

RESOLUTION NO. 4 FOR 2023

A regular 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, Albany County, New York on January 23, 2023 at 6:00 p.m., local time.

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

PRESENT: Alison Blessing
Peter Gannon
John Kearney
Gary Rinaldi
David Yule

ABSENT: Carm Basile
Thomas Despart

THE FOLLOWING PERSONS WERE ALSO PRESENT:

Sean Maguire	Executive Director
Christopher Kelsey	Chief Financial Officer
Melissa C. Bennett, Esq.	Barclay Damon LLP

The following resolution was offered by David Yule, seconded by Alison Blessing, to wit:

RESOLUTION APPROVING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN FACILITY FOR LINCOLN AVENUE DEVELOPMENT, LLC (PHASE 1A) AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the Town of Colonie Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of 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 of New York, 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, Lincoln Avenue Development, LLC (the “Company”), on behalf of itself and/or entities formed or to be formed on behalf of the foregoing, has submitted an application (the “Application”) to the Agency, a copy of which was presented at this meeting and copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project 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 “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 “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 “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 order to induce the Company to proceed with the Project within the Town it appears necessary for the Agency to assist the Company by taking a leasehold interest in the Project Facility so as to afford the Company certain relief from mortgage recording taxation (to the extent requested), relief from real property taxation and relief from sales and use taxation for a limited period; and

WHEREAS, the members of the Agency adopted a resolution on December 19, 2022 (the “Public Hearing Resolution”) authorizing a public hearing in compliance with the provisions of Section 859-a of the Act; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Agency (A) caused notice of public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed by certified mail, return receipt

requested on January 9, 2023 to the chief executive officers of the county, the town and the school district in which the Project Facility is or is to be located (each an “Affected Tax Jurisdiction” and collectively, the “Affected Tax Jurisdictions”), (B) caused notice of the Public Hearing to be published on January 11, 2023 in the Times Union, a newspaper of general circulation available to the residents of the Town of Colonie, Albany County, New York, and (C) conducted the Public Hearing on January 23, 2023 at 6:00 p.m. at the Town of Colonie Memorial Town Hall, Town Hall Main Meeting Room, 534 New Loudon Road, Latham, New York; and

WHEREAS, proposed Third-Party Tenants (1) shall be subject to the prior written consent of the Executive Director, which consent shall not be unreasonably withheld or delayed, but which consent shall be subject to all requirements of the Act, including but not limited to that such sublease to the proposed Third-Party Tenant shall not cause the Project Facility to be in violation of Section 862(2)(a) of the Act and such sublease shall not cause any portion of the Project Facility to be occupied by a sublessee in violation of Section 862(1) of the Act, except that (2) in the event that the Agency must make a determination pursuant to Section 862(1) of the Act, such proposed Third-Party Tenant shall be subject to the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed, subject to a determination that such sublease shall not cause any portion of the Project Facility to be occupied by a sublessee in violation of Section 862(1) of the Act and otherwise subject to all requirements of the Act (all of the foregoing, collectively, the “Prior Tenant Approvals”); and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance, the Agency proposes to enter into the following documents (collectively, the “Agency Documents”): (A) one or more underlying lease agreements (and a memorandum thereof) (collectively, the “Underlying Lease”) each by and between the Company and the Agency, pursuant to which, among other things, the Agency will acquire a leasehold interest in the Land and the improvements now or hereafter located on the Land from the Company; (B) one or more lease agreements (and a memorandum thereof) (collectively, the “Lease Agreement”) each by and between the Agency and the Company, pursuant to which, among other things, the Company will agree to undertake and complete the Project as agent of the Agency and the Company will further agree 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; (C) one or more project agreements (collectively, the “Project Agreement”) that complies with the requirements of Section 859-a(6) of the Act; (D) one or more payment in lieu of tax agreements (collectively, the “PILOT Agreement”) each by and between the Agency and the Company, pursuant to which the Company will agree to make payments in lieu of taxes in accordance with the terms set forth in Exhibit A; (E) one or more tenant agency compliance agreements (collectively, the “Tenant Agency Compliance Agreement”) each by and between the Agency and a Third-Party Tenant; and (F) various other documents and certificates relating to the Project; and

WHEREAS, in connection with the Project, the Company will execute and deliver to the Agency one or more bills of sale (collectively, the “Bill of Sale to Agency”), which convey from the Company to the Agency all right, title and interest of the Company in the Equipment; and

WHEREAS, as security for the Loan (as such term is defined in the Lease Agreement), the

Agency and the Company will execute and deliver to a lender or lenders to be determined (the “Lender”), one or more mortgages, assignments of leases and rents and such other loan documents satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably required by the Lender, to be dated a date to be determined (collectively, the “Loan Documents”) in connection with the financing, refinancing or permanent financing of the costs of acquiring, constructing and equipping the Project Facility; and

