

A regular meeting of the County of Saratoga Industrial Development Agency was convened via public session on July 27, 2023 at 8:30 a.m. (EST) at the Saratoga Chamber of Commerce offices, 28 Clinton Street, Saratoga Springs, 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
Erinn Kolligian	Assistant Treasurer

ABSENT:

Kevin J. Tollisen	Member
Yvonne Manso	Member

ALSO PRESENT:

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

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

RESOLUTION # 1550

RESOLUTION CONSENTING TO AN ASSIGNMENT TO, AND ASSUMPTION BY GMS REALTY, LLP 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 TWINBROOK REALTY, LLC PROJECT LOCATED IN SARATOGA SPRINGS, 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 November 28, 2017 (the “Lease Agreement”), by and between the Agency and Twinbrook Realty, 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 22.26 acre parcel of land constituting tax map parcel 178.-1-63 and located at 10 Skyward Drive in the City of Saratoga Springs, New York (the “Land”) (b) the construction on the Land of an approximately 143,000 square foot facility to be occupied by SKS Bottle & Packaging, Inc., a New York business corporation (“SKS”) and utilized as a distribution and warehouse facility as well as for corporate headquarters (the “Facility”) 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 a Payment in Lieu of Tax Agreement dated November 28, 2017, (the “PILOT Agreement”), pursuant to which the Original Company agreed to pay certain payments in lieu of taxes; and

WHEREAS, the Agency has been notified that GMS Realty, LLP, a Vermont limited liability partnership (“GMS Realty”) intends to purchase the Project Facility from the Original Company; and

WHEREAS, in connection with the proposed sale of the Project Facility and the subsequent leasing of a portion of the Facility to Green Mountain Electric Supply, Inc. (“GMES”), the Agency pursuant to an application filed by GMS Realty (the “Application”) has been requested to (A) consent to the assignment to GMS Realty by the Original Company of all of the right, title and interest of the original Company in the Lease Agreement and the Pilot Agreement (the “Assignment”) in consideration of the assumption by GMS Realty of the obligations and liabilities of the Original Company under the Lease Agreement and the Pilot Agreement, (2) grant certain financial assistance to GMS Realty in the form of exemptions from (a) NYS and local sales tax with respect to the acquisition and installation of certain equipment into the Facility, (b) mortgage recording tax and (c) real property taxes (pursuant to a modification to the terms of the Pilot Agreement); and

WHEREAS, if approved, GMES and SKS would be tenants of the Facility;

WHEREAS, immediately prior to the consideration of this Resolution a public hearing was conducted as required by Section 859-a(2) of the General Municipal Law of the State of New York; 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;

WHEREAS, the Agency has been advised that financing for the acquisition of the Project Facility will be provided by a loan from The Adirondack Trust Company (the “Lender”) to GMS Realty in the principal amount of \$14,000,000.00 (the “Loan”); and

WHEREAS, the Loan will be secured by a mortgage on the Project Facility from the Agency and GMS Realty in favor of the Lender (the “Mortgage”) and an assignment of leases and rents relating to the Project Facility from GMS Realty and the Agency in favor of the Lender (the “Assignment”); and

WHEREAS, in connection with the Assignment, the Agency will execute and deliver (i) an Assignment and Assumption Agreement by and among the Original Company, GMS Realty and the Agency (the “Assignment and Assumption Agreement”), (ii) an amendment to the Lease Agreement by and between the Agency and GMS Realty (the “Lease Amendment”), (iii) an amendment and restatement of the Pilot Agreement by and between the Agency and GMS Realty (the “Pilot Agreement Amendment”) and (iv) a project agreement by and between the Agency and GMS Realty (the “Project Agreement” and together with the Assignment and Assumption Agreement, the Lease Amendment, the Pilot Agreement Amendment and the Project Agreement, collectively the “Assignment Documents”);

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

Section 1. Based upon the representations made by GMS Realty to the Agency, the Agency hereby makes the following findings and determinations with respect to the proposed Assignment and providing of financial assistance:

A. The Project as modified continues to constitute a “project” within the meaning of the Act; and

B. The approval of the Assignment and providing of financial assistance to GMS Realty by the Agency of the acquisition, construction and installation of the Project Facility pursuant to the Act, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Saratoga County, New York and the State of New York, improve their standard of living and thereby serve the public purposes of the Act; and

C. The approval of the Assignment and providing of financial assistance to GMS Realty will not result in the removal of a facility or plant of the Applicant or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Applicant or any other proposed occupant of the Project Facility located in the State; and

D. A deviation from the Agency’s Uniform Tax Exemption Policy resulting from the providing of financial assistance to GMS Realty is justified as such will assist in efforts to prevent a loss of the existing jobs at the Facility and will assist in attracting a new business into the City of Saratoga Springs which has the potential for significant growth.

Section 2. 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 3. The Agency hereby approves (A) the assignment to, and assumption by, GMS Realty, 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, (B) the assumption by GMS Realty of all obligations of the Original Company under the Lease Agreement and PILOT 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 Documents and (C) the providing of the Financial Assistance described in the Application consisting of the following:

Estimated State and Local Sales Tax Exemption	\$91,000
Estimated Mortgage Recording Tax Exemption	\$105,000
Estimated Real Property Tax Exemption	\$1,365,408

Section 4. Each officer of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Assignment Documents, together with the Mortgage and the Assignment, 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. GMS Realty and GMES are each hereby appointed the true and lawful agents of the Agency (A) acquire and install the Equipment, (B) to appoint sub-agents for such purposes and (C) to make, execute, acknowledge, and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for completing the Project and all with the same powers and the same validity as the Agency could do if acting on its own behalf. In addition, GMS Realty and GMES are hereby authorized to advance such funds as may be necessary to accomplish such purposes.

Section 6. 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 7. 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 J. Sutton	VOTING AYE
Tom Lewis	VOTING AYE
Philip Klein	VOTING AYE
Michael Mooney	VOTING AYE
Kevin J. Tollisen	ABSENT
Erinn Kolligian	VOTING AYE
Yvonne Manso	ABSENT

The foregoing Resolution was thereupon declared duly adopted.

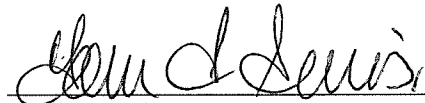
STATE OF NEW YORK)
) SS.:
COUNTY OF SARATOGA)

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 July 27, 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 27th day of July, 2023.



~~(Assistant)~~ Secretary