

RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on September 19, 2023 at 8:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

PRESENT: Kathleen Murphy, Rickey T. Brown, Steven Thompson, Kenneth Kinsey, Dirk Sonneborn

THE FOLLOWING PERSONS WERE ALSO PRESENT: Staff Present: Eric Ennis, Kyle DeMarco, Susan Katzoff, Esq., Lori McRobbie; Others Present: Wendy Lougnot, Esq., Barry Lentz, Tylah Worrell, Peter King, Robert Sorasone

The following resolution was offered by Dirk Sonneborn and seconded by Rickey T. Brown:

RESOLUTION AUTHORIZING A WAIVER OF CERTAIN PROVISIONS IN THE LEASE TRANSACTIONAL DOCUMENTS

WHEREAS, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, TLSP Coda LLC, or an entity to be formed (the "**Company**"), by application dated January 18, 2023 (the "**Application**"), requested that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 1.97 acres of real property located at 1014-16 Fayette St. E. (Tax Map No. 048.-05-01); 1027-29 Genesee St. E. (Tax Map No. 048-05-04.1); 1001-19 Genesee St. E & Crouse Ave. (Tax Map No. 048.-05-05); 313-23 Crouse Ave. S. (Tax Map No. 048.-05-06); 309 Crouse Avenue S. (Tax Map No. 048.-05-07); and 301-07 Crouse Avenue S. (Tax Map No. 048.-05-08), all in the City of Syracuse, New York (such parcels to be resubdivided) (collectively, the "**Land**"); (ii)(a) the demolition of existing structures (excepting therefrom the Ward Wellington Ward home); (b) the renovation/preservation of Ward Wellington Ward home, including renovation of the exterior façade to historical standards and the interior into a retail space; and (c) the construction of an approximately 300,149 sq.ft., six-story residential apartment building containing approximately 282 units, consisting of approximately 103 studio units; 98 one-bedroom units and 69 two-

bedroom units; and 12 three-bedroom units, to be located on a portion of the first floor and floors 2-6; a variety of amenities on the first floor including lounge, study, fitness areas and a public retail space, a few smaller common space areas on each floor for resident work-from-home and lounge areas; an exterior courtyard space at the center of the building which will include a year-round heated pool and dining patio; as well as a subsurface approximately 146 space parking garage and a surface approximately 29 space parking lot; all located on the Land (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, construction, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, in July, 2023, the Company and the Agency closed on the Project and executed the necessary lease transactional documents, including but not limited to an Agency Lease Agreement dated as of July 15, 2023 between the Agency and the Company (the "**Agency Lease**") and a Payment in Lieu of Taxes Agreement dated even date therewith which is set to expire June 30, 2039 (the "**PILOT Agreement**") (collectively, the "**Transactional Documents**"); and

WHEREAS, by correspondence dated August 22, 2023, the Company has requested the Agency consider amending the Transactional Documents to permit an assignment of the Company Documents (as defined in the Agency Lease) in the event of a foreclosure by the Lender (as defined below) to satisfy certain conditions of the Lender. As a requirement of the financing, ACRES Capital, LLC ("**Acres**") is requiring either: (a) the Agency waive the restrictions on transfer/assignment in the Transactional Documents to permit an assignment of the Company's interests in and under the Company Documents (the "**Waiver**"), in the event of: (i) a foreclosure or deed in lieu of foreclosure (collectively, "**Foreclosure**") by Acres or its servicer (collectively, the "**Lender**") wherein the Lender takes title to the Project Facility; and (ii) for the subsequent transfer of the Project Facility by the Lender following the Lender's acquisition by Foreclosure (the "**Subsequent Sale**" and together with the Foreclosure, collectively, the "**Transfers**"); or (b) remit an additional three-million dollars (\$3MM) as additional collateral. The Company advised that the additional collateral will stress the Projects financial stability in the near term; and

WHEREAS, in the case of Transfers, there shall be no uncured event of default under the Transactional Documents and each the Lender and the subsequent purchaser through a Subsequent Sale would be required to assume all rights, responsibilities, obligations, undertakings, liabilities and indemnities of the Company under the Transactional Documents ("**Assumption Requirement**"); and

WHEREAS, in the event of a Foreclosure, the Lender shall provide the Agency with at least sixty (60) days' prior written notice of its intent to foreclose and take title and consent to execution and delivery of all documents necessary to effectuate the Assumption Requirement. In the event of a Foreclosure where the Lender does not take title then no Waiver would be permitted without the prior written consent of the Agency; and