WHEREAS, in order to secure the performance by the Company of its obligations under the PILOT Agreement, the Company will execute one or more mortgages (collectively, the “PILOT Mortgage”) in favor of the Agency granting to the Agency a mortgage lien on the Company’s interest in the Project Facility; and

WHEREAS, the Agency will file with the assessor and mail to the chief executive officers of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of one or more New York State Board of Real Property Services Form RP-412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (each, a “Real Property Tax Exemption Form”) relating to the Project; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, the Agency will file with the State Department of Taxation and Finance one or more forms entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be file pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Reports”) and provide copies of the Thirty-Day Sales Tax Reports to the Company; and

WHEREAS, in order to begin the construction of the Project Facility and the acquisition of Equipment prior to the execution and delivery of the Agency Documents and other final documents and agreements in connection with the Project, the Company has requested the appointment of the Company as agent of the Agency for sales and use tax purposes; and

WHEREAS, in connection with the appointment of the Company as agent of the Agency for sales and use tax purposes, the Agency and the Company will enter into a preliminary project agreement and certain related documents (the “Interim Documents”) with respect to the Project; and

WHEREAS, simultaneously with the execution of the Interim Documents, the Agency will file with the New York State Department of Taxation and Finance the form entitled a Thirty-Day Sales Tax Form pursuant to Section 874(9) of the Act; and

WHEREAS, for purposes of exemption from New York State (the “State”) sales and use taxation as part of the Financial Assistance requested, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), the Project had been subject to an environmental review pursuant to the requirements of the State Environmental Quality Review Act and the regulations thereunder, resulting in the issuance of a Negative Declaration by the Agency by resolution dated January 23, 2023;

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

Section 1. The Agency, based upon the representations made by the Company to the Agency in the Application and at this meeting, hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;

(B) The Project constitutes a “project,” as such term is defined in the Act;

(C) The Project site is located entirely within the boundaries of the Town of Colonie, New York;

(D) The undertaking of the Project pursuant to the Lease Agreement is for a proper purpose, to wit, to preserve and/or create permanent private sector jobs and to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the Town of Colonie and the State of New York;

(E) The Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of a plant or facility of any proposed occupant of the Project Facility located in the State; and

(F) This Project does not constitute a project where the facilities or property comprising the Project will be primarily used in making retail sales of goods or services to customers who personally visit such facilities and constitute more than one-third (1/3) of the total Project cost.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) proceed with the Project; (B) acquire: (i) a leasehold interest in the Land and all improvements now or hereafter located on the Land from the Company pursuant to the Underlying Lease, and (ii) title to the Equipment pursuant to the Bill of Sale to Agency from the Company to the Agency; (C) lease the Project Facility to the Company pursuant to the Lease Agreement; (D) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, constructed and installed, as provided in the Lease Agreement; (E) enter into the PILOT Agreement; (F) enter into the Project Agreement; (G) accept the PILOT Mortgage; (H) subject to any required Prior Tenant Approvals,

enter into the Tenant Agency Compliance Agreement; (H) secure the Loan by entering into the Mortgage; and (I) grant to the Company the Financial Assistance with respect to the Project. In the event of the occurrence of a recapture event under the Project Agreement, the Agency will pursue recapture of Financial Assistance as provided therein.

Section 3. The Agency is hereby authorized to acquire a leasehold interest in the Project Facility pursuant to the Underlying Lease and title to the Equipment pursuant to the Bill of Sale and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 4. (A) The Agency Documents shall be in form and substance satisfactory to Chairman (or Vice Chairman or Executive Director) and the Agency Counsel and shall be in substantially similar form to the documents used in connection with prior Agency projects. The Chairman (or Vice Chairman or Executive Director) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents and the Loan Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same.

(B) The Chairman of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency.

Section 5. For purposes of providing the terms and conditions for which the Company will receive the benefit of certain State and local sales and use tax exemptions in connection with the Project, the Interim Documents in such form as the Chairman (or Vice Chairman) of the Agency shall (with the advice of Agency counsel) deem advisable, be, and the same are, hereby approved; and the Chairman and Vice Chairman of the Agency are each hereby authorized and directed to execute, acknowledge and deliver the Interim Documents in the name of the Agency. The execution and delivery of the Interim Documents shall be conclusive evidence of due authorization and approval of the Interim Documents in their respective final form. The Chairman or Vice Chairman of the Agency shall determine the date of expiration of the Company's appointment as temporary agent of the Agency; provided, however, that such expiration date shall be not later than December 31, 2023 unless either (a) the Agency and the Company have entered into a "straight-lease" transaction (as defined in the Act) prior to such date; or (b) the Agency has agreed to an extension of such expiration date.

