

FINAL RESOLUTION
(70 Pier LLC Project)

A regular meeting of the City of Yonkers Industrial Development Agency was convened in public session on April 27, 2023.

The following resolution was duly offered and seconded, to wit:

Resolution No. 04/2023 - 07

RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) ACKNOWLEDGING THE PUBLIC HEARING HELD BY THE AGENCY WITH RESPECT TO THE 70 PIER LLC PROJECT, (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT, FINANCIAL ASSISTANCE AND PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, TAX AGREEMENT, TAX AGREEMENT MORTGAGE AND RELATED DOCUMENTS; (iii) AUTHORIZING FINANCIAL ASSISTANCE TO PIER 70 LLC IN THE FORM OF (A) A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT, (B) MORTGAGE RECORDING TAX EXEMPTION AND (C) A REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A TAX AGREEMENT; AND (iv) AUTHORIZING THE EXECUTION AND DELIVERY OF A MORTGAGE AND RELATED DOCUMENTS, IF REQUIRED

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 83 of the Laws of 1982 of the State of New York (the "State"), as amended (hereinafter collectively called the "Act"), the Agency was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **70 PIER LLC**, for itself or on behalf of an entity to be formed (the "Company") has submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) the acquisition of certain land located at 66 and 70 Pier Street (SBL: 1-146-5 and SBL: 1-146-1.4), City of Yonkers, New York (the "Land") being the site of the former Yonkers Parking Authority building and parking lot; (ii) the construction on the Land of a four-story building consisting of (a) approximately 36 residential rental units over ground floor amenities, which may be converted to retail, and approximately 35 exterior parking spaces and (b) municipal and pedestrian improvements in the form of: (1) fifteen (15) new, metered parking spaces to be created along Pier Street; (2) nineteen (19) new metered parking spaces located to the north and west of Abe Cohen Plaza; (3) new pavings, plantings, benches, fountains, flagpoles, and a public sculpture on Abe Cohen Plaza (collectively, the "Improvements"); and (iii) the acquisition and installation in and around the

Improvements of certain items of equipment and other tangible personal property (the “Equipment”; and, collectively with the Land and the Improvements, the “Facility”); and

WHEREAS, on January 11, 2019, the Agency adopted a preliminary resolution with respect to the Project and the construction of the Facility: (i) accepting the Application of the Company, (ii) directing that a public hearing be held, and (iii) describing the Financial Assistance (as hereinafter defined) being contemplated by the Agency with respect to the Project; and

WHEREAS, the City Council of the City Yonkers (the “City”) adopted Local Law 11-2022, which authorized the transfer of 66 Pier Street to the Agency and eventually the Company for the purpose of constructing the Facility; and

WHEREAS, by a certain Land Disposition Agreement, dated April 27, 2023, and a certain Purchase and Sale Agreement, dated April 27, 2023, each by and between the Agency and the Company, title to 66 Pier Street will be transferred to the Company in furtherance of the Project; and

WHEREAS, it is contemplated that the Agency will enter into an agent, financial assistance and project agreement, pursuant to which the Agency will designate the Company as its agent for the purpose of constructing and equipping the Project (the “Agent Agreement”), (ii) negotiate and enter into a lease agreement (the “Lease Agreement”), leaseback agreement (the “Leaseback Agreement”) and tax agreement (the “Tax Agreement”) with the Company, and, if required by the Agency, a Tax Agreement mortgage (the “Tax Agreement Mortgage”), (iii) take a leasehold interest in the Land, the Improvements and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and Tax Agreement (and Tax Agreement Mortgage, if applicable have been negotiated), and (iv) provide Financial Assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project, and (b) a partial real property tax abatement structured through the Tax Agreement; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on Wednesday, January 30, 2019, at 6:30 p.m. local time, at the offices of Agency at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Agency (the “Public Hearing”) whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A copy of the Notice of Public Hearing - published and forwarded to the affected taxing jurisdictions with Notice Letter at least ten (10) days prior to said Public Hearing - is attached hereto as **Exhibit A**, along with the Affidavit of Publication of *The Journal News*, and Minutes of the Public Hearing; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as “SEQRA”), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project; and

WHEREAS, in October, 2019, the City of Yonkers City Council (the “City Council”) designated itself to act as “Lead Agency” and issued a positive declaration for the proposed Ludlow Community Plan and Zoning Amendments, and determined that a Draft Generic Environmental Impact Statement (“DGEIS”) would be required; and

WHEREAS, the City Council accepted the DGEIS on March 23, 2021, and held a public hearing on May 11, 2021 and accepted public comment until May 27, 2021; and

WHEREAS, pursuant to a Final Generic Environmental Impact Statement (“FGEIS”) and the SEQRA Findings Statement which was approved and adopted by the City Council by Resolution No. 111-2022, dated September 28, 2022 (the “City Council Resolution”), the City Council concluded, after considering the relevant environmental impacts, facts and conclusions, weighing and balancing the environmental impacts with social, economic and other considerations, and considering and addressing all substantive public and agency comments, that from among the reasonable alternatives, the Project minimizes or avoids environmental effects to the maximum extent practicable, and will achieve a balance between the protection of the environment and the need to accommodate social and economic considerations (the “City Council SEQRA Findings”); and

WHEREAS, the Company has or will obtain a mortgage loan or loans (collectively, the “Mortgage”) to finance all or a portion of the financing or re-financing of the costs of the Facility from a lender to be identified by the Company, which Mortgage will secure an aggregate principal amount of approximately \$10,000,000.00; and

WHEREAS, the Company has requested a mortgage recording tax exemption upon the recording of the Mortgage in the amount of approximately \$150,000.00.

