

RESOLUTION NO. _____ FOR 2023

A meeting of the Town of Colonie Industrial Development Agency (the “Agency”) was convened in public session at the Town of Colonie Memorial Town Hall, Town Hall Main Meeting Room, 534 New Loudon Road, Latham, New York 12110, on September 11, 2023 at 6:00 p.m., local time.

The meeting was called to order by the (Vice) Chairman and, upon roll being called, the following members of the Agency were:

PRESENT: Carm Basile
Alison Blessing
Thomas Despart, III
Peter Gannon
John Kearney
Gary Rinaldi
David R. Yule

ABSENT: None

THE FOLLOWING PERSONS WERE ALSO PRESENT:

Christopher Kelsey Chief Financial Officer
Melissa C. Bennett, Esq. Barclay Damon LLP

The following resolution was offered by Gary Rinaldi, seconded by Alison Blessing, to wit:

RESOLUTION OF THE TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE EXECUTIVE DIRECTOR TO HOLD A PUBLIC HEARING IN CONNECTION WITH RESPECT TO ADDITIONAL FINANCIAL ASSISTANCE FOR LINCOLN AVENUE DEVELOPMENT, LLC.

WHEREAS, the Town of Colonie Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 232 of the Laws of 1977, as amended by Chapter 594 of the Laws of 1980 of New York, as amended, constituting Section 911-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, renovating, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of

New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, by resolution adopted by the Agency on or about January 23, 2023 (the “Approving Resolution”), the Agency agreed to undertake a project (the “Project”) on behalf of Lincoln Avenue Development, LLC (the “Company”) consisting of the following: (A)(1) the acquisition of an interest in approximately 15.2 acres of real estate located at 10 Pennsylvania Road and 50 Pennsylvania Road (also known as 861 1st Street), Watervliet (to be subdivided from current tax map no. 44.10-1-32.3) in the Town of Colonie, Albany County, New York (the “Land”), (2) the construction of two buildings to be located on the Land, of which one building is to be approximately 120,000 square feet and one building is to be approximately 45,000 square feet, including related sitework (the “Original Improvements”), and (3) the acquisition and installation therein and thereon of various building materials, furniture, fixtures, machinery, equipment and personal property (the “Equipment” and, together with the Land and the Improvements, the “Original Project Facility”), which Project Facility is to be leased and subleased by the Agency to the Company and further subleased by the Company to third-party tenants for flex space/warehousing/distribution uses (each a “Third-Party Tenant”); (B) the granting of certain “financial assistance” (within the meaning of section 854(14) of the Act) with respect to the foregoing limited to potential exemptions from certain sales and use taxes, mortgage recording taxes (except to the extent limited by the Act), transfer taxes and real property taxes (collectively, the “Original Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, in connection with the Project and the granting of the Original Financial Assistance, the Agency entered into the following documents (hereinafter collectively referred to as the “Project Documents”): (A) an underlying lease to agency, dated as of February 1, 2023 by and between the Company and the Agency, pursuant to which, among other things, the Agency acquired a leasehold interest in the Land and the improvements now or hereafter located on the Land from the Company, (B) a memorandum of underlying lease dated as of February 1, 2023, (C) a lease agreement dated as of February 1, 2023 (the “Lease Agreement”) by and between the Agency and the Company, pursuant to which, among other things, the Company agreed to undertake and complete the Project as agent of the Agency and the Company further agreed to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency’s administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project, (D) a memorandum of lease agreement dated as of February 1, 2023, (E) a project agreement dated as of February 1, 2023, by and between the Agency and the Company, which sets forth the terms and conditions under which Original Financial Assistance shall be provided to the Company, (F) a payment in lieu of tax agreement dated as of February 1, 2023 by and between the Agency and the Company (the “PILOT Agreement”) whereby the Company agreed to make certain payments in lieu of real property taxes, and (G) various certificates relating to the Original Project; and

WHEREAS, the Company has requested (the “Request”) that the Agency consent to a change to the Original Project, consisting of the increase of the square footage (the “Additional Square Footage”) of the 45,000 square foot buildings to now be an approximately 60,000 square foot building (the Original Improvements as so modified, the “Improvements”); and

WHEREAS, pursuant to Section 4.1(B) of the Lease Agreement, no material change in the Project description shall be made unless the Agency shall have consented thereto in writing (which consent of the Agency shall not be unreasonably withheld or delayed); and

WHEREAS, due to the Additional Square Footage, additional “financial assistance” (within the meaning of Section 854(14) of the Act) is being requested with respect to the Request in the amount of approximately \$208,552.94 (the “Additional Financial Assistance” and, together with the Original Financial Assistance, the “Financial Assistance”); and

WHEREAS, pursuant to Section 859-a of the Act, prior to the Agency providing any financial assistance of more than \$100,000 to any project, the Agency, must among other things, hold a public hearing with respect to said project and the proposed financial assistance; and

WHEREAS, the Additional Financial Assistance will cause the Agency to provide additional financial assistance in excess of \$100,000, therefore pursuant to Section 859-a of the Act, prior to the Agency approving the Additional Financial Assistance, the Agency, among other things, must hold a public hearing with respect to the Request; and

WHEREAS, the Agency desires to comply with the public hearing and notice and other procedural requirements contained in Section 859-a of the Act with respect to the Additional Financial Assistance;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency hereby authorizes the Executive Director of the Agency, after consultation with the members of the Agency and the Agency’s Counsel, to (A) establish the time, date and place for a public hearing of the Agency to hear all persons interested in the Project and the Additional Financial Assistance (the “Public Hearing”); (B) cause the Public Hearing to be held in a city, town or village where the Project Facility is located, and cause notice of such Public Hearing to be given to the public by publishing a notice or notices of such Public Hearing in a newspaper of general circulation available to the residents of the governmental units where the Project Facility is located, such notice or notices to comply with the requirements of Section 859-a of the Act; (C) cause notice of the Public Hearing to be given to the chief executive officer of the county and of each city, town, village and school district in which the Project Facility is located, such notice or notices to comply with the requirements of Section 859-a of the Act; and (D) conduct such Public Hearing.

Section 2. The Executive Director of the Agency is hereby authorized and directed to (A) (i) distribute copies of this Resolution to the Company, and (ii) deliver or cause to be delivered a copy of this Resolution by certified mail, return receipt requested or an electronic correspondence with a read-receipt, to the chief executive officer of each affected local taxing jurisdiction

(including the school board/district clerk and district superintendent of each affected school district), such delivery to comply with the requirements of Section 859-a of the Act; and (B) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 3. A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

Section 4. This Resolution shall take effect immediately upon adoption.

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

	<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Carm Basile	X		
Alison Blessing	X		
Thomas Despart, III	X		
Peter Gannon	X		
John Kearney	X		
Gary Rinaldi	X		
David R. Yule	X		

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

I, the undersigned Secretary of the Town of Colonie Industrial Development Agency (the “Agency”), DO HEREBY CERTIFY that I have compared the foregoing copy of the minutes of the meeting of the Agency, including the Resolution contained therein, held on September 11, 2023, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Agency and such resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency 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 and rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of September, 2023.



Secretary