof) housing the Zone Academy, all at an estimated maximum cost of \$29,890,000; and

WHEREAS, the Board has previously adopted, with respect to the Project, a Negative Declaration (concluding that the Project will not have a significant adverse impact on the environment), pursuant to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law; and

WHEREAS, pursuant to the Bond Resolution, the District has previously issued a bond anticipation note, on June 16, 2016, in the amount of \$19,389,000 for the temporary financing of the Project; and

WHEREAS, by a QZAB allocation letter dated February 25, 2015, the State Education Department awarded the District \$9,017,756 from the State's 2014 qualified zone academy bond allocation (the "Allocation"); and

WHEREAS, the Board believes that it is in the best interest of the District to continue to undertake and finance, as part of the Project, various capital improvements to buildings and facilities of the District housing the Zone Academy, and to permanently finance a portion of the Project by the issuance (using the full remaining amount of the Allocation) of up to \$1,124,070 of bonds of the District that will be treated as qualified zone academy bonds ("QZABs")

pursuant to Sections 54A and 54E of the Internal Revenue Code of 1986, as amended (the "Code");

NOW, THEREFORE, BE IT RESOLVED, by the Board on behalf of the District as follows:

SECTION 1. The Board hereby authorizes the District to issue up to \$1,124,070 of the serial bonds that were authorized under the Bond Resolution as QZABs for purposes of Sections 54E and 54A of the Code (the "Bonds"). The President of the Board is hereby authorized, on behalf of the Board, to (A) designate the Bonds as QZABs, and (B) take such actions and execute such documents as may be necessary to ensure the continued status of the Bonds as QZABs.

SECTION 2. The plan of financing for the Project, as initially set forth in Section 2 of the Bond Resolution, is hereby further amended to the extent necessary to have such stated plan of financing comport with the updated QZAB-related financing plan described in this resolution, and the Bond Resolution is hereby so amended to the necessary extent (while being otherwise hereby ratified and reaffirmed). This is in keeping with the District's desire to make maximum use (to the extent legally permissible) of the Allocation, through the District's issuance of the Bonds as QZABs, with the balance of the Project to be financed conventionally under the Bond Resolution, as originally intended.

SECTION 3. Without limiting the delegation of power and authority that is being made herein to the President of the Board, the Board understands and authorizes the District's issuance of the Bonds under arrangements that are generally described in that certain letter dated October 13, 2016, from Capital One Public Funding, LLC (the "Purchaser") to Capital Markets Advisors, LLC ("CMA"), as the District's financial advisor, a copy of which has been presented to the Board herewith and the terms of which are incorporated herein by this reference (the "QZAB Financing Proposal"). The Board hereby specifically authorizes and approves the District's entrance into the arrangements that are described generally in the QZAB Financing Proposal and, in furtherance thereof, the President of the Board is hereby further authorized, on behalf of the District, (1) to determine that the selection of the Purchaser was in compliance with 2 NYCRR 37.5 and with the Board's policies and procedures adopted pursuant to NY General Municipal Law Section 104-b, (2) to enter into and sign, on behalf of the District, both the QZAB Financing Proposal (to the extent not already accomplished) and a formal commitment letter with the Purchaser (the "Commitment") setting forth the Federal Tax Credit Rate, the stated interest rate and such other terms relating to the arrangements for the Bonds as may be acceptable to the President of the Board, and (3) to enter into any other reasonably related and necessary arrangements with the Purchaser that may be necessary, convenient or otherwise appropriate in accordance with and in furtherance of the terms of the QZAB Financing Proposal. The QZAB Financing Proposal, showing the proposed amount of the Bonds and the proposed terms of the financing, is hereby approved. The QZAB Financing Proposal has been prepared based upon the assumption that the Bonds will be issued in the amount of \$1,124,070. This Board recognizes that the amount of the Bonds may in fact differ from the assumed amount set forth in the QZAB Financing Proposal (if, for example, the District receives an additional QZAB allocation or if the amount of the Bonds is necessarily reduced in the event that the estimated value of the "Private Contribution" described in Section 6 hereof is for any reason lowered prior to closing). The

President of the Board is hereby authorized and directed to determine the final amount of the Bonds, the date of the Bonds, the terms of the Bonds, the provisions relating to any prepayment of the Bonds or redemption of the Bonds prior to maturity, whether the Bonds will be insured by a policy or policies of municipal bond insurance or otherwise enhanced by a credit enhancement facility or facilities, the terms of the private sale of the Bonds to the Purchaser, the amount of the annual payments to be made by the District pursuant to the Bonds, whether the Bonds will be sold at a discount in the manner authorized by Section 57.00(e) of the Local Finance Law, and the rate or rates of interest to be borne thereby, and all powers in connection therewith are hereby delegated to the President of the Board; provided that the terms of the Bonds shall comply with all applicable laws and regulations. The President of the Board shall file a copy of his or her certificate determining the details of the Bonds with the District Clerk not later than ten (10) days after the delivery thereof.

SECTION 4. The Board hereby authorizes the expenditure of the proceeds of the Bonds for the Project (or for the redemption of bond anticipation notes, the proceeds of which were utilized for the Project), which Project consists of (A) rehabilitating or repairing the public school facilities in which the Zone Academy has been established, and (B) providing equipment for use at such Zone Academy, as set forth in greater detail in this resolution, in the QZAB Financing Proposal, in the Zone Academy Resolution and in the Bond Resolution.

SECTION 5. The Board hereby agrees to comply with the provisions of the Davis-Bacon Act of 1931, as amended and reenacted, P. L. 107-217 of 2002, 116 Stat. 1062, 1304, to the extent required by the American Recovery and Reinvestment Tax Act of 2009, P. L. 111-5, as required and to the extent applicable to the QZAB Project.

