

AUTHORIZING RESOLUTION

Resolution: 103123-06

At a meeting of the Herkimer County Industrial Development Agency, Herkimer County, New York (the “Agency”), held at 420 E. German Street, Herkimer, New York on the 31st day of October, 2023 at 8:00 a.m., the following members of the Agency were:

Present: Vincent J. Bono, Cory Albrecht, Ann Gaworecki, John Scarano,
Michael Werenczak, Timothy Day, Alana Basloe

Absent: None

Also Present: John Piseck, Victoria Adams, Jennifer Young, Erin Spina, Anthony Hallak

After the meeting had been duly called to order, the Chairman announced that the purpose of the meeting was to consider and take action on certain matters pertaining to Colucci Trucking LLC (the “Company”) and Diamond Drive, LLC.

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

AYE	NAY	ABSTAINED
*ALL	*NONE	*NONE

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE ALL RELEVANT CLOSING DOCUMENTS WITH RESPECT TO THE ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF AN INTEREST IN THE REAL PROPERTY SITUATE IN THE TOWN OF SCHUYLER, COUNTY OF HERKIMER AND STATE OF NEW YORK AND THE PERSONAL PROPERTY TO BE ACQUIRED AND LOCATED THEREAT (the “Facility”) THROUGH LEASE AGREEMENT, LEASING SAID FACILITY BACK TO THE COMPANY, CONSENTING TO A SUBLEASE WITH DIAMOND DRIVE, LLC AND PROVIDING SALES AND MORTGAGE TAX EXEMPTIONS; TO ADDRESS ENVIRONMENTAL ISSUES AND TO PROVIDE FOR INDEMNIFICATION OF THE AGENCY ON SUCH ISSUES RELATING TO THE PROJECT THROUGH THE EXECUTION OF AN ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT WITH THE COMPANY (the “ECIA”); TO ENTER INTO A RECAPTURE AGREEMENT; TO ENTER INTO A PAYMENT IN LIEU OF TAX AGREEMENT; AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT.

WHEREAS, Colucci Trucking, LLC, on behalf of itself and/or the principals of Colucci Trucking, LLC (the “Company”) has applied to the Herkimer County Industrial Development Agency (the “Agency”) to enter into a transaction relating to the acquisition of an interest of land, as hereinafter defined, the construction and equipping of a trucking facility and office space on a parcel of land located at Drive In Road, Schuylers, New York 13502, Herkimer County (the “Land”), and the acquisition and installation of equipment in the Improvements, all to be used by the Company in connection with providing a complete trucking facility and office space in support of Colucci Trucking, LLC (the Land, Improvements and Equipment) are referred to collectively as the “Facility” and the construction and equipping of the Improvements is referred to as (the “Project”); and

WHEREAS, the Company will further lease the facility for its operation from Diamond Drive, LLC pursuant to a lease agreement between the Company and Diamond Drive, LLC; and

WHEREAS, the Company will sublease the Facility to the Agency, pursuant to Article 18-A of the General Municipal Law of the State of New York, and Chapter 372 of the Laws of 1970 of the State of New York, as may be amended from time to time (collectively the “Act”) and the Agency will lease the Facility back to the Company pursuant to a Leaseback Agreement (the “Leaseback Agreement”); and

WHEREAS, the Company and Diamond Drive, LLC will construct, renovate and equip the Project as Agent 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, the Agency is authorized under its Uniform Tax Exemption Policy to provide for financial assistance to the Project and under proper circumstances and upon notice to the affected taxing jurisdictions deviate therefrom; and

WHEREAS, the Company filed an Application for Financial Assistance in July 10, 2023; and

WHEREAS, the Company filed a revised Application for Financial Assistance in July 25, 2023; and

WHEREAS, the Company and Diamond Drive, LLC filed a second revised Application for Financial Assistance on September 26, 2023; and

WHEREAS, representations made by the Company and Diamond Drive, LLC in their second revised Application for Financial Assistance support the finding that the Project will promote employment opportunities and prevent economic deterioration in the area served by the Agency; and

WHEREAS, based upon recommendation made by the Company in its second revised Application, the value of financial assistance is described as follows:

Mortgage Tax exemption estimated at \$13,000.00 but shall not exceed \$13,000.00;

Sales and Use Tax exemptions estimated at \$61,875.00 but shall not exceed \$61,875.00 in aggregate;

Real Property Tax Abatement is estimated at \$36,765.39.

