

AN ORDINANCE OF THE CITY OF ELIZABETH, IN THE COUNTY OF UNION, NEW JERSEY AUTHORIZING THE GUARANTY OF NOT EXCEEDING \$2,000,000 AGGREGATE PRINCIPAL AMOUNT OF PROJECT REVENUE BONDS, SERIES 2020 (ELIZABETHTOWN PLAZA REDEVELOPMENT PROJECT) OF PACE QALICB, INC. FOR THE PURPOSE OF PROVIDING ADDITIONAL SECURITY THEREFOR, APPROVING THE FORM OF A SUBSIDY AGREEMENT AND APPROPRIATING \$2,000,000 AND PROVIDING FOR THE ISSUANCE OF \$2,000,000 IN BONDS OR NOTES OF THE CITY AS A FUNDING SOURCE THEREFOR AND DETERMINING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, PACE QALICB, Inc. (the "Corporation") is a non-profit corporation formed pursuant to the New Jersey Nonprofit Corporation Act (N.J.S.A. 15A:1-1 et seq.) with the approval of the Parking Authority of the City of Elizabeth (the "Authority"), consistent with the provisions of the Internal Revenue Service ("IRS") Revenue Ruling 63-20 (the "Revenue Ruling") and IRS Revenue Procedure 82-26 in order to enable the Corporation to issue obligations from time to time, including obligations with interest that is exempt from federal income taxation; and

WHEREAS, its Amended Certificate of Incorporation provides that the Corporation may exercise any and all of the powers enumerated in N.J.S.A. 15A:3-1, as amended and supplemented, which includes the authority to borrow money through the issuance of bonds or notes, or other forms of indebtedness of the Corporation and to apply the proceeds thereof to further the public purposes for which the Corporation was formed; and

WHEREAS, the Corporation has previously undertaken a New Markets Tax Credits financing and issued its \$11,875,000 Project Revenue Bonds (Elizabethtown Plaza Redevelopment Project), 2009 Series A (the "2009 Bonds") and its \$16,520,00 Project Revenue Bonds (Elizabethtown Plaza Redevelopment Project), Series 2010, consisting of \$3,520,000 Project Revenue Bonds, Series 2010 B and \$13,000,000 Project Revenue Recovery Zone Economic Development Bonds, Series 2010 C (collectively, the "2010 Bonds") in order to provide funds for the development and construction of a 1,515 space parking garage facility (the "Garage") and related retail and office facility (the "Facility") known as the J. Christian Bollwage Garage on property owned by the Authority and identified as a subdivided portion of Block 6 Lot 94 on the Official Tax Map of the City of Elizabeth (the "City"), which is part of the Midtown Elizabeth Redevelopment Plan in a designated "Area in Need of Rehabilitation" under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law"); and

WHEREAS, the Corporation has issued its \$2,500,000 Project Revenue Bonds (Elizabethtown Plaza Redevelopment Project), Series 2018 (the "2018 Bonds"), in order to provide funds for certain tenant fit-out work pursuant to a Lease Agreement for the second and third floors of the Facility entered into between the Corporation and the State of New Jersey (the "State"), Department of Treasury, Division of Property Management and Construction for use by the State's Public Defender's Office; and

WHEREAS, the City guaranteed the payment of the principal of and interest on the 2010

APPROVAL or DISAPPROVAL on
AUG 26 2020
City Clerk

Bonds pursuant to an ordinance of the City duly and finally adopted on October 7, 2009 and a Subsidy Agreement between the City and Corporation dated June 1, 2010; and

WHEREAS, the City guaranteed the payment of the principal of and interest on the 2018 Bonds pursuant to an ordinance of the City duly and finally adopted on October 25, 2016 and a Subsidy Agreement between the City and Corporation dated May 10, 2018; and

WHEREAS, in order to obtain financing to perform certain fit-out work (the "Project") pursuant to a Lease Agreement for the first floor of the Facility to be entered into between the Corporation and the State Department of Treasury, Division of Property Management and Construction for use by the State Department of Transportation, Motor Vehicle Commission, the Corporation now intends to issue not to exceed \$2,000,000 aggregate principal amount of its Project Revenue Bonds (Elizabethtown Plaza Redevelopment Project), and any project notes issued in anticipation thereof (said Project Revenue Bonds, together with any project note or notes issued in anticipation of the issuance of said Project Revenue Bonds are collectively referred to herein, regardless of whether issued in 2020 or a later year, as the "Series 2020 Bonds"), which Series 2020 Bonds will be issued pursuant to the Trust Indenture dated as of November 5, 2009 between The Bank of New York Mellon (the "Trustee") and the Corporation, as amended and supplemented, including by the First Supplemental Indenture dated as of November 5, 2009, a Second Supplemental Indenture dated as of June 1, 2010, a Third Supplemental Indenture dated as of May 1, 2018 and a Fourth Supplemental Indenture to be entered into between the Trustee and the Corporation with respect to the Series 2020 Bonds; and

