

FOR CONSIDERATION

March 23, 2011

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Gardiner (Ulster County) – Gillette Creamery Capital – Empire State Economic Development Fund – General Development Fund (Capital Grant)

REQUEST FOR: Findings and Determinations Pursuant to Sections 16-m and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan  
Authorization to Make a Grant and to Take Related Actions;

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General Project Plan

I. Project Summary

Grantee: Phyljohn Distributors, Inc. d/b/a Gillette Creamery (“Gillette” or the “Company”)

ESD\* Investment: A grant of up to \$600,000 to be used for a portion of the cost of real estate acquisition, renovations and the purchase of machinery and equipment.

\* The New York State Urban Development Corporation doing business as the Empire State Development Corporation (“ESD” or the “Corporation”)

Project Locations: 47 Steve’s Lane\*, Gardiner, Ulster County  
6 Interstate Drive, Albany, Albany County

\*Project activity site; other is job-retention site

Proposed Project: Purchase and renovate a 33,000-square-foot warehouse to expand ice cream distribution business in New York State

ESD Incentive Offer Accepted: October 22, 2009

Project Completion: November 2010

Number of Employees at Project Location:

Initial employment (at time of ESD Incentive Offer)	0*
Current employment level:	60
Minimum employment on January 1, 2013:	79

\* 60 existing employees will be relocated from Ellenville, NY and 12 employees will be retained in Albany, NY.

Grantee Contact: John Gillette, Jr. President  
 PO Box 256  
 47 Steves Lane  
 Gardiner, NY 12525  
 Phone: (845) 647-4260 ext 116  
 Fax: (845) 647-1142

Anticipated  
 Appropriation  
 Source: Empire State Economic Development Fund

ESD Project No.: W899

Project Team:	Origination	Paul Taxter
	Project Management	Beverly Bobb
	Affirmative Action	Denise Ross
	Finance	Jonevan Hornsby
	Environmental	Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Purchase of Building	\$1,800,000
Purchase of Acreage	115,000
Renovation	500,119
Equipment	1,830,537
Furniture	111,653
Indirect/Soft Cost	156,000
Other existing mortgage	<u>725,000</u>
Total Project Costs	<u>\$ 5,238,309</u>

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate/Term/Lien</u>
ESD-Grant	\$600,000	11.45%	
Rondout Savings Bank	1,315,000	25.10%	5.50%/10 yrs/first lien on RE
SBA/NYBDC	808,000	15.42%	5.50 %/20yrs/ 2nd lien on
SBA/NYBDC	800,000	15.27%	5.65% 20yrs/3 <sup>rd</sup> lien on RE
Rondout Savings Bank	1,000,000	19.09%	5.50% 20yrs 4 <sup>th</sup> lien on RE

Company Equity	<u>715,309</u>	<u>13.67%</u>
Total Project Financing	<u>\$5,238,309</u>	<u>100%</u>

### III. Project Description

#### A. Background

Established in 1985, Phyljohn Distributors, Inc., d/b/a Gillette Creamery is the largest family owned and operated wholesale ice cream distributor in Eastern New York. The Company primarily distributes wholesale ice cream products from partner brands such as Nestle, Unilever, Perry's Masterfoods and Welsh Farms. The Company also offers a full service ice cream vending program as well as secondary products including ice cream mix, toppings, frozen foods and snacks. During 1985 the Company operated under the name Tri-County Ice Cream. With only four employees and two trucks the Company provided service to only a few counties in New York. Today, the Company employs 70 people and distributes their products in New York, Pennsylvania, New Jersey, Vermont and Massachusetts. Gillette's customers include Shoprite, Stop & Shop, Wal-Mart, Aramark and Host Marriott. The Company's major Northeast competitors include Edy's, Sure Winner Foods and Hershey's.

Since 1985, Gillette has grown to be recognized as a leader in the ice cream distribution industry. In an effort to increase their profit margin, the Company made a decision to diversify their distribution inventory. In order to capitalize on this new venture, the Company needed to relocate to a larger warehouse facility. The Company operates its main facility in Ellenville, New York and has a second depot located in Albany. The Company considered relocating their new warehouse to either Vermont or within New York. The opportunity in Vermont included a commercial property at a reduced cost along with tax incentives. The move to Vermont would have been a compelling business strategy for Gillette and a threat to jobs in Ulster County.

