

Date: March 29, 2016

At a meeting of the Town of Islip Industrial Development Agency (the “Agency”), held at Islip Town Hall, 655 Main Street, Islip, New York on the 29th day of March, 2016 the following members of the Agency were:

Present:

Supervisor Angie M. Carpenter  
Councilman John C. Cochrane Jr.  
Councilwoman Trish Bergin Weichbrodt  
Councilman Steven J. Flotteron  
Councilwoman Mary Kate Mullen

Absent:

Also Present:

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of title to, or an interest in, a certain industrial development facility more particularly described below (454 Realty LLC 2016 Facility) and the leasing of the facility to 454 Realty LLC.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

Supervisor Angie M. Carpenter  
Councilman John C. Cochrane Jr.  
Councilwoman Trish Bergin Weichbrodt  
Councilman Steven J. Flotteron  
Councilwoman Mary Kate Mullen

RESOLUTION OF THE TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY TO BE LEASED TO 454 REALTY LLC, A NEW YORK LIMITED LIABILITY COMPANY AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 47 of the Laws of 1974 of the State of New York, as amended from time to time (collectively, the “**Act**”), the Town of Islip Industrial Development Agency (the “**Agency**”) was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, 454 Realty LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of 454 Realty LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”) has applied to enter into a transaction in which the Agency will assist in the acquisition of an approximately 1.358 acre parcel of land located at 4661 Veterans Memorial Highway, Hollbrook, New York (the “**Land**”), the construction, equipping and furnishing of an approximately 16,000 square foot, 2-story building located thereon (the “**Equipment**” and the “**Improvements**”; and together with the Land, the “**Facility**”), all to be leased by the Agency to the Company for further lease by the Company to various tenants (collectively, the “**Sublessees**”) for use as a commercial multi-tenant office building, including the following as they relate to the appointment of the Company as agent of the Agency with respect to the acquisition, construction and equipping of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, construction and equipping of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the acquisition, construction and equipping of the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under such Facility; and

WHEREAS, the Agency will acquire a leasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of April 1, 2016 or such other date as the Chairman or Executive Director of the Agency and counsel to the Agency shall agree (the “**Company Lease**”), by and between the Company and the Agency; and

WHEREAS, the Agency will sublease and lease the Facility to the Company pursuant to a certain Lease Agreement, dated as of April 1, 2016 or such other date as the Chairman or Executive Director of the Agency and counsel to the Agency shall agree (the “**Lease Agreement**”), by and between the Agency and the Company; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company consistent with the policies of the Agency, in the form of (i) exemptions from sales and use taxes in an amount not to exceed \$86,397.00, in connection with the purchase or lease of equipment, building materials, services or other personal property, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof), consistent with the policies of the Agency; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, in order to define the Company's obligations regarding payments-in-lieu-of taxes with respect to the Facility, the Agency and the Company will enter into a certain Payment-in-Lieu-of-Tax Agreement, dated as of April 1, 2016, or such date as may be determined by the Chairman or Executive Director of the Agency and counsel to the Agency (the "**PILOT Agreement**"), pursuant to which the Company will make payments-in-lieu-of-taxes on the Facility; and

WHEREAS, in connection with the leasing and the subleasing of the Facility, the Agency, the Company will enter into a certain Recapture Agreement, dated as of April 1, 2016 or such date as may be determined by the Chairman or Executive Director of the Agency and counsel to the Agency (the "**Recapture Agreement**"), by and between the Agency and the Company; and

WHEREAS, a portion of the Facility will be used primarily in making "retail sales" as defined in accordance with the provisions of Section 862(2)(a) of the Act to customers who will personally visit the Facility; and

WHEREAS, based upon the representations and warranties of the Company in the application for financial assistance filed by the Company to the Agency, dated January 19, 2016 (the "**Application**"), facilities and property that are primarily used in making retail sales of goods and services to customers who personally visit the Facility will not constitute more than one-third percent (1/3) of the total size of the Facility, so that the Facility will not violate the prohibition against providing financial assistance to retail facilities contained in Section 862(2)(a) of the Act, except as provided therein; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company;

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(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; and

- (b) The Facility constitutes a “project”, as such term is defined in the Act; and
- (c) The acquisition, construction and equipping of the Facility, the leasing of the Facility to the Company will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Town of Islip, and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and
- (d) The acquisition, construction and equipping of the Facility is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and
- (e) Based upon representations of the Company and counsel to the Company, the Facility conforms with the local zoning laws and planning regulations of the Town of Islip, Suffolk County, and all regional and local land use plans for the area in which the Facility is located; and
- (f) The Facility and the operations conducted therein do not have a significant effect on the environment, as determined in accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder; and
- (g) It is desirable and in the public interest for the Agency to lease and sublease the Facility to the Company; and
- (h) The Company Lease will be an effective instrument whereby the Agency leases the Land and the Improvements from the Company; and
- (i) The Lease Agreement will be an effective instrument whereby the Agency leases and subleases the Facility to the Company; and
- (j) The PILOT Agreement will be an effective instrument whereby the Agency and the Company set forth the terms and conditions of their agreement regarding the Company's payments in lieu of real property taxes; and
- (k) The Recapture Agreement will be an effective instrument whereby the Agency and the Company agree to provide for the obligations of the Company under the Transaction Documents (as defined in the Lease Agreement) and describe the circumstances in which the Agency may recapture some or all of the benefits granted to the Company and
- (l) The Environmental Compliance and Indemnification Agreement, dated as of April 1, 2016 or such other date as may be determined by the Chairman or the Executive Director of the Agency and counsel to the Agency (the “**Environmental Compliance and Indemnification Agreement**”), by and between the Agency and the Company will be an effective instrument whereby the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws.

