

A 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, New York 12110, on October 19, 2020 at 6:00 p.m., local time.

The meeting was called to order by the (Vice) Chairman and, upon roll being called, the following members of the Agency were:

PRESENT: Carm Basile
Alison Blessing
Peter Gannon
John Kearney
Gary Rinaldi
Benjamin Syden

ABSENT: Eric Phillips

THE FOLLOWING PERSONS WERE ALSO PRESENT:

| | |
|--------------------------|-------------------------|
| Sean Maguire | Executive Director |
| Christopher Kelsey | Chief Financial Officer |
| Melissa C. Bennett, Esq. | Barclay Damon LLP |

The following resolution was offered by Carm Basile, seconded by Alison Blessing, to wit:

RESOLUTION APPROVING THE ACQUISITION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF A CERTAIN FACILITY FOR FIRST COLONIE COMPANY LIMITED PARTNERSHIP 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, First Colonie Company Limited Partnership (the “Company”), on behalf of itself and/or entities formed or to be formed on behalf of the foregoing, has presented an application (the “Application”) to the Agency requesting that the Agency consider undertaking a project (the “Project”) on behalf of the Company consisting of the following: (A)(1) the license to approximately 13.5 acres of land located at 660, 668 and 676 Albany-Shaker Road (tax map nos. 30.-5-5, 30.-5-7 and 30.-5-8) in the Town of Colonie, Albany County, New York (the “Land”) and the approximately 230,000 square foot building located thereon for use as a hotel, banquet/catering and conference facility (commonly known as The Desmond) by the Company (the “Facility”), and (2) the acquisition and installation therein and thereon of various building materials, furniture, fixtures, machinery and equipment (the “Equipment” and, collectively with the Land and the Facility, the “Project 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 sales and use taxes (the “Financial Assistance”); and (C) the sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the members of the Agency adopted a resolution on September 21, 2020 (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, the Company has submitted for the Agency’s consideration a “Report for The Desmond, Albany Shaker Road, Town of Colonie, NY” of Prestige Hospitality Group dated October 15, 2020 (the “Tourism Destination Report”); 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 on October 2, 2020 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 October 8, 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 October 19, 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, 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) a license agreement (the “License Agreement”) by and between the Company and the Agency, pursuant to which, among other things, the Agency will acquire from the Company the right to enter upon the Land for the purpose of undertaking and completing the Project; (B) one or more installment sale agreements (the “Installment Sale Agreement”) by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake and complete the Project as agent of the Agency and, as part thereof, 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) a project agreement (the “Project Agreement”) that complies with the requirements of Section 859-a(6) of the Act; and (D) various other documents and certificates relating to the Project; and

WHEREAS, in connection with the Project, the Company will execute and deliver to the Agency a bill of sale (the “Bill of Sale to Agency”), which conveys from the Company to the Agency all right, title and interest of the Company in the Equipment; and

WHEREAS, simultaneously with the execution and delivery of the Installment Sale Agreement, the Agency will file with the State Department of Taxation and Finance a form 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 Report”) and provide a copy of the Thirty-Day Sales Tax Report to the 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 Agency must determine the potential environmental significance of the Project; and

WHEREAS, to aid the Agency in determining whether the action described above may have a significant adverse impact upon the environment, the Company prepared an Environmental Assessment Form (the “EAF”), a copy of which is on file at the office of the Agency;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Based upon an examination of the EAF, the criteria contained in 6 NYCRR § 617.7(c), and based further upon the Agency’s knowledge of the action and its environmental effects as the Agency has deemed appropriate, the Agency makes the following findings and determinations pursuant to SEQRA:

(i) The action consists of the components described above in the third WHEREAS clause of this resolution; and

(ii) The action constitutes a “Type II Action” (as said quoted term is defined in SEQRA) and therefore no further environmental review is required under SEQRA.

Section 2. The Agency, based upon the representations made by the Company to the Agency in the Application and at this meeting, 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 Project Facility constitutes a “project”, as such term is defined in the Act;
- (C) The undertaking of the Project pursuant to the Installment Sale 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;
- (D) The completion of the Project Facility will not 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; and
- (E) Although the Project will constitute a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost, the Project falls within an exception in Section 862(2)(a) of the Act, because, based upon the Tourism Destination Report and representations of the Company and counsel to the Company, the Project constitutes a “tourism destination” that is likely to attract a significant number of visitors from outside the economic development region in which the Project is located, consisting of Albany, Saratoga, Greene, Schenectady, Rensselaer, Warren, Washington and Columbia counties.

Section 3. In consequence of the foregoing, the Agency hereby determines to: (A) proceed with the Project; (B) acquire from the Company the right to enter upon the Land for the purpose of undertaking and completing the Project; (C) sell the Project Facility to the Company pursuant to the

Installment Sale Agreement; (D) acquire, reconstruct, renovate and install the Project Facility, or cause the Project Facility to be acquired, reconstructed, renovated and installed, as provided in the Installment Sale Agreement; and (E) 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 4. The Agency is hereby authorized to acquire (A) the right to enter upon the Land for the purpose of undertaking and completing the Project pursuant to the License Agreement, and (B) title to the Equipment pursuant to one or more bills of sale (the “Bill of Sale to Agency”) from the Company to the Agency 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 5. The Agency is hereby authorized to acquire, reconstruct, renovate and install the Project Facility as described in the Installment Sale 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, reconstruction, renovation and installation are hereby ratified, confirmed and approved.

Section 6. (A) The Agency 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, 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 7. 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, 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 binding upon the Agency.

Section 8. 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 Project 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 Project Facility.

Section 9. 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 10. 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 **\$440,000 and shall last for no more than one year.**

Section 11. 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>ABSENT</u> |
|-----------------|------------|------------|---------------|
| Carm Basile | X | | |
| Alison Blessing | X | | |
| Peter Gannon | X | | |
| John Kearney | X | | |
| Eric Phillips | | | X |
| Gary Rinaldi | X | | |
| Benjamin Syden | X | | |

The Resolution was thereupon declared adopted.