

SCHOHARIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

349 Mineral Springs Road, Cobleskill, NY 12043

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Ronald S. Filmer, Jr.
Chief Executive Officer, Retiring

Chester Burton
Chairman

Julie Pacatte, Interim, CEO

SCIDA ANNUAL BOARD OF DIRECTORS MEETING

February 7, 2023

SCIDA Board Minutes

1. **Meeting** called to order at 9:34 a.m. by Chairman Chester Burton.

Members: Chairman/Chester Burton, V. Chair/Joseph Trapani, Treasurer/Wanda King, Member/Peter Johnson, Ben Oevering. **Staff:** Ron Filmer Jr. retiring CEO, Julie Pacatte Interim CEO

Present: IDA Board Members: Chester Burton, Peter Johnson, Ben Oevering Joe Trapani and Wanda King via phone **Staff:** Ron Filmer Jr., Julie Pacatte **Guests:** Joe Scott attorney via phone, Bill Combs Jr, videographer, Patsy Nicosia, Times Journal and Eric Stein, SEEC Board of Directors

2. **MOTION to approve** January 11, 2023 meeting minutes with correction to include Julie Pacatte, Bill Combs Jr and Patsy Nicosia as guests, moved by Peter Johnson and seconded by Joe Trapani, all In Favor.
3. **Treasurer:** Financial reports distributed prior to meeting, no discussion.

Committees of the Agency: No reports.

- **IDA Finance Committee** – (Joseph Trapani, Wanda King, Ben Oevering)
- **IDA Audit Committee** - (Chester Burton, Wanda King, Peter Johnson)
- **IDA Governance Committee** – (Chester Burton, Joseph Trapani, Wanda King, Peter Johnson, Ben Oevering)

4. **Old Business:**

- **SSI:** Resolution authorizing enforcement action on the Sharon Springs Inc. project discussed with Joe Scott, attorney, via telephone.

MOTION to adopt Resolution Authorizing Enforcement Action on Sharon Springs Inc, moved by Peter Johnson and seconded by Joe Trapani. Roll Call Vote Unanimously In Favor Chet Burton, Joe Trapani, Peter Johnson and Ben Oevering. Wanda King unable to vote remotely, requested to be on record as "In Favor".

- **Adler Stabilization:** RESTORE NY grant application was submitted by Jan 27th deadline. IDA Financing Commitment letter was included as reviewed and commented by Joe Scott, attorney. Now, finalizing owner site access memo anticipate award announcement in May 2023.
- **Empire State Greenhouse (ESG):** Ron and Julie had conversation at length with new capital consultants and Joe Scott attorney about bond financing eligibility. Email request for ESG to submit project memo with phasing, costs and timing (dated 1/30-31/2023). Anticipate ESG site visit February 16th.

10:27am **MOTION to enter Executive Session to discuss land sale and SCIDA Administration** moved by Chet Burton and seconded by Joe Trapani all In Favor. Guest: Eric Stein

11:56 am **MOTION to exit Executive Session**, moved by Peter Johnson and seconded by Ben Oevering all In Favor

- **Land Sale:** Discussed in Executive Session, Ron and Julie to follow-up with prospective buyers and Village leadership.
- **SCIDA Administration:** Discussed in Executive Session, Chairman Burton to follow-up with County Chairman Federice and Supervisor Terry, Chair, County Economic Development Committee

MOTION to readvertise for the full time IDA staff position and maintain the MOU with SEEC for management services and office space at 287 Main, moved by Joe Trapani and seconded by Chet Burton. Roll Call Vote **In Favor:** Chet Burton and Joe Trapani **Against:** Ben Oevering **Abstain:** Peter Johnson (Carried 2-1). Wanda King unable to vote remotely, requested to be on record as "In Favor".

SCIDA Board consensus to participate in Strategic Alignment with Alliances.

5. **New Business:** N/A

6. **Other:** N/A

7. **Set date for next meeting** – March 1, 2023 @ 9:30 (changed to 9:00 am)

8. **Adjournment** – On motion duly made by Peter Johnson and seconded by Joe Trapani meeting adjourned at 12:04 pm.