Section 6. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Interim Documents, the Agency Documents and the Loan Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Interim Documents, the Agency Documents and the Loan Documents binding upon the Agency.

Section 7. The Agency hereby delegates to the Company as agent of the Agency, the authority to designate (following the execution and delivery of the Interim Documents or Agency Documents, as the case may be), agents and sub-agents of the Agency (each, a “Sub-Agent”) for purposes of utilizing the Agency sales and use tax exemption with respect to the acquisition, construction and installation of the Project Facility; provided that any such sub-agency designation shall become effective only upon submission to the Agency within fifteen (15) days of such agency and sub-agency designation: (1) an executed sub-agent appointment agreement (in a form approved by the Agency) and (2) a completed Form ST-60 of the New York State Department of Taxation and Finance (IDA Appointment of Project Sublessee or Agent for Sales Tax Purposes). Such agents and sub-agents may include contractors and subcontractors involved in the acquisition, construction, reconstruction and installation of the Improvements.

Section 8. The Agency shall maintain records of the amount of State and local sales and use tax exemption benefits provided to the Project and each agent or Project operator and shall make such records available to the State Commissioner of Taxation and Finance (the “Commissioner”) upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company’s receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its agents and/or operators to make, all records and information regarding State and local sales and use tax exemption benefits available to the Agency upon request. The provisions of Section 875 of the Act are hereby incorporated herein as if set forth herein and the Agency agrees that it shall comply with the requirements of such Section 875.

Section 9. The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from New York State sales and use exemptions benefits. Notwithstanding anything herein to the contrary, the amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed **\$534,000 and shall last no longer than two years from the execution and delivery of the respective Agency Documents.**

Section 10. Notwithstanding anything herein to the contrary, the amount of mortgage recording tax exemption benefits comprising the Financial Assistance approved herein shall not exceed **\$192,000.**

Section 11. Notwithstanding anything herein to the contrary, the amount of real property tax exemption benefits comprising the Financial Assistance approved herein shall be approximately **\$2,294,082**, which such amount reflects the total estimated real property tax exemptions for the Project Facility (which constitute those taxes that would have been paid if the Project Facility were on the tax rolls and not subject to the Lease Agreement) of approximately \$4,705,810 less the estimated payments in lieu of taxes of approximately \$2,411,728 to be made by the Company to the affected tax jurisdictions with respect to the Project Facility during the terms of the Lease Agreement. The approximate amount of estimated real property tax exemptions and the approximate amount of

estimated payments in lieu of taxes are estimated based on an assumed assessed value of the Project Facility and assumed future tax rates of the affected tax jurisdictions. The actual amount of real property tax abatement benefit is subject to change over the terms of the Lease Agreement depending on any changes to assessed value and/or tax rates of the Affected Tax Jurisdictions. Exhibit A attached hereto reflects the calculation for the annual amount of the payments in lieu of taxes to be made to the affected tax jurisdictions in each year during the terms of the Lease Agreement, with the schedule to be phased in with respect to each of the two buildings as construction is completed for each building; however, in no event shall any such schedule commence on a tax year later than seven years from the date hereof.

Section 12. The Interim Documents, the Agency Documents and the Loan Documents shall be deemed the obligations of the Agency, and not of any member, officer, agent or employee of the Agency in his/her individual capacity, and the members, officers, agents and employees of the Agency shall not be personally liable thereon or be subject to any personal liability or accountability based upon or in respect hereof or of any transaction contemplated hereby. The Interim Documents, the Agency Documents and the Loan Documents shall not constitute or give rise to an obligation of the State of New York or the Town of Colonie, New York and neither the State of New York nor the Town of Colonie, New York shall be liable thereon, and further, such agreement shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency.

Section 13. 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>ABSTAIN</u>	<u>ABSENT</u>
Carm Basile				X
Alison Blessing	X			
Thomas Despart				X
Peter Gannon	X			
John Kearney	X			
Gary Rinaldi	X			
David Yule	X			

The 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 January 23, 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 23rd day of January, 2023.



Secretary

Exhibit A

The PILOT Agreement would not provide any abatements for any special assessments levied on the Project Facility. The Company will pay 100% of taxes due on the Land, and the Improvements will be subject to the following schedule:

<u>Tax Year</u> <u>following</u> <u>completion</u> <u>of</u> <u>construction</u>	<u>Percentage of Normal</u> <u>Tax Exemption on the</u> <u>Improvements</u>
1	90%
2	80%
3	70%
4	60%
5	45%
6	30%
7	15%
8 and thereafter	0%