WHEREAS, for the Subsequent Sale by the Lender, the assignee/purchaser would be required to satisfy certain conditions; including but not limited to: (i) the Assumption Requirements; and (ii) be a Qualified Transferee (as defined below); and

WHEREAS, Lender shall provide the Agency and its counsel written notice of its intent to transfer the Project Facility to a third party at least sixty (60) days' prior to the intended transfer date and request the Agency's consent to do so in accordance herewith (the "**Transfer Notice**"); and

WHEREAS, the Transfer Notice will include representations and warranties from (i) the proposed Purchaser (as hereinafter defined), and (ii) the Lender, to the best of its knowledge based solely upon the information and documentation provided to it by the Purchaser (unless the Lender has actual knowledge of an inaccuracy or incompleteness of any of the same) that the proposed Purchaser, (the "**Purchaser**"), is a Qualified Transferee (according to the below enumerated standards) and must be accompanied by such information and documentation as the Agency, acting by and through its Chairman/Executive Director or legal counsel, may require to substantiate such representation and warranty. A Purchaser shall be a "**Qualified Transferee**" if the Agency determines in its reasonable judgment that: (1) The Purchaser has successfully and continuously owned and operated projects of similar size, scope and use to that of the Project over the then preceding ten (10) years (collectively, "**Facilities**"); (2) The Purchaser has demonstrated that it has a net worth sufficient to fund the successful ongoing operation and maintenance of the Project Facility; (3) The Purchaser is current on the payment of all real estate taxes, payments in lieu of taxes, levies, charges, fees and assessments due and owing to any taxing jurisdiction in which it owns or operates Facilities; (4) The Purchaser has no outstanding actions or proceedings, without a judicially mandated settlement agreement, decision or order, in any State or federal court or any administrative body nor any outstanding judgments; (5) The Purchaser is current on the payment of all federal, New York State and Onondaga County taxes and has made all filings of all required returns; and (6) The Purchaser has furnished to the Agency at least two (2) banking references; and

WHEREAS, the Company is requesting the Agency authorize a waiver of the assignment restrictions in the Agency Lease, as set forth above, to allow for the Transfers; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), the Agency is required to make a determination as to whether the "action" (as said quoted term is defined in SEQRA) to be taken by the Agency may have a "significant impact on the environment" (as said quoted term is utilized in SEQRA). The Agency has classified the granting of the Waiver and the approval of the Transfers as a "Type II" action as that term is

defined under SEQRA, and therefore no further review is required.

NOW, THEREFORE, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

(1) Based upon the representations made by the Company to the Agency, the Agency hereby makes the following findings and determinations:

- (a) the action authorized pursuant to this Resolution constitutes a Type II action under SEQRA and no further review is required; and
- (b) the Agency authorizes the Waiver, solely in those specific instances set forth herein and defined as the Transfers and all subject to the terms and conditions set forth herein.

(2) The Chair, Vice Chair and the Executive Director of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver all documents and agreements necessary to effect the intent of this Resolution, including but not limited to amendments to the Transactional Documents, and to make such changes, omissions, insertions, revisions or amendments to the terms set forth herein, as approved by the Chair or Vice Chair and upon advice of counsel to the Agency, and to do and cause to be done any such other acts and things, as they determine, may be necessary or desirable to consummate the transactions contemplated by this Resolution.

(3) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(4) Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare, for submission to the (Vice) Chair and/or Executive Director for execution and delivery, all documents necessary to effect the undertaking of the Project and the grant of Financial Assistance in connection with the Project.

(5). The approvals provided for herein are contingent upon the Company's payment of all of the Agency's fees and costs, including but not limited to attorneys' fees.

(6). The Secretary and/or Executive Director of the Agency is hereby authorized to distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(7). This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

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

	<u>AYE</u>	<u>NAY</u>
Kathleen Murphy	X	
Rickey T. Brown	X	
Steven Thompson	X	
Kenneth Kinsey	X	
Dirk Sonneborn	X	

The foregoing Resolution was thereupon declared duly adopted.

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

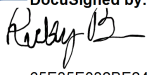
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on September 19, 2023, with the original thereof on file in the office of the Agency, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Agency on 10/16/2023.

City of Syracuse Industrial Development Agency

DocuSigned by:

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Rickey T. Brown, Secretary

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