

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 27, 2020 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: John Kearney
Benjamin Syden
Carm Basile
Eric Phillips
Alison Blessing
Peter Gannon
Gary Rinaldi

ABSENT: None

The following persons were also present:

| | |
|-----------------------|-------------------------|
| Christopher Kelsey | Chief Financial Officer |
| Melissa Bennett, Esq. | Barclay Damon LLP |

The following resolution was offered by Eric Phillips, seconded by Benjamin Syden, to wit:

RESOLUTION APPROVING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN FACILITY FOR CHRIS’ COFFEE SERVICE, INC. AND TRIXIE GIRL LLC 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, 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, Trixie Girl LLC (the “Real Estate Holding Company”) and Chris’ Coffee Service, Inc. (the “Operating Company”), on behalf of themselves and/or entities formed or to be formed on behalf of the foregoing, have presented an application (the “Application”) to the Agency requesting that the Agency consider undertaking a project (the “Project”) on behalf of the Real Estate Holding Company and the Operating Company consisting of the following: (A)(1) the acquisition of an interest in approximately 5.49 acres of land located at 348 Old Niskayuna Road, Latham (tax map no. 18.-4-3.2) in the Town of Colonie, Albany County, New York (the “Land”), the acquisition and construction of an approximately 64,000 square foot building on the Land (the “Improvements”), and the acquisition and installation therein of certain equipment not part of the Equipment (as such term is defined herein) (the “Facility 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 Real Estate Holding Company and of which Company Facility (i) 34,500 square feet will be further subleased by the Real Estate Holding Company to the Operating Company (together with the hereinafter defined Chris’ Coffee Equipment, the “Chris’ Coffee Facility”) and the Operating Company will acquire and install certain equipment and personal property therein (the “Chris’ Coffee Equipment”), which Chris’ Coffee Facility will be used by the Operating Company as a manufacturing and warehouse facility for its business of coffee roasting and packaging; and (ii) the remaining 29,500 square feet will be available to the Operating Company for future expansion and/or for lease to third-party tenants (the “Expansion Facility”); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from mortgage recording taxes (except as limited by Section 874 of the Act), transfer taxes and sales and use taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Real Estate Holding Company or such other person as may be designated by the Real Estate Holding Company and agreed upon by the Agency and the lease (with an obligation to purchase) or sale of the Chris’ Coffee Equipment to the Operating Company or such other person as may be designated by the Operating Company and agreed upon by the Agency; and

WHEREAS, the members of the Agency adopted a resolution on December 16, 2019 (the “Public Hearing Resolution”) authorizing a public hearing in compliance with the provisions of Section 859-a of the Act; and

WHEREAS, in compliance with the provisions of Section 859-a of the Act, the Public Hearing Resolution indicated that the undertakings of the Agency contained therein are contingent upon the Agency making a determination to proceed with the Project following compliance by the Agency with the public notice and public hearing requirements set forth in 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 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 16, 2020 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 27, 2020 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, the Agency caused to be mailed on January 17, 2020 a letter to the chief executive officers of the City of Albany and Albany County (the “Current Municipalities”) notifying the Current Municipalities that a real estate holding company of the Operating Company currently owns space at 10 Corporate Circle and the Operating Company currently leases space at 12 Corporate Circle, both in Albany, New York 12203 (collectively, the “Current Facilities”) and that the Operating Company has informed the Agency that the Operating Company will “abandon” (as such term is used in Section 859-a(5)(d) of the Act) the Current Facilities upon completion of the Project; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (collectively, the “Agency Documents”): (A) an underlying lease agreement (and a memorandum thereof) (the “Underlying Lease”) by and between the Real Estate Holding 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 Real Estate Holding Company; (B) a lease agreement (and a memorandum thereof) (the “Lease Agreement”) by and between the Agency and the Real Estate Holding Company, pursuant to which, among other things, the Real Estate Holding Company will agree to undertake and complete the Project as agent of the Agency and the Real Estate Holding 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) an equipment lease agreement by and between the Agency and the Operating Company, pursuant to which the Operating Company will agree to lease the Chris’ Coffee Equipment from the Agency; (D) a project agreement (the “Project Agreement”) that complies with the requirements of Section 859-a(6) of the Act; and (E) various other documents and certificates relating to the Project; and

WHEREAS, in connection with the Project, (A) the Real Estate Holding Company will execute and deliver to the Agency a bill of sale (the “Bill of Sale to Agency”), which conveys from the Real Estate Holding Company to the Agency all right, title and interest of the Real Estate Holding Company in the Facility Equipment; and (B) the Operating Company will execute and deliver to the Agency a bill of sale (the “Operating Company Bill of Sale to Agency”), which conveys from the Operating Company to the Agency all right, title and interest of the Operating Company in the Chris’ Coffee Equipment; and

WHEREAS, as security for the Loan (as such term is defined in the Lease Agreement), the Agency and the Real Estate Holding 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, simultaneously with the execution and delivery of the Lease Agreement, the Agency will file with the State Department of Taxation and Finance 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 Real Estate Holding Company and the Operating Company; 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;

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 Real Estate Holding Company and the Operating Company to the Agency in the Application, 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 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;

(C) Although the completion of the Project Facility will result in the removal of a plant or facility of the 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 the proposed occupant of the Project Facility located in the State the Project is reasonably necessary to preserve the competitive position of the Operating Company in its respective industry; and

(D) 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 Real Estate Holding Company pursuant to the Underlying Lease, (ii) title to the Facility Equipment pursuant to the Bill of Sale to Agency from the Real Estate Holding Company to the Agency, and (iii) title to the Chris' Coffee Equipment pursuant to the Operating Company Bill of Sale to Agency from of the Operating Company to the Agency; (C) lease the Project Facility to the Real Estate Holding Company pursuant to the Lease Agreement; (D) lease the Chris' Coffee Equipment to the Operating Company pursuant to the Equipment Lease Agreement; (E) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, constructed and installed, as provided in the Lease Agreement; (F) grant to the Lender such mortgage lien on and security interest in its interest in the Project Facility (subject to the "Unassigned Rights" as defined in the Lease Agreement) and assign to the Lender all leases and rents with respect to the Project Facility (except for the Underlying Lease and the Lease Agreement), in each case as required by the Lender and the Loan Documents; and (G) 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 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 and the Loan Documents shall be in form and substance satisfactory to Chairman (or Vice Chairman) 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) 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. 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 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 Agency Documents and the Loan Documents binding upon the Agency.

Section 6. The Agency hereby delegates to the Company as agent of the Agency, the authority to designate (following the execution and delivery of the Agency Documents), 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, reconstruction and installation of the 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 Facility.

Section 7. 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 8. 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 **\$240,000**.

Section 9. Notwithstanding anything herein to the contrary, the amount of mortgage recording tax exemption benefits comprising the Financial Assistance approved herein shall be for a mortgage or mortgages in an aggregate amount not to exceed **\$4,900,000**.

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:

| | <u>AYE</u> | <u>NAY</u> | <u>ABSTAIN</u> | <u>ABSENT</u> |
|------------------|------------|------------|----------------|---------------|
| Carm Basile | X | | | |
| Allison Blessing | | | X | |
| Peter Gannon | X | | | |
| John Kearney | X | | | |
| Eric Phillips | X | | | |
| Gary Rinaldi | X | | | |
| Benjamin Syden | X | | | |

The Resolution was thereupon declared duly adopted.

