

## RESOLUTION

A regular meeting of the County of Oswego Industrial Development Agency (the “*Agency*”) was convened in public session on September 17, 2013 at 3:00 p.m., at 44 West Bridge Street, Oswego, New York.

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

**PRESENT:** Nick Canale, Jr., Donald H. Kunzwiler, Carolyn A. Rush,  
H. Leonard Schick, Morris Sorbello and Gary T. Toth

**ABSENT:** None

**ALSO PRESENT:** Kevin C. Caraccioli, David S. Dano and L. Michael  
Treadwell

The following resolution was duly offered and seconded:

### **RESOLUTION APPROVING THE AGENCY’S PARTICIPATION IN A MORTGAGE MODIFICATION AGREEMENT AND SUBORDINATION AGREEMENT AT THE REQUEST OF THE COMPANY IN CONNECTION WITH THE PROJECT FACILITY AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH**

**WHEREAS**, the County of Oswego Industrial Development Agency (the “*Agency*”) is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the “*State*”), as amended, together with Chapter 234 of the Laws of 1973 of the State of New York, as amended from time to time (collectively, 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, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, 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 grant financial assistance in connection with one or more “projects” (as defined in the Act); and

**WHEREAS**, by resolutions adopted on July 14, 2009 (the "**Resolutions**"), the Agency agreed to undertake a certain project (the "**Project**") at the request of G&S Broadwell, Inc. (the "**Company**") consisting of: (A) (i) the acquisition of a leasehold interest in approximately 20,850 square feet of improved real property located at 24 East First Street ("**Lot 1**") and approximately 13,700 square feet of land located at 27 East First Street ("**Lot 2**"), both in the City of Oswego, Oswego County (Lot 1 and together with Lot 2 and the Existing Land, collectively referred to as the "**Land**"); (ii) the construction of an approximate 36,000 square foot building consisting of a conference center, restaurant, eighteen (18) hotel rooms, health club expansion and the construction of an approximately 13,700 square foot parking lot (collectively, the "**Facility**"), all located on the Land; (iii) the acquisition of and installation in the Facility of various machinery, equipment and furnishings (the "**Equipment**") (the Land, Facility and Equipment are hereinafter collectively referred to as the "**Project Facility**"); (B) the granting of certain financial assistance (the "**Financial Assistance**") in the form of exemption from real property tax, mortgage recording tax and sales and use taxation, as well as a loan from the Agency's Economic Development Fund in an amount not to exceed \$500,000 (collectively, the "**Financial Assistance**"); and (C) the lease of the Project Facility by the Agency pursuant to a lease agreement and the lease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the City of Oswego previously acted as lead agency for the purpose of conducting a coordinated environmental review of the original Project under SEQRA, 6 NYCRR Part 617, and determined that the Project constituted a "Type 1 Action" under SEQRA and on June 19, 2009 issued a negative declaration; and

**WHEREAS**, in conjunction with the undertaking of the Project, the Company and the Agency entered into two (2) mortgages in favor of HSBC Bank, USA National Association ("**HSBC**") in an original aggregate principal amount in excess of Seven Million 00/100 (\$7,000,000.00) to secure the Company's obligations under corresponding notes in a like amount (the "**Mortgages**"). The Agency also entered into a subordination agreement wherein the Agency subordinated certain mortgages it held to the Mortgages; and

**WHEREAS**, the Company has requested that the Agency participate in the consolidation of the Mortgages by executing a mortgage consolidation and modification agreement in favor of HSBC, in an amount not to exceed Five Million One Hundred Thousand and No/100 (\$5,100,000) to secure the financing of the Project as well as a new subordination agreement (collectively the "**Mortgage Modification**"); and grant a corresponding exemption from mortgage recording tax (collectively, the "**New Financial Assistance**"); and

**WHEREAS**, the subordination agreement executed by the Agency in connection with the Mortgages explicitly stated and applied to all extensions and modifications of the Mortgages; and

**WHEREAS**, the Agency Lease dated as of September 1, 2010, executed by the Company and the Agency in connection with the Project, anticipated the Agency's participation in additional financings.

**NOW, THEREFORE,** be it resolved by the members of the County of Oswego Industrial Development Agency as follows:

(1) Based upon the representations made by the Company to the Agency, the Agency hereby makes the following findings and determinations:

(a) The approval, execution and delivery of the Mortgage Modification and the New Financial Assistance will not result in a change to the Project as originally considered such that an amendment of the Negative Declaration is required, and as such, the Negative Declaration is hereby ratified and affirmed and no further SEQRA action is required; and

(b) The Agency has the authority to, and hereby does, approve and authorize the Mortgage Modification and the New Financial Assistance. The Chief Executive Officer and/or (Vice) Chairperson are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the Mortgage Modification and the other documents and agreements identified in, or required to carry out the intent of, this Resolution, subject to review and approval of the Chief Executive Officer or Vice Chairman upon advice of counsel and/or special counsel to the Agency, and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution. The execution thereof by the Chief Executive Officer or Vice Chairman constitutes conclusive evidence of such approval.

(2) As a condition precedent to the Agency's participation in the Mortgage Modification and the grant of the New Financial Assistance, as set forth herein, the Company will submit to the Agency the appropriate fee, including the Agency's legal fees associated with the refinancing, in exchange for the Agency's grant of the New Financial Assistance.

(3) Should the Agency's participation in the Mortgage Modification, or the granting of the New Financial Assistance on the Project Facility be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the refinance, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

(4) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(5) The Chief Executive Officer of the Agency is hereby authorized to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

(6) This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

(7) Counsel to the Agency and special Agency counsel are hereby authorized to work with the Company, and others to prepare, for submission to the Agency, all documents necessary to effect the grant of the New Financial Assistance and to consummate the transactions contemplated by this Resolution including but not limited to the Mortgage Modification.

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

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>	<u>Recuse</u>
Nick Canale, Jr.	X				
Donald H. Kunzwiler	X				
Carolyn A. Rush	X				
H. Leonard Schick	X				
Morris Sorbello	X				
Gary T. Toth	X				

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned Chief Executive Officer of the County of Oswego Industrial Development Agency, Do Hereby Certify that (i) I have compared the annexed extract of the minutes of the meeting of the County of Oswego Industrial Development Agency (the “*Agency*”) held on September 17, 2013, 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 the whole of such original insofar as the same relates to the subject matters referred to therein.

I Further Certify that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Agency on September \_\_\_\_, 2013.

\_\_\_\_\_  
L. Michael Treadwell  
Chief Executive Officer

(SEAL)