

AUTHORIZING RESOLUTION

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 20th day of March, 2019 at 8:00 a.m., the following members of the Agency were:

Present: Vincent J. Bono, Cory Albrecht, John Scarano, Dan Reardon, Michael Werenczak, Catherine Ricci

Absent: David Chlus

Also Present: John Piseck, Stacey Holleran and 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 Higby Gold, Inc. (the "Company").

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 OF AN INTEREST IN THE REAL PROPERTY SITUATE IN THE TOWN OF FRANKFORT, 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 THROUGH 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, Higby Gold, Inc., on behalf of itself and/or the principals of Higby Gold, Inc. (the “Company”) has applied to the Herkimer County Industrial Development Agency (the “Agency”) to enter into a transaction relating to the acquisition, construction and equipping of a complete truck stop/retail convenience outlet providing diesel fuel, gasoline, driver amenities, convenience store, restaurant, truck wash, reserved parking, CAT scale operation and office space on a parcel of land located at County Mile, Frankfort, New York, 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 truck stop and retail convenience facility providing diesel fuel, gasoline, driver amenities, a truck wash and CAT scales in support of Higby Gold, Inc. (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 lease 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 on 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 will construct and equip the Project; and

WHEREAS, the Company will construct a manufacturing facility under the Act; 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

WHEREAS, representations made by the Company in its 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, 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 retail facility 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 to representations by the Company that the proposed lease-leaseback transaction is either and 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 has prepared and submitted to the Agency an Environmental Assessment Form and related documents (the “Questionnaire”) with respect to the Facility, a copy of which is 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 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 facility is an eligible Project to the extent that the Agency has received and reviewed census and economic data pertaining to the community in which the Project is located, which data includes income and employment information demonstrating the Town of Frankfort is an economically distressed community; and

- (e) 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
- (f) Based upon representations of the Company, 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
- (g) 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
- (h) The Amended and Restated Lease is an effective instrument whereby the Company conveys a leasehold interest to the Agency; and
- (i) The Amended and Restated Leaseback Agreement is an effective instrument whereby the Company leases the Facility from the Agency; and

Section 2. In consequence of the foregoing, 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 Amended and Restated Lease Agreement, the Amended and Restated Leaseback Agreement and memoranda thereof, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement, the Mortgage, 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 Executive Director, 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, 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 Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution. 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, Secretary or member of the Agency and the Executive Director, 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, Stacey Holleran, 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 20th day of March, 2019 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 20th day of March, 2019.

HERKIMER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY


Stacey Holleran, Assistant Secretary

EXHIBIT A

STATE OF NEW YORK)
)ss
County of Oneida)

Patricia Zehr of the City of Utica, in said county, being duly sworn, says she is the Principal Clerk of the Utica Observer-Dispatch the Publishers of The Times-Telegram, a daily newspaper printed and published in the city of Utica, County and State aforesaid, and that an advertisement of which the attached is a copy, cut from the columns of said paper has been regularly published in said paper on each of the following dates:

01/11/2019

Patricia Zehr

Sworn to before me this

11th day of January 2019

Theresa B McFadden

NOTARY PUBLIC ONEIDA CO., N.Y.

THERESA B MCFADDEN
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01MC6303520
Qualified in Madison County
Commission Expires May 12, 2022

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18 of the New York State General Municipal Law, will be held by the Herkimer County Industrial Development Agency (the "Agency") on the 22nd day of January 2019, at 9:00 AM, local time at the Town Hall, Village of Frankfort, 201 Third Avenue Herkimer County, New York, in connection with the following matter:

HIGBY GOLD, INC. (the "Company") has requested that the Agency consider undertaking a project for the benefit of the Company as follows: (i) to provide assistance through sales tax and mortgage tax incentives for the constructing, equipping, and financing of the below described project: Facility and real property tax relief in the form of a Payment Lieu of Tax Agreement (the "Assistance"); (ii) acquire, construct, equip and finance the Facility to cause the Facility to be constructed, equipped and financed; and (iii) lease (with an obligation to purchase) or sell the Facility to the Company such other person as may be designated by the Company and agreed upon by the Agency, if any portion of the Assistance being offered by the Agency is inconsistent with the Agency's uniform exemption policy, the Agency will follow the procedures for deviation from such policy in accordance with the provisions of GML.

The Facility will consist of the acquisition, construction, and equipping of a complete truck stop/reconvenience outlet providing diesel fuel, gas oil, driver amenities, convenience store, restaurant, truck wash, reserved parking, and CAT Scales, located on the east side of Country Mile in the Town of Frankfort, Herkimer County, State of New York known as Lot 19 and 20. The Project has an estimated cost of Three Million Three Hundred Sixty Eight Thousand and 00 Dollars (\$3,368,000.00) ("Project Costs"). The Facility will be owned and operated by the Company.

