

A regular meeting of the County of Saratoga Industrial Development Agency was convened via public session on June 20, 2023 at 8:30 a.m. (EST) at the Malta Town Hall, 2540 NYS Route 9, Malta, New York following the close of a public hearing.

The meeting was called to order by the Chairman and, upon roll being called, the following were:

PRESENT:

Rodney Sutton	Chairperson
Tom Lewis	Secretary
Philip Klein	Vice Chairperson
Michael Mooney	Treasurer
Kevin J. Tollisen	Member
Erinn Kolligian	Assistant Treasurer
Yvonne Manso	Member

ABSENT:

ALSO PRESENT:

Scott Duffy	Agency CEO
Jeff Many	Agency CFO
Michael Valentine	Agency Administrator
Kimberly Lambert	Assistant Agency Administrator
James A. Carminucci, Esq.	Lemery Greisler LLC, Agency Counsel

The following resolution was offered by Mr. Tollisen, seconded by Mr. Klein, to wit:

RESOLUTION # 1543

RESOLUTION CONSENTING TO AN ASSIGNMENT TO, AND ASSUMPTION BY 113 TABOR WAREHOUSE LLC OF CERTAIN DOCUMENTS AND AUTHORIZING THE EXECUTION AND DELIVERY BY THE COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY OF AN ASSIGNMENT AND ASSUMPTION AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE 113 TABOR ROAD LLC PROJECT LOCATED IN HALFMOON, NEW YORK.

WHEREAS, the County of Saratoga Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of the State of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of the State of New York, as amended (the “Enabling Act”), and Chapter 855 of the 1971 Laws of the State of New York, as amended, constituting Section 890-h 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, reconstructing, 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 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, the Agency entered into a Lease Agreement dated July 7, 2022 (the “Lease Agreement”), by and between the Agency and 113 Tabor Road LLC (the “Original Company”), in connection with a project (the “Project”), consisting of the following: (A) (1) the acquisition of an interest in an approximately 5.00 acre parcel of land constituting tax map parcel 260.-1-42.13 and located at 113 Tabor Road in the Town of Halfmoon, New York (the “Land”) (2) the construction on the Land of an approximately 43,250 square foot warehouse/flex building (the “Facility”) to be leased to tenants (the “Tenants”) and (3) the acquisition and installation therein of certain machinery and equipment (the “Equipment” and together with the Land and the Facility collectively, the “Project Facility”), (B) the financing of all or a portion of the costs of the foregoing, (C) the lease of the Project Facility to the Original Company and (D) the providing of “financial assistance” (as defined in the Act) with respect to the Project;

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, the Original Company executed and delivered (i) a Payment in Lieu of Tax Agreement dated July 7, 2022, (the “PILOT Agreement”), pursuant to which the Original Company agreed to pay certain payments in lieu of taxes and (ii) a project agreement dated July 7, 2022 (the “Project Agreement”); and

WHEREAS, by letter dated April 7, 2023 the Agency was notified that 113 Tabor Warehouse LLC, a Vermont limited liability company authorized to conduct business within the State of New York (the “Assignee”) intends to purchase the Project Facility from the Original Company; and

WHEREAS, in connection with a proposed sale of the Project Facility, the Original Company has requested that the Agency (A) approve the assignment to, and assumption by the Assignee, of all of the Original Company’s interest in the Project Facility, including, but not limited to the benefits of the Lease Agreement and the PILOT Agreement and the Project Agreement (the “Assignment”), and (C) authorize the assumption by the Assignee of all obligations of the Original Company under the Lease Agreement and the PILOT Agreement and the Project Agreement pursuant to an Assignment and Assumption Agreement, (the “Assignment and Assumption Agreement”); and

WHEREAS, the Agency has been advised that the Assignee will be financing its acquisition of the Project Facility through a mortgage loan from The Adirondack Trust Company in a principal amount not to exceed \$5,500,000 (the “Loan”) and in connection therewith has been requested to execute a mortgage, assignment of leases and rents and related documents to secure the Loan (collectively, the “Loan Documents”); and

WHEREAS, no additional “financial assistance” has been requested to be provided by the Agency in connection with the Assignment and thus a public hearing was not required to be conducted prior to the consideration of this Resolution; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Law of the State of New York, as amended, (the “SEQR Act”), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the Assignment; and

WHEREAS, pursuant to SEQRA, the Agency has examined the Assignment in order to make determination as to whether the Assignment is subject to SEQRA, and it appears that the Assignment constitutes a Type II action under SEQRA;

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

Section 1. Based upon an examination of the Assignment, the Agency hereby determined that the Assignment constitutes a “Type II action” pursuant to 6 NYCRR 617.5(c)(23) and (26), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Assignment.

Section 2. The Agency hereby approves (A) the assignment to, and assumption by, the Assignee, of all of the Original Company’s interest in the Project Facility, including, but not limited to the benefits of the Lease Agreement and PILOT and the Project Agreement, (B) the assumption by the Assignee of all obligations of the Original Company under the Lease Agreement and the PILOT Agreement and Project Agreement pursuant to the Assignment and Assumption Agreement, subject in each case, however, to the following conditions: (1) approval by counsel to the Agency of the form and substance of the documents to be executed by the Agency in connection with the Assignment, including the Assignment and Assumption Agreement, (the “Assignment Documents”).

Section 3. Each officer of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Assignment Documents, all in substantially the forms thereof approved by Counsel to the Agency, with such changes, variations, omissions and insertions as such officer shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval.

Section 4. Each officer of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Loan Documents all in substantially the forms thereof approved by Counsel to the Agency, with such changes, variations, omissions and insertions as such officer shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval.

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 Assignment Documents and the Loan Documents, and to execute and deliver all such additional certificated, 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 this Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Assignment Documents and the Loan Documents binding upon the Agency.

Section 6. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Rodney Sutton	VOTING NAY
Tom Lewis	VOTING AYE
Philip Klein	VOTING AYE
Michael Mooney	VOTING NAY
Kevin J. Tollisen	VOTING AYE
Erinn Kolligian	VOTING AYE
Yvonne Manso	VOTING AYE

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF SARATOGA)

I, the undersigned Secretary of the County of Saratoga Industrial Development Agency (the “Agency”), DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency held on June 20, 2023, including the resolution contained therein, with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respect duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, _____.

(Assistant) Secretary