To encourage the Company to remain in New York, ESD made an offer of a \$600,000 capital grant, which was accepted on October 22, 2009. This project would facilitate the Company's efforts to expand their operations, maintain existing relationships and respond to new business opportunities. As a result of the project, the Company would relocate 60 employees to the new facility and created an additional 7 jobs at the new location. Additionally, Gillette will maintain 12 employees at the satellite office located in Albany.

#### B. The Project

The project involved the acquisition, renovation and equipping of a 33,000-square-foot warehouse and office space located in Gardiner NY. The renovations for the new facility provided Gillette Creamery with 15,000 square feet of freezer space, additional 6,000 square feet of refrigerated loading dock space, and 7,000-square-feet of dry warehouse storage and 6,550 square feet of office space. The project also required a significant investment in highly specialized machinery and equipment to store and refrigerates the Company's inventory. Gillette anticipates creating an additional 7 new jobs in 2011.

C. Financial Terms and Conditions

1. Upon execution of the grant disbursement agreement, the Company shall pay a commitment fee of 1% of the \$600,000 capital grant (\$6,000) and reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will demonstrate no material adverse change in its financial condition prior to disbursement.
3. The Company will be required to contribute a minimum of 10% of the total project cost in the form of equity contributed. Equity is defined as cash injected into the project by the Company or by investors, and should be auditable through Company financial statements or Company accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project.
4. Prior to disbursement, the Company must employ at least the number of Full-time Permanent Employees set forth as the Baseline Employment in the table below. A Full-time Permanent Employee shall mean (a) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties.
5. Up to \$600,000 will be disbursed to the Grantee in three installments as follows:
  - a) an Initial Disbursement of an amount equal to 50% of the grant (\$300,000) upon documentation of real estate, renovation and machinery and equipment, project costs totaling \$5.2 million, and submission of certification of occupancy and documentation of the employment of at least 72 Full-time Permanent Employees at the Project Location, (60 at the Gardiner Project location and 12 at the Albany Project Location) assuming that all project approvals have been completed and funds are available;
  - b) a Second Disbursement of an amount equal to 25% of the grant (\$150,000) will be disbursed upon documentation of the employment of at least 76 Full-time Permanent Employees at the Project Locations (Employment Increment of 4 at the Gardiner Project Location), provided Grantee is otherwise in compliance with program requirements;
  - c) a Third Disbursement of an amount equal to 25% of the grant (\$150,000) will be disbursed upon documentation of the employment of at least 79 Full-time Permanent Employees at the Project Locations (Employment Increment of 3 at the Gardiner Project Location), provided Grantee is otherwise in compliance with program requirements.

Payment will be made upon presentation to ESDC of an invoice and such other documentation as ESDC may reasonably require. Expenses must be incurred on or after October 22, 2009, to be considered eligible project costs. All disbursements must be requested by April 1, 2013.

6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$600,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Company and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.
  
7. In consideration for the making of the Grant, Grantee will achieve the Employment Goals set forth in Column B of the table below. If the Full-time Permanent Employee Count for the year prior to the reporting date set forth in Column A of the table below is less than eighty-five percent (85%) of the Employment Goal set forth in Column B (an "Employment Shortfall"), then upon demand by ESD, Grantee shall be obligated to repay to ESD a portion of each disbursement of the Grant, as follows:

The Recapture Amount is based on the time that has lapsed between when the Grant funds were disbursed and when the Employment Shortfall occurred. The Recapture Amount shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

- (i) 100% of the disbursed amount if the Employment Shortfall occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
- (ii) 80% of the disbursed amount if the Employment Shortfall occurred in the second full calendar year after the disbursement was made;
- (iii) 60% of the disbursed amount if the Employment Shortfall occurred in the third full calendar year after the disbursement was made;
- (iv) 40% of the disbursed amount if the Employment Shortfall occurred in the fourth full calendar year after the disbursement was made;
- (v) 20% of the disbursed amount if the Employment Shortfall occurred in the fifth full calendar year after the disbursement was made.

The Grantee's number of Full-time Permanent Employees shall be deemed to be the greater of the number as of the last payroll date in the month of December for such year or the average employment for the 12 month period computed by quarter.

Baseline Employment	0*
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A	B
Reporting Date	Employment Goals
February 1, 2012	0*+X+Y
February 1, 2013	0*+X+Y
February 1, 2014	0*+X+Y
February 1, 2015	0*+X+Y
February 1, 2016	0*+X+Y

X = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in section C.5 above (i.e. X=4, and Employment Goals shall equal [0\*+ X =76] if the Initial Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Initial Disbursement has not yet been made then X=0.