SECTION 6. The President of the Board and other District officials have been authorized, on behalf of the Board, to solicit and receive from private entities one or more written commitments to make "qualified contributions" (within the meaning of Sections 54E(b) and 54E(d)(4) of the Internal Revenue Code) having a present value, as of the date of issuance of the Bonds, using the Federal Tax Credit Rate specified in the Bonds as the discount rate, of not less than ten percent (10%) of the proceeds of the Bonds (the "Private Contribution"). The general nature of the anticipated Private Contribution that will support the issuance of the Bonds as qualified zone academy bonds is described in that certain letter (and related recommended deliverables proposal), dated September 21, 2016, from A+ Educators (of Phoenix, Arizona) to the District, and the Board hereby delegates to the President of the Board the power to review, approve and accept, if appropriate, such Private Contribution on behalf of the District (upon the specific condition that the Bonds may not be issued in the absence of such review, approval and acceptance of the anticipated Private Contribution by the President of the Board).

SECTION 7. CMA, as the financial advisor to the District, has informed the District that (A) it has solicited proposals from underwriters or other potential purchasers regarding the purchase of the Bonds as QZABs in a manner that provided (1) notice to qualified parties interested in participating in the selection process, and (2) a reasonable opportunity for interested, qualified candidates to submit a proposal, and (B) as a result of the selection process, CMA has obtained a commitment from the Purchaser (as summarized in the QZAB Financing Proposal) under which the Bonds will be issued and treated as QZABs.

SECTION 8. The District is hereby specifically authorized to enter into the contractual arrangements for the Bonds pursuant to the applicable provisions of the Education Law and the Local Finance Law. In furtherance thereof, the President of the Board is further authorized, on behalf of the Board, to make such certifications in connection with the issuance of the Bonds as the President deems necessary and/or desirable, including, without limitation, certifications that (A) the Zone Academy is a “qualified zone academy” (within the meaning of Section 54E(d)(1) of the Code), (B) the requirements of Sections 54A and 54E of the Code that relate to the issuance and maintenance of the Bonds as QZABs have been satisfied, and (C) any necessary approvals and consents of the New York State Department of Education, the Office of the New York State Comptroller or other parties have been received.

SECTION 9. In accordance with Section 54A of the Code, the owner of the Bonds may be eligible to receive tax credits in an amount equal to the Federal Tax Credit Rate specified in the Bonds. Notwithstanding anything to the contrary contained in the Bond Resolution, the Bonds shall be general obligations of the District solely with respect to the principal, stated interest rate and redemption premium (if any) on the Bonds, payable solely as to such principal, stated interest rate and redemption premium (if any) by a general tax upon all the taxable real property within the District (subject to certain statutory limitations imposed by Chapter 97 of the 2011 Laws of New York). The faith and credit of the District are hereby irrevocably pledged solely for the payment of the principal, the stated interest rate and redemption premium (if any) on the Bonds, and provision shall be made annually in the budget of the District by appropriation for the payment of interest on any of the Bonds to be due and payable in such year. Subject to the requirement of the District to pay any early redemption premium which may become due by it under the documents evidencing the Bonds, the faith and credit of the District is specifically not pledged for the realization of the value of the Federal Tax Credit Rate on the Bonds.

SECTION 10. In the absence or unavailability of the President of the Board, the Vice President of the Board is hereby specifically authorized to exercise any or all of the powers delegated to the President of the Board in this resolution.

SECTION 11. This resolution shall take effect immediately.

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

AYES:

NOES:

ABSENT:

The foregoing resolution was thereupon declared duly adopted.

CERTIFICATE OF RECORDING OFFICER

The undersigned hereby certifies that:

(1) I am the duly qualified and acting Clerk of the Kenmore-Town of Tonawanda Union Free School District, Erie County, New York (the "District") and the custodian of the records of the District, including the minutes of the proceedings of the Board of Education of the District (the "Board"), and am duly authorized to execute this certificate.

(2) Attached hereto is a true and correct copy of the resolution duly adopted at a meeting of the Board that was held on November 15, 2016, and entitled:

**A RESOLUTION, DATED NOVEMBER 15, 2016, OF THE BOARD OF EDUCATION OF THE KENMORE-TOWN OF TONAWANDA UNION FREE SCHOOL DISTRICT, ERIE COUNTY, NEW YORK (THE "DISTRICT"), APPROVING AND AUTHORIZING THE DISTRICT'S ISSUANCE OF UP TO \$1,124,070 OF QUALIFIED ZONE ACADEMY BONDS FOR THE FINANCING OF CAPITAL IMPROVEMENTS TO THE FACILITIES OF THE DISTRICT'S PREVIOUSLY-ESTABLISHED QUALIFIED ZONE ACADEMY, AND DELEGATING ALL POWERS REGARDING THE DISTRICT'S ISSUANCE OF SUCH OBLIGATIONS TO THE PRESIDENT OF THE BOARD OF EDUCATION.**

(3) The meeting was duly convened and held and the resolution was duly adopted in all respects in accordance with law and the regulations of the District. To the extent required by law or the regulations, due and proper notice of the meeting was given. A legal quorum of members of the Board was present throughout the meeting, and a legally sufficient number of members voted in the proper manner for the adoption of the resolution. All other requirements and proceedings under law, the regulations, or otherwise, incident to the meeting and the adoption of such resolution, including any publication, if required by law, have been duly fulfilled, carried out and otherwise observed.

(4) The seal appearing below constitutes the official seal of the District and was duly affixed by the undersigned at the time this certificate was signed.

IN WITNESS WHEREOF, I have hereunto set my hand as of November \_\_, 2016.

\_\_\_\_\_  
District Clerk

(SEAL)