**RESOLUTION AUTHORIZING ENFORCEMENT ACTION
SHARON SPRINGS, INC. PROJECT**

A regular meeting of Schoharie County Industrial Development Agency (the "Agency") was convened in public session at 597 E. Main Street in the Town of Cobleskill, Schoharie County, New York on February 7, 2023 at 9:30 o'clock a.m., local time.

The meeting was called to order by the (Vice) Chairman and, upon roll being called, the following members of the Agency were:

PRESENT:

Chester Burton	Chairman
Joseph Trapani	Vice Chairman
Wanda King	Treasurer
Peter Johnson	Member
Benjamin Oevering	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

The following resolution was offered by Peter Johnson, seconded by Joe Trapani, to wit:

Resolution No. 0223 -

RESOLUTION AUTHORIZING THE SCHOHARIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY TO TAKE CERTAIN ENFORCEMENT ACTIONS IN CONNECTION WITH THE REVIEW AND MONITORING BY THE AGENCY OF THE SHARON SPRINGS, INC. PROJECT.

WHEREAS, Schoharie County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 114 of the 1973 Laws of New York, as amended, constituting Section 905-a 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 manufacturing, warehousing, research, commercial and industrial 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 one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, pursuant to a closing on August 22, 2016 (the "Closing"), the Agency entered into a lease agreement dated as of August 1, 2016 (the "Lease Agreement") by and between the Agency and Sharon Springs, Inc. (the "Company") in connection with a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 14.2 acre parcel of land located at 233 Main Street in the Town of Sharon and Village of Sharon Springs, Schoharie County, New York (the "Land"), together with the existing buildings located thereon containing in the aggregate approximately 19,600 square feet of space (collectively, the "Facility"), (2) the reconstruction and renovation of the Facility, and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to be owned and operated by the Company as a spa and health care facility and any directly or indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the Lease Agreement; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of August 1, 2016 (the "Underlying Lease") by and between the Company, as landlord and the Agency, as tenant, pursuant to which the Company leased to the Agency the Land and all improvements now or hereafter located on the land (collectively, the "Premises") for a lease term ending on December 31, 2030, and (2) a bill of sale dated as of August 1, 2016 (the "Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of the Company in the Equipment, (B) the Agency and the Company executed and delivered a certain uniform agency project agreement dated as of August 1, 2016 (the "Uniform Agency Project Agreement") relating to the granting of the Financial Assistance by the Agency to the Company; (C) the Company and the Agency executed and delivered a payment in lieu of tax agreement dated as of August 1, 2016 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility, (D) the Agency filed with the assessor and mailed to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (E) the Agency executed and delivered to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance, and (F) the Agency filed with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report") (collectively, with the Lease Agreement, the "Basic Documents"); and

WHEREAS, by resolution adopted by the members of the Agency on May 19, 2021 (the "Extension Resolution"), the Agency authorized the execution and delivery of an amendment to the Payment in Lieu of Tax Agreement and a revised sales tax letter (the "Revised Sales Tax Letter"), subject to certain conditions, including: (A) the payment of the Agency's administrative fee in the amount equal to \$5,000.00, (B) evidence satisfactory to the Agency and its staff that the Company is in compliance with the Agency's policies relating to the Project; (C) the payment of the fees and expenses of the Agency Counsel, (D) the execution and delivery of documents prepared by the Agency Counsel to provide for the amendment to the Payment in Lieu of Tax Agreement and extension of the sales tax letter, (E) evidence satisfactory to the Agency that the Village of Sharon Springs (the "Village"), the Town of Sharon (the

“Town”), the Sharon Springs Central School District (the “School District”) have approved the terms of the amendment to the PILOT Agreement. (F) the execution and delivery by the Company of an agreement or agreements addressing the local code compliance issues identified and to be enforced by the Village and as noted in the Company Request, (G) evidence satisfactory to the Agency that the Company has obtained and closed on financing by December 31, 2021 for undertaking the Project, and (H) payment by the Company of a \$2,500.00 escrow deposit to the Agency and satisfaction of the remaining conditions by June 30, 2021; and