WHEREAS, prior to the closing of a lease-leaseback transaction, and the granting of any tax benefits, a public hearing (the "Hearing") was held so that all persons with views in favor of or opposed to either the financial assistance contemplated by the Agency, or the location or nature of the Facility, can be heard; and

WHEREAS, notice of the Hearing was given prior to the closing of a lease-leaseback transaction, and the granting of any tax benefits, and such notice (together with proof of publication) was in the form annexed hereto as **Exhibit A**; and

WHEREAS, the minutes of the Hearing are or will be annexed hereto as **Exhibit B**; and

WHEREAS, the Agency has given due consideration to the operation of a trucking facility, the employment opportunities, taxable value of the Project and the economic conditions of the area in which the Project is situated; and

WHEREAS, the Agency has given due consideration to the application of the Company and Diamond Drive, LLC and to representations by the Company that the proposed lease-leaseback transaction is either an inducement to the Company to maintain and expand the Facility in the County or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the "SEQR Act" or "SEQRA"), the Agency constitutes a "State Agency"; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company and Diamond Drive, LLC by virtue of their activities in renovating, constructing and equipping the Project shall submit, as a condition to closing, that SEQR review is not required, or in the alternative, the Environmental Assessment Form and related documents (Questionnaire) with respect to the Facility, a copy of which will be placed on file as the office of the Agency; and

WHEREAS, prior to the granting of any tax benefits, the Agency will complete its environmental review (if applicable) and make determinations for purposes of SEQRA.

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 of the Act and to exercise all powers granted to it under the Act; and

- (b) The Facility constitutes a “project,” such as that term is defined in the Act; and
- (c) The acquisition, construction, equipping and financing of the Facility, and 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 Herkimer County 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 Diamond Drive, LLC, the Facility conforms with the local zoning laws and planning regulations of Herkimer County and all regional and local use plans for the area in which the Facility is located; and
- (f) It is desirable and in the public interest for the Agency to acquire a leasehold interest in the Facility and lease the Facility back to the Company; and
- (g) The Lease is an effective instrument whereby the Company conveys a leasehold interest to the Agency; and
- (h) The Leaseback Agreement is an effective instrument whereby the Company leases the Facility from the Agency; and

Section 2. In consequence of the foregoing, and subject to the receipt and approval by the Agency of pre-closing documents deemed reasonably necessary by counsel to the Agency, the Agency hereby determines to acquire a leasehold interest in the Facility from the Company and to lease the Facility back to the Company and to execute and deliver the Lease Agreement, the Leaseback Agreement and memoranda thereof, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement, the Recapture Agreement and all related documents (collectively the Closing Documents).

Section 3. The form and substance of the Closing Documents (each in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 4.

- (a) The Chairman, Vice Chairman, Secretary or any member of the Agency and the Chief Executive Officer, John J. Piseck, are hereby authorized, on behalf of the Agency, to execute and deliver the Closing Documents, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Secretary, Chief Executive Officer or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or

appropriate to effect the transactions contemplated by this resolution. The execution thereof by the Chairman, Vice Chairman, Chief Executive Officer or any member of the Agency shall constitute conclusive evidence of such approval.

- (b) The Chairman, Vice Chairman, Secretary or member of the Agency and the Chief Executive Officer, John J. Piseck, 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 5. 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 Closing 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 Closing Documents binding upon the Agency.

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

I, Victoria Adams, the undersigned Assistant Secretary of the Herkimer County Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Herkimer County Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on the 31st day of October, 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 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 Closing Documents contained in this transcript of proceedings are each in substantially the substance presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand as of this 31st day of October, 2023.

HERKIMER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY



Victoria Adams, Assistant Secretary

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York State General Municipal Law, will be held by the Herkimer County Industrial Development Agency (the "Agency") on the 25th day of October, 2023 at 8AM local time at the Schuyler Town Hall, 2090 State Route 5, Utica, NY 13502, Town of Schuyler, in connection with the following matter:

COLUCCI TRUCKING, LLC presented an application (the "Application") to the Agency on May 5, 2023, which application was amended and received by the Agency on July 25, 2023 (the "Amended Application"), which Application was further amended and received by the Agency on September 28, 2023 (the "Second Amended Application"), which Second Amended Application added Diamond Drive, LLC as a participant in the Project, copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking a project for the benefit of the companies as follows; (i) to provide assistance through sales tax and mortgage tax incentives for the constructing, equipping, and financing of a project facility and real property tax relief in the form of a Payment in Lieu of Tax Agreement (the "Assistance"), (ii) to acquire, construct, equip, and finance the project facility or to cause the project facility to be constructed, equipped, and financed; and (iii) to lease and/or sublease (with an obligation to leaseback) or sell the project facility to the Companies or such other person as may be designated by the Companies and agreed upon by the Agency.