WHEREAS, the City has determined that the completion of the Project would not be undertaken but for the provision by the City of a commitment of its credit annually to support the annual debt service on the Series 2020 Bonds issued by the Corporation to finance a portion of the cost of the Project in the event that, for any reason, the revenues generated from the Project are insufficient in a given year to provide sufficient funds to pay the principal and/or interest on such Series 2020 Bonds; and

WHEREAS, pursuant to the Redevelopment Law, specifically N.J.S.A. 40A:12A-8(f), the City may, among other things, extend its credit to the Corporation, as a redeveloper of the Project, to finance the Project; and

WHEREAS, in order to provide an inducement to the prospective purchasers of the Series 2020 Bonds to purchase the same and to provide additional security to the holders thereof, the City, in accordance with the provisions with the Redevelopment Law, desires to provide an agreement to extend credit or to provide for the annual payment to the Corporation of such funds to assure that the principal of, redemption premium, if any, and interest on the Series 2020 Bonds is paid; and

WHEREAS, as security for the Series 2020 Bonds, the City desires to authorize the execution and delivery of a City Subsidy Agreement by and between the Corporation and the City, the form of which is attached hereto as Exhibit A and is on file in the City Clerk's office (the "Subsidy Agreement"), and the City, pursuant to N.J.S.A. 40A:12A-37, N.J.S.A. 40A:12A-67 and the Local Bond Law, N.J.S.A. 40A:2-1 et seq. (the "Local Bond Law"), has determined to authorize the issuance of bonds or notes to provide for the funding source of the Subsidy Agreement; and

WHEREAS, the City shall provide for the extension of the City's credit by unconditionally and irrevocably guaranteeing the principal of and interest on the Series 2020 Bonds in an aggregate principal amount not to exceed \$2,000,000 in accordance with the terms of this ordinance of the City finally adopted by the City Council (the "City Guaranty") and approved by the Mayor of the City (the "Mayor") by a guaranty certificate to be executed by Mayor on the face of each Series 2020 Bond, and by the Subsidy Agreement (collectively, the "City Bond Guaranty"), all pursuant to Section 12A-8(f) of the Redevelopment Law.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF ELIZABETH, STATE OF NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring), as follows:

SECTION 1. The recitals are fully incorporated herein by this reference.

SECTION 2. The Mayor and the Chief Financial Officer of the City (each an "Authorized Officer") are hereby each authorized to execute and deliver, on behalf of the City, the Subsidy Agreement in substantially the form attached hereto as Exhibit A and on file in the City Clerk's office, with such changes as the Authorized Officer, in his respective sole discretion, after consultation with such counsel and any advisors to the City, shall determine, such determination to be conclusively evidenced by the execution of the Subsidy Agreement by an Authorized Officer. The City Clerk is hereby authorized and directed to attest to the execution of the Subsidy Agreement by an Authorized Officer and to affix the corporate seal of the City on the Subsidy Agreement.

SECTION 3. Pursuant to and in accordance with the terms of the Redevelopment Law and the Subsidy Agreement, the City is hereby authorized to and hereby shall fully, unconditionally and irrevocably guaranty the punctual payment of the principal of and interest on, calculated on a tax-exempt or taxable basis, the Series 2020 Bonds to be issued at one or more times in one or more series in an aggregate principal amount not exceeding \$2,000,000, which Series 2020 Bonds are to be issued to provide additional financing for the Project as described in the recitals hereto, on such terms and conditions as may be agreed to by and between the City and the Corporation in the Series 2020 Bonds, the City Bond Guaranty and in such other documents related thereto and as are reflected in this ordinance and in the guaranty certificate on the face of or attached to each Series 2020 Bond. Upon the endorsement of the Series 2020 Bonds referred to in Section 3 below, in the event of non-payment by the Corporation the City shall be fully, unconditionally and irrevocably obligated to pay the principal of and interest on the Series 2020 Bonds and, accordingly, the City shall be unconditionally and irrevocably obligated to levy *ad valorem* taxes upon all the taxable property within the City for the payment thereof when required under the provisions of applicable law. The full faith and credit of the City are hereby pledged for the full and punctual performance of said City Guaranty.