WHEREAS, in addition to the conditions identified in the Extension Resolution, the Basic Documents required the Company to, among other things, (a) complete the acquisition, reconstruction and installation of the Project Facility, (b) create at least forty (40) FTE positions, and (c) make an actual investment in the Project by the Completion Date (as defined in the Lease Agreement) equal to or exceeding eighty percent (80%) of the Total Project Costs (as defined in the Lease Agreement); and

WHEREAS, the Company, as described in more detail in this resolution, has failed to satisfy a number of the conditions contained in the Basic Documents; and

WHEREAS, in light of this failure by the Company to satisfy such conditions, the Agency is considering certain enforcement actions regarding the Company and the Project, including whether to terminate the Lease to Agency, the Lease Agreement and the Payment in Lieu of Tax Agreement by the execution and delivery of certain termination documents (collectively, the “Termination Documents”); and

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

Section 1. The Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;

(B) The Agency staff has regularly monitored the progress of the Project, has had periodic discussions with the local municipal officials and has reviewed the status of the Company’s compliance with the terms of the Basic Documents with the Company and Agency Counsel, and the failures by the Company to comply with the terms of the Basic Documents have been regularly reported to the members of the Agency and Agency Counsel (the “Defaults”), the Defaults identified by the Agency staff include the following:

(1) failure to complete the acquisition, reconstruction and installation of the Project Facility;

(2) failure to create at least forty (40) FTE positions;

(3) failure to execute and deliver an agreement or agreements addressing the local code compliance issues identified and to be enforced by the Village;

(4) failure to provide proof to the Agency that the Company has obtained and closed on financing sufficient to undertake the Project; and

(5) failure to make an actual investment in the Project by the Completion Date (as defined in the Lease Agreement) equal to or exceeding eighty percent (80%) of the Total Project Costs (as defined in the Lease Agreement);

(C) Agency Counsel sent a letter to the Company dated March 1, 2022 and the Company has not responded to such letter;

(D) The Agency has reviewed the Defaults and desires to make a determination to take the enforcement action or actions with respect to the Project and the Company;

(E) The enforcement action to be taken with respect to the Company and the Project is the action or actions described in Section 2 and Section 3 below; and

(F) It is desirable and in the public interest for the Agency to review and monitor the Project, to consider various enforcement actions and to determine to take enforcement action(s) with respect to the Project.

Section 2. Based upon the findings and determinations described in Section 1 above, the Agency hereby approves and authorizes the delivery of written notice to the Company (the "Default Letter"), pursuant to Section 10.1(A)(2) of the Lease Agreement, specifying the nature of such Defaults and requesting that they be remedied, and directs the Agency staff and Agency Counsel (A) to prepare the Default Letter and (B) to contact the Company and arrange for the implementation of any remedies.

Section 3. Further based upon the findings and determinations described in Section 1 above, in the event the Company does not respond to the Default Letter and fails to cure the Defaults for a period of thirty (30) days after dispatch of the Default Letter, the Agency hereby approves and authorizes the enforcement action(s) described in Schedule A to this resolution, and directs the Agency staff and Agency Counsel (A) to prepare the necessary documents to accomplish and implement such enforcement action(s) (collectively, the "Enforcement Documents") and (B) to contact the Company and arrange for the implementation of the enforcement action(s).

Section 4. The Chairman (or Vice Chairman) of the Agency is hereby authorized to execute and deliver (A) the Default Letter, and (B) the Enforcement Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form presented at this meeting, with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) 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 (A) the Default Letter, and (B) the Enforcement Documents, and to execute and deliver all such additional certificates, 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 the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of (A) the Default Letter, and (B) the Enforcement 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:

Chester Burton
Joseph Trapani
Wanda King
Peter Johnson
Benjamin Oevering

VOTING
VOTING
VOTING
VOTING
VOTING

YEA
YEA
YEA
YEA
YEA

— on record in Favor

The foregoing Resolution was thereupon declared duly adopted.


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

I, the undersigned (Assistant) Secretary of Schoharie County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on February 7, 2023 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein 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 respects 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.

7 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this day of February, 2023.



(Assistant) Secretary

(SEAL)

SCHEDULE A
ENFORCEMENT ACTION OR ACTIONS

1. Undertake the claw-back of IDA financial assistance.
2. Terminate the Lease Agreement and the related Agency Basic Documents (as defined in the Lease Agreement), including the PILOT Agreement.