The project facility will consist of the acquisition, construction, and equipping of a trucking terminal, maintenance garage and office space located at Drive In Road in the Town of Schuyler, Herkimer County, State of New York, known as Tax Map No(s). 105.3-2-8 (part of), 105.3-2-10 and 105.3-2-11 (the "Project"). The Project has an estimated cost of One Million Six Hundred Five Thousand and 00/100 Dollars (\$1,605,000.00) (the "Project Costs"). The project facility will be owned by Diamond Drive, LLC and leased to Colucci Trucking, LLC

A representative of the Agency will be present at the above-stated time to review the Project Application, and hear comments and accept written statements from any persons with views in favor of or opposed to either the proposed Assistance to the Companies or the location or nature of the Facility.

A copy of the Second Amended Application filed by the Companies with the Agency with respect to the project facility, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the offices of the Agency. A transcript or summary report of the hearing will be made available to the members of the Agency.

Additional information can be obtained from and written comments may be addressed to John J. Piseck, Jr., Chief Executive Officer, Herkimer County Industrial Development Agency, 420 E. German Street, Suite 101A, Herkimer, New York 13350; Telephone 315-866-3000.

HERKIMER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: Jennifer Young

Name: Jennifer Young

Title: Administrative Assistant

LOCALiQ

Observer-Dispatch | Daily Messenger
Times Telegram | New Jersey Herald
Times Herald-Record

PO Box 631202 Cincinnati, OH 45263-1202

PROOF OF PUBLICATION

Victoria Adams
Herkimer Co Ind. Development/H
420 E. GERMAN ST. STE#101A
HERKIMER NY 13350-1049

RECEIVED OCT 31 2023

STATE OF NEW YORK, COUNTY OF HERKIMER

The Times Telegram, a newspaper published in the City of Utica,
New York.

The text of the notice as published in said newspaper is as set
forth below, or in the annexed exhibit, was published in the issue
dated:

10/13/2023

and that the fees charged are legal.

Sworn to and subscribed before on 10/13/2023

Legal Clerk

Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$98.82

Order No: 9375837

Customer No: 639140

PO #:

of Copies:

1

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

MARIAH VERHAGEN
Notary Public
State of Wisconsin

NOTICE OF PUBLIC
HEARING

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HERKIMER COUNTY
INDUSTRIAL
DEVELOPMENT AGENCY
Name: Victoria Adams

EXHIBIT B



PUBLIC HEARING MINUTES

STAFF

JOHN J. PISECK, JR.
Chief Executive Officer

VICTORIA L. ADAMS
Operations Manager

JENNIFER L. YOUNG
Administrative Office
Assistant

ERIN E. SPINA
Marketing & Communications
Specialist

BOARD OF DIRECTORS

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Vice Chairman

JOHN SCARANO
Secretary

MICHAEL WERENCZAK
Treasurer

ANN GAWORECKI
Director

TIM DAY
Director

ALANA BASLOE
Director

COUNSEL

ANTHONY G. HALLAK, Esq.
Felt Evans, LLP

**Herkimer County Industrial Development Agency
October 25, 2023 @ 8:00 AM
Diamond Drive, LLC
Schuyler Town Hall
2090 State Route 5, Utica NY**

Mr. Piseck introduced himself as the Chief Executive Officer of the Herkimer County Industrial Development Agency.

Mr. Piseck appointed Victoria Adams to record the minutes of the hearing.

Mr. Piseck stated that on October 13, 2023 a Public Hearing Notice was published in the legal section of the Times Telegram as well as being posted on the Agency website. The Agency also provided a copy to the CEO of all affected taxing jurisdictions. The following is the published notice:

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420 E. German Street, Box 1 Suite 101A, Herkimer, NY 13350 315-866-3000

"This institution is an equal opportunity provider, employer and lender."

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Mr. Piseck invited public comments.

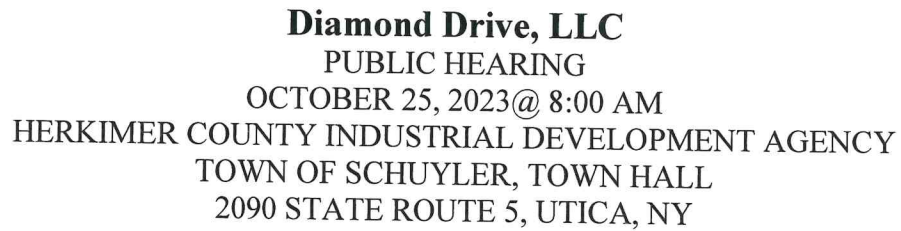
Being there were no comments, the public hearing was closed at 8:18am.

Respectfully submitted,



Victoria Adams
Operations Manager

Attachment: Sign in sheet



ORGANIZATION

Herkimer County IDA

Herkimer County FIDA