SECTION 4. The Mayor of the City shall, and is hereby authorized and directed to, execute, by manual or facsimile signature, an endorsement on or attached to each of the Series 2020 Bonds evidencing this City Bond Guaranty by the City as to the guaranty of punctual payment of the principal of and interest on the Series 2020 Bonds. The endorsement on each Series 2020 Bond shall be in substantially the following form, and absent the fully executed

endorsement in such following form on any such Series 2020 Bond, such Series 2020 Bond shall not be entitled to the benefits of this ordinance:

“GUARANTY OF THE CITY OF ELIZABETH, STATE OF NEW JERSEY

The payment of the principal of and interest on the within [insert appropriate designation of bond or note] shall be fully, irrevocably and unconditionally guaranteed by the City of Elizabeth, State of New Jersey (the “City”) in accordance with the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., and the ordinance of the City finally adopted pursuant thereto, and the City is fully, irrevocably and unconditionally liable for the payment, when due, of the principal of and interest on this [insert appropriate designation of bond or note], and, if necessary, the City shall levy *ad valorem* taxes upon all the taxable property within the City in order to make such payment.

IN WITNESS WHEREOF, the City has caused this City Bond Guaranty to be executed by the manual or facsimile signature of its Mayor, all as of the date of the within [insert appropriate designation of bond or note].

CITY OF ELIZABETH, STATE OF NEW JERSEY

By: _____
Mayor”

Each Authorized Officer is hereby further authorized and directed to negotiate, approve, execute or acknowledge such other certificates or agreements relating to this full, irrevocable and unconditional City Bond Guaranty that may be required in connection with the Corporation’s issuance of the Series 2020 Bonds. Such further agreement or certificate shall not in any manner relieve the City from its obligations hereunder.

SECTION 5. For the purpose of funding the Subsidy Agreement, there is hereby appropriated the sum of \$2,000,000 comprised of \$2,000,000 in bonds or notes authorized herein. No down payment is required in connection with the purpose for which obligations are authorized as provided in N.J.S.A. 40A:12A-37(c), and the obligations authorized herein are deductible from the gross debt of the City as more fully explained in Section 9(f) of this ordinance.

SECTION 6. In order to finance the cost of the improvement or purpose, negotiable bonds are hereby authorized to be issued in the principal amount of \$2,000,000 pursuant to the Local Bond Law and the Redevelopment Law. In anticipation of the issuance of the bonds, negotiable bond anticipation notes are hereby authorized to be issued pursuant to and within the limitations prescribed by the Local Bond Law.

SECTION 7. (a) The improvement hereby authorized and the purpose for the financing of which the bonds or notes may be issued is to provide the funding source of the

Subsidy Agreement to be delivered in connection with the financing of the Project, including all work and materials necessary therefor or incidental thereto.

(b) The estimated maximum amount of bonds or notes to be issued for the improvement or purpose is as stated in Section 5 hereof.

(c) The estimated cost of the improvement or purpose is equal to the amount of the appropriation herein made therefor.

(d) The rate of interest on the bonds and bond anticipation notes authorized herein shall not exceed any maximum rate imposed by law.

SECTION 8. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the Chief Financial Officer; provided that no note shall mature later than one year from its date. The notes shall bear interest at such rate or rates and be in such form as may be determined by the Chief Financial Officer. The Chief Financial Officer shall determine all matters in connection with notes issued pursuant to this ordinance, and the Chief Financial Officer's signature upon the notes shall be conclusive evidence as to all such determinations. All notes issued hereunder may be renewed from time to time subject to the provisions of the Local Bond Law. The Chief Financial Officer is hereby authorized to sell part or all of the notes from time to time at public or private sale and to deliver them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof. The Chief Financial Officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the notes pursuant to this ordinance is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the notes sold, the price obtained and the name of the purchaser.

SECTION 9. The following additional matters are hereby found, determined and declared by the City:

(a) The Project would not be undertaken but for the provision by the City of a commitment of its credit to support the annual debt service on the Series 2020 Bonds issued by the Corporation to finance a portion of the cost of the Project in the event that, for any reason, the Corporation's revenues are insufficient in a given year to provide sufficient funds to pay the principal and/or interest on such Series 2020 Bonds.