Section 2. In consequence of the foregoing, the Agency hereby determines to:  
(i) lease the Land and the Improvements from the Company pursuant to the Company Lease,

(ii) execute, deliver and perform the Company Lease, (iii) lease and sublease the Facility to the Company pursuant to the Lease Agreement, (iv) execute, deliver and perform the Lease Agreement, (v) execute, deliver and perform the PILOT Agreement, (vi) execute, deliver and perform the Recapture Agreement, and (vii) execute and deliver the Environmental Compliance and Indemnification Agreement.

Section 3. The Agency is hereby authorized to acquire the real property and personal property described in Exhibit A and Exhibit B, respectively, to the Lease Agreement 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 are hereby approved, ratified and confirmed.

Section 4. Reserved.

Section 5. The Agency hereby authorizes and approves the following economic benefits to be granted to the Company in connection with the acquisition, construction and equipping of the Facility in the form of (i) exemptions from sales and use taxes in an amount not to exceed \$86,397.00, in connection with the purchase or lease of equipment, building materials, services or other personal property, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof), consistent with the policies of the Agency.

Section 6. Subject to the provisions of this resolution, the Company is herewith and hereby appointed the agent of the Agency to acquire, renovate and equip the Facility. The Company is hereby empowered to delegate its status as agent of the Agency to its agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to acquire, renovate and equip the Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency solely for purposes of making sales or leases of goods, services and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agents of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. This agency appointment expressly excludes the purchase by the Company of any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The Company shall indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Agency. The aforesaid appointment of the Company as agent of the Agency to acquire, renovate and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which the Company has received a total of exemptions from sales and use taxes in an amount of \$86,397.00, in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time. The aforesaid appointment of the Company is subject to the execution of the documents contemplated by this resolution.

Section 7. The Company hereby agrees to comply with Section 875 of the Act. The Company further agrees that the exemption of sales and use tax provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this Authorizing Resolution is subject to termination and recapture of benefits pursuant to Section 875 of the Act and the Recapture Agreement.

Section 8. The form and substance of the Company Lease, the Lease Agreement, the PILOT Agreement, the Recapture Agreement and the Environmental Compliance and Indemnification Agreement to which the Agency is a party (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 9.

(a) The Chairman, Vice Chairman, Executive Director or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Company Lease, the Lease Agreement, the PILOT Agreement, the Recapture Agreement and the Environmental Compliance and Indemnification Agreement, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Executive Director or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, Vice Chairman, Executive Director or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, Executive Director or any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 10. 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 Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, 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 Agency Documents binding upon the Agency.

Section 11. This resolution shall take effect immediately.

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

I, the undersigned Secretary of the Town of Islip Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Islip Industrial Development Agency (the “**Agency**”), including the resolutions contained therein, held on the 29th day of March, 2016, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 29th day of March, 2016.

By:   
Assistant Secretary

EXHIBIT A

Form of Proposed PILOT Benefits

Formula for In-Lieu-of-Taxes Payment: Town of Islip (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Sachem School District, Suffolk County and Appropriate Special Districts

Definitions

X = \$49,000

Y = increase in assessment above X resulting from the acquisition, construction and equipping of the Facility.

Normal Tax Due = Those payments for taxes and assessments, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Islip (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located) which are or may be imposed for special improvements or special district improvements, that the Company would pay without exemption.

Payment

Tax Year (following first taxable status date after the election by Company, more specifically set forth in paragraph 1(c) of the PILOT Agreement)

Formula

- |                   |   |
|-------------------|---|
| 1                 | 100% normal tax on X and 0% normal tax on Y   |
| 2                 | 100% normal tax on X and 10% normal tax on Y  |
| 3                 | 100% normal tax on X and 20% normal tax on Y  |
| 4                 | 100% normal tax on X and 30% normal tax on Y  |
| 5                 | 100% normal tax on X and 40% normal tax on Y  |
| 6                 | 100% normal tax on X and 50% normal tax on Y  |
| 7                 | 100% normal tax on X and 60% normal tax on Y  |
| 8                 | 100% normal tax on X and 70% normal tax on Y  |
| 9                 | 100% normal tax on X and 80% normal tax on Y  |
| 10                | 100% normal tax on X and 90% normal tax on Y  |
| 11 and thereafter | 100% normal tax on X and 100% normal tax on Y |