A representative of the Agency will be in place to review the project application, and hear comments and accept written statements from any

LEGAL NOTICES DEPARTMENT

Utica Observer-Dispatch
~ Herkimer TimesTelegram ~ Mid York Weekly
221 Oriskany Plaza, Utica, NY 13501

(315) 792-4918 - Direct Line
(315) 792-5085 - Fax
legal@uticaod.com

This Proof has been prepared for:

Stacey Holleran
HERKIMER CO IND. DEVELOPMENT
420 E. GERMAN ST., STE#101A
HERKIMER, NY 13350-1049
315-866-3000

For Publication in the:

- Observer Dispatch
- Times Telegram
- Mid-York Weekly

e-Mailed Proof - OR - Faxed Proof

*Approved
1-8-19*

Proof & Cost

Tuesday, January 08, 2019

Ad #: 000650830 - Revised - Hearing Date added* -
Run Date(s): 01/11/2019

Cost of Notice: \$86.62
Affidavit of Publication: \$15.00
Total Order Price: \$101.62*

Note:
We are ready to publish your Revised legal notice in the *Times Telegram*.
Please review your legal notice proof. *Let me know as soon as you can, if
this proof & cost is approved.*

Thank you,

Linda	Karen
Linda Grayson Garcea	Karen Greco
Legal Department	Legal Department
legals@uticaod.com	
Telephone: 315-792-4918	Fax: 315-792-5085

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 22nd day of January 2019, at 9:00 AM, local time at the Town Hall, Village of Frankfort, 201 Third Avenue, Herkimer County, New York, in connection with the following matter:

HIGBY GOLD, INC. (the "Company") has requested that the Agency consider undertaking a project for the benefit of the Company as follows: (i) to provide assistance through sales tax and mortgage tax incentives for the constructing, equipping, and financing of the below described 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 Facility or to cause the Facility to be constructed, equipped, and financed; and (iii) to lease (with an obligation to purchase) or sell the Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency. If any portion of the Assistance being offered by the Agency is inconsistent with the Agency's uniform tax exemption policy, the Agency will follow the procedures for deviation from such policy in accordance with the provisions of the GML.

The Facility will consist of the acquisition, construction, and equipping of a complete truck stop/retail convenience outlet providing diesel fuel, gasoline, driver amenities, convenience store, restaurant, truck wash, reserved parking, and CAT scales, operation and office space located on the east side of Country Mile in the Town of Frankfort, Herkimer County, State of New York, known as Lot 19 and Lot 20. The Project has an estimated cost of Three Million Three Hundred Sixty Eight Thousand and 00/100 Dollars (\$3,368,000.00) (the "Project Costs"). The Facility will be owned and operated by the Company.

A representative of the Agency will be at the above-stated time and place 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 Company or the location or nature of the Facility. A copy of the Application filed by the Company with the Agency with respect to the 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. Placock, Jr., Executive Director, Herkimer County Industrial Development Agency, 420 E. German Street, Suite 101A, Herkimer, New York 13350; Telephone 315-866-3000.

HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Date: January, 2019
By Name: Stacey J. Holleran
Title: Assistant Secretary
TT: 01/11/2019

Note: Please review and approve the Revised text above with your reply. Thank you,

EXHIBIT B

PUBLIC HEARING MINUTES

**Herkimer County Industrial Development Agency
January 22, 2019 @ 9:00 AM
Higby Gold, Inc.
Town of Frankfort, Town Hall, 201 Third Avenue
Frankfort, NY 13340**

John J. Piseck, Jr. introduced himself as the Executive Director of the Herkimer County Industrial Development Agency and opened the public hearing at 9:02AM.

Mr. Piseck appointed Stacey Holleran to record the minutes of the hearing.

Mr. Piseck also introduced Mr. Jerry Stucchi and Mr. John Dillon of Higby Gold.

Mr. Piseck stated that on January 11, 2019, a Public Hearing Notice was published in the legal section of the Times Telegram as well as being posted on the Agency's website. The Agency also provided a copy to the CEO of all affecting taxing jurisdictions. The following is the published notice:

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A representative of the Agency will be at the above-stated time and place 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 Company or the location or nature of the Facility. A copy of the Application filed by the Company with the Agency with respect to the 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., Executive Director, Herkimer County Industrial Development Agency, 420 E. German Street, Suite 101A, Herkimer, New York 13350; Telephone 315-866-3000.

The agency is in receipt of census and economic data relevant to this project. The data provides income and employment information on the county and the town. The data suggests that the Town of Frankfort is an economically distressed area.

Mr. Piseck invited public comments.

Being no public comment, the public hearing was closed at 9:10 AM.

Respectfully Submitted,



Stacey J. Holleran
Office Manager

Attachment: Sign in sheet

ATTENDEES – PUBLIC HEARING
HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY
HIGBY GOLD, INC. – 9:00 A.M. – JANUARY 22, 2019
TOWN HALL, TOWN OF FRANKFORT, 201 THIRD AVE., FRANKFORT, NY

NAME

ORGANIZATION

Bill Maxim

Carpenters

Glenn Asnok

T Frankfort

Jerry Stocchi

Higby Gold

John Dillon

Higby Gold

Stacey Holleran

IDA

John Piasek

IDA