(b) The improvement or purpose described in this ordinance is not a current expense. It is an improvement or purpose the City may lawfully undertake, and no part of the cost thereof has been or shall be specially assessed on property specially benefited thereby.

(c) The period of usefulness of the improvement or purpose, within the limitations of the Local Bond Law, according to the reasonable life thereof computed from the date of the bonds authorized by this ordinance, is 15 years.

(d) The Supplemental Debt Statement required by the Local Bond Law has been duly prepared and filed in the office of the City Clerk, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State. Such statement shows that the gross debt of the City as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided in this ordinance by \$2,000,000, but that the net debt of the City determined as provided in the Local Bond Law is not increased by this ordinance and the obligations authorized herein will be within all debt limitations prescribed by that Law.

(e) An aggregate amount not exceeding \$100,000 for items of expense listed in and permitted under N.J.S.A. 40A:2-20 is included in the estimated cost indicated herein for the purpose or improvement.

(f) This ordinance authorizes obligations of the City solely for a purpose described in the Redevelopment Law, and pursuant to N.J.S.A. 40A:12A-67(f) the obligations authorized herein are deductible from gross debt of the City until such time as such bonds or notes are actually issued, and only up to the amount actually issued, to fund the Subsidy Agreement.

(g) The maximum principal amount of Series 2020 Bonds (including one or more series of bonds and/or notes issued in anticipation thereof) of the Corporation that are hereby and hereunder fully, unconditionally and irrevocably guaranteed as to the punctual payment of the principal thereof and interest thereon is \$2,000,000.

SECTION 10. The full faith and credit of the City is hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this ordinance. The obligations shall be direct, unlimited obligations of the City, and the City shall be obligated to levy ad valorem taxes upon all the taxable real property within the City for the payment of the obligations and the interest thereon without limitation of rate or amount.

SECTION 11. The City hereby covenants to take any action necessary or refrain from taking such action in order to preserve the tax-exempt status of the bonds and notes authorized hereunder as is or may be required under the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code"), including compliance with the Code with regard to the use, expenditure, investment, timely reporting and rebate of investment earnings as may be required thereunder.

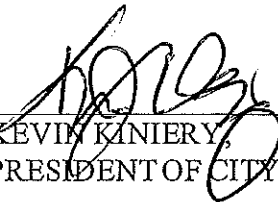
SECTION 12. The Chief Financial Officer of the City is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the City or the Series 2020 Bonds (including one or more series of bonds and/or notes issued in anticipation thereof) and to execute such disclosure document on behalf of the City. The Chief Financial Officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the City pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") for the benefit of holders and beneficial owners of obligations of the City or the Series 2020 Bonds (including one or more series of bonds and/or notes issued in anticipation thereof) and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof, provided such undertaking is and continues to be, in the opinion of a

nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the City fails to comply with its undertaking, the City shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

SECTION 13. If any section of this ordinance or the application thereof to any person or circumstance shall, for any reason be adjudged by a Court of competent jurisdiction to be invalid, such judgment shall not effect, impair or invalidate the remainder of this ordinance which is hereby declared to be severable.

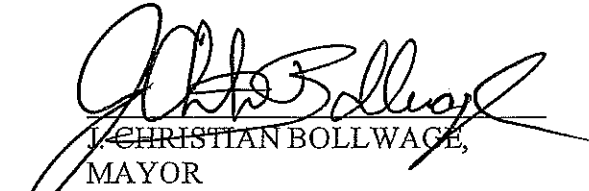
SECTION 14. This ordinance shall take effect 20 days after the first publication thereof after final adoption, as provided by the Local Bond Law.

PASSED: 8/25/2020

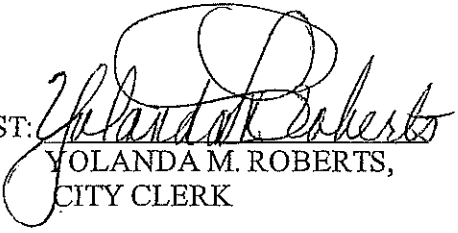


KEVIN KINERY,
PRESIDENT OF CITY COUNCIL

APPROVED: 07/28/2020



CHRISTIAN BOLLWAGE,
MAYOR

ATTEST: 

YOLANDA M. ROBERTS,
CITY CLERK