Y = Grantee's Employment Increment that will be the basis of the Third Disbursement of the Grant as described in section C.5 above (i.e. Y=3, and Employment Goals shall equal [0\*+ X + Y = 79] if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Second Disbursement has not yet been made then Y=0.

\* 60 Full-time Permanent Employees will be relocated from Ellenville and 12 will be retained in Albany

#### IV. Statutory Basis

1. The proposed project would promote the economic health of New York State by facilitating the creation or retention of jobs or would increase activity within a municipality or region of the state or would enhance or help to maintain the economic viability of family farms.  
As a result of this project, the Company will maintain its employment level of 72, including retention of 12 jobs which were at risk of relocation to another state. In addition, the Company will create 7 new jobs.
2. The proposed project would be unlikely to take place in New York State without the requested assistance.  
The Company considered relocating its operations to Vermont. ESD's assistance helped to reduce costs and make the project feasible in New York.
3. The project is reasonably likely to accomplish its stated objectives and the likely benefits of the project exceed costs.  
Evaluated over a seven-year period, the following are anticipated project impacts (dollar values are present value):
  - Fiscal benefits to NYS government from the project are estimated at \$2,806,899;
  - Fiscal cost to NYS government is estimated at \$600,000;
  - Project cost to NYS government per direct job is \$9,615;
  - Project cost to NYS government per job (direct plus indirect ) is estimated at \$4,827;
  - Ratio of project fiscal benefits to costs to NYS government is 4.68:1;

- Fiscal benefits to all governments (state and local) are estimated at \$4,938,388;
- Fiscal cost to all governments is \$600,000;
- All government cost per direct job is \$9,615;
- All government cost per total job is \$4,827;
- The fiscal benefit to cost ratio for all governments is 8.23:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$26,421,137, or \$212,550 per job (direct and indirect);
- The economic benefit to cost ratio is 44.04:1;
- Project construction cost is \$628,119 which is expected to generate 5 direct job years and 2 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 1.02 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is 1 year.

( See Project Summary Benefit-Cost Evaluation attached for detail and definitions.)

4. The requirements of Section 10(g) of the Act are satisfied.  
 No residential relocation is required because there are no families or individuals residing on the site.

V. Environmental Review

ESD staff has determined that the project constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the project.

VI. Affirmative Action

ESD's Non-discrimination and Affirmative Action policy will apply. The Company is encouraged to include minorities and women in any job opportunities created by the project, and to solicit and utilize Minority and Women-owned Business Enterprises for any contractual opportunities generated in connection with the project.

VII. ESD Financial Assistance Subject to Availability of Funds and Additional Approval

The provision of ESD financial assistance is contingent upon the availability of funds and the approval of the State Division of the Budget.

VIII. Additional Submissions to Directors

Resolutions  
 New York State Map  
 Project Finance Memorandum  
 Cost-Benefit Analysis

March 23, 2011

Gardiner (Ulster County) – Gillette Creamery Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) - Findings and Determinations Pursuant to Sections 16-m and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

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RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the Gillette Creamery - Economic Development Fund- General Development Financing (Capital Grant) Project (the “Project”), the Corporation hereby determines pursuant to Sections 16-m and 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that

1. The proposed project would promote the economic health of New York State by facilitating the creation or retention of jobs or would increase activity within a municipality or region of the state or would enhance or help to maintain the economic viability of family farms;
2. The project would be unlikely to take place in New York State without the requested assistance;
3. The project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs;
4. There are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the “Plan”) for the Project submitted to this meeting, together with such changes therein as the President and Chief Executive Officer - Designate of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the President and Chief Executive Officer - Designate of the Corporation or his designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing, and that upon such written finding being made, the President and Chief Executive Officer - Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Gillette Creamery a grant for a total amount not to exceed Six Hundred Thousand Dollars (\$600,000) from the Empire State Economic Development Fund, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the President and Chief Executive Officer - Designate of the Corporation or his designee(s) may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the President and Chief Executive Officer - Designate of the Corporation or his designee(s) be, subsequent to the making of the grant, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the grant as he or she may deem necessary or appropriate in the administration of the grant; and be it further

RESOLVED, that the provision of ESD financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the President and Chief Executive Officer - Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

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