WHEREAS, the number of jobs to be created or maintained at the Facility are projected to be two (2).

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Public Hearing held concerning the Project and the Financial Assistance was duly held in accordance with the Act, including, but not limited to, the giving of at least ten (10) days published notice of the Public Hearing (such notice also provided to the Chief Executive Officer of each affected tax jurisdiction), affording interested parties a reasonable opportunity, both orally and in writing, to present their views with respect to the Project. The Agency hereby determines that the Project is a “commercial” project under the Act, and that undertaking and providing financial assistance to the Project (i) will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the City and the State and improve their standard of living, (ii) will preserve the competitive position of the Project and will not result in the removal of an industrial, manufacturing or commercial plant of the Company or any occupant of the Project from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any occupant of the

Project except as permitted by the Act, and (iii) is authorized by the Act and will be in furtherance of the policy of the State as set forth therein.

Section 2. The Agency is hereby authorized to provide to the Company the Financial Assistance in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the Project, (b) a mortgage recording tax exemption in the amount of approximately **\$150,000.00**, and (c) a real property tax abatement structured through the Tax Agreement.

Section 3. Subject to the Company executing an Agent Agreement (in a form to be approved by Counsel to the Agency and/or Transaction Counsel) and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Agent Agreement shall expire on **December 31, 2024** (unless extended for good cause by the Executive Director of the Agency) if the Lease Agreement, Leaseback Agreement, Tax Agreement and Tax Agreement Mortgage contemplated have not been executed and delivered.

Section 4. Based upon the representation and warranties made by the Company in its Application for financial assistance, the Agency hereby authorizes and approves the Company as its agent to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in the amount of approximately **\$4,800,000.00**, which result in New York State and local sales and use tax exemption benefits (“Sales and Use Tax Exemption Benefits”) in the amount of approximately **\$426,000**. The Agency agrees to consider any requests by the Company for increase to the amount of Sales and Use Tax Exemption Benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services.

Section 5. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption

benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 6. The Chairman, Vice Chairman, President, Executive Director, Secretary and/or the CFO of the Agency are hereby authorized, on behalf of the Agency, to negotiate and enter into (A) the Agent Agreement, (B) the Lease Agreement, pursuant to which the Company leases the Project to the Agency, (C) the related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, and (D) the Tax Agreement and Tax Agreement Mortgage; *provided, that*, (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the Tax Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 7. The Chairman, Vice Chairman, Executive Director and/or the Secretary of the Agency are hereby authorized, on behalf of the Agency, to execute, deliver and record any mortgage, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any reputable lender identified by the Company, up to a maximum principal amount necessary to refinance existing Company debt and to undertake the Project, acquire the Facility and/or finance or refinance the Facility or equipment and other personal property and related transactional costs (hereinafter, with the Agent Agreement, Lease Agreement, Leaseback Agreement, Tax Agreement and Tax Agreement Mortgage, collectively called the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Executive Director and/or the Secretary of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman, Executive Director and/or the Secretary of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

Section 8. 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 and to execute and deliver all such 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 resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 9. The Agency hereby finds and determines as follows: (i) the Project is a “Type I” action under SEQRA; (ii) the requirements of SEQRA have been met; and (iii) the Agency concurs with the City Council SEQRA Findings, and adopts said findings and determinations as its own.

Section 10. 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:

	<i>Yea</i>		<i>Nay</i>		<i>Abstain</i>		<i>Absent</i>	
Mayor Mike Spano	[✓]	[]	[]	[]
Marlyn Anderson	[✓]	[]	[]	[]
Melissa Nacerino	[]	[]	[]	[x]
Hon. Cecile D. Singer	[]	[]	[]	[x]
Henry Djonbalaj	[✓]	[]	[]	[]
Roberto Espiritu	[]	[]	[]	[x]
Victor Gjonaj	[✓]	[]	[]	[]

The Resolution was thereupon duly adopted.

CERTIFICATION
(70 Pier LLC Project)

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

I, MARLYN ANDERSON, the undersigned Secretary of the City of Yonkers Industrial Development Agency DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the City of Yonkers Industrial Development Agency (the “Agency”), including the resolution contained therein, held April 27, 2023, 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 resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that 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 or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 27 day of April 2023.


Marlyn Anderson, Secretary

[SEAL]

EXHIBIT A

Notice of Public Hearing
Notice Letter
Evidence of Mailing Notice Letter
Affidavit of Publication of *The Journal News*
Minutes of Public Hearing

[Attached hereto]

YIDA Resolution No. 04/2023-07
Final Resolution – 70 Pier LLC
April 27, 2023
TC: Harris Beach PLLC

EXHIBIT B

Negative Declaration

[Attached hereto]