

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT dated as of July 31, 2023 (this "Amendment") by and between the COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at Saratoga County Municipal Center, Ballston Spa, New York 12020 (the "Lessor"), as landlord, and GMS REALTY, LLP (doing business in New York State as GMS Realty Partners LLC), a limited liability partnership organized and existing under the laws of the State of Vermont and having an address of 356 Rathe Road, Colchester, Vermont 05446 (the "Company"), as tenant;

W I T N E S S E T H:

WHEREAS, the New York State Industrial Development Agency Act, being Title I 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"), authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any buildings or other improvements, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for, among other things, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities; and

WHEREAS, the Lessor was created pursuant to and in accordance with the provisions of the Enabling Act by Chapter 855 of the Laws of 1971 of the State of New York, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and improve their standard of living; and

WHEREAS, the Lessor, at the request of Twinbrook Realty LLC ("Twinbrook") previously undertook a project (the "Project") consisting of (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 Twinbrook and (D) the providing of "financial assistance" (as defined in the Act) with respect to the Project; and;

WHEREAS, the Project Facility was leased by Twinbrook to the Lessor pursuant to the terms of an Underlying Lease November 28, 2017 by and between Twinbrook, as lessor, and the Lessor, as lessee which was recorded in the Saratoga County Clerk's Office on December 4, 2017 as instrument # 2017038409; and

WHEREAS, the Lessor has leased the Project Facility to Twinbrook pursuant to the terms of that certain Lease Agreement dated as of November 28, 2017 by and between the Lessor, as lessor, and Twinbrook, as lessee, which was recorded in the Saratoga County Clerk's Office on December 4, 2017 as

instrument # 2017038410 (the "Lease Agreement") (all capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Lease Agreement); and

WHEREAS, pursuant to the terms of a certain assignment and assumption agreement of even date herewith by and among the Lessor, Twinbrook and the Company and recorded in the office of the Saratoga County Clerk immediately prior to the recordation hereof, Twinbrook assigned to the Company all of Twinbrook's right title and interest in and to the Lease Agreement in consideration for the assumption by the Company of all of Twinbrook's obligations and liabilities under the Lease Agreement ; and

WHEREAS, in connection therewith and by resolution duly adopted by the Lessor on July 27, 2023, the Lessor consented to such assignment and assumption and agreed to provide to the Company financial assistance with respect to exemptions from mortgage recording tax, sales tax (in connection with the acquisition and installation by the Company of additional items of equipment into the Facility) and real property taxes; and

WHEREAS, in connection therewith, the parties desire to modify the Lease Agreement in the manner hereinafter set forth;

NOW, THEREFORE, THE LESSOR AND THE COMPANY HEREBY AGREE AS FOLLOWS:

Section 1. Section 1.1 of the Lease Agreement is hereby amended to include the following defined terms to appear in their proper alphabetical position within said Section

"2023 Equipment" means that portion of the Equipment installed by the Company or GMES into the Facility.

"2017 Equipment" means that portion of the Equipment installed into the Facility by Twinbrook or SKS.

"GMES" means Green Mountain Electric Supply, Inc., a Vermont corporation.

"SKS" means SKS Bottle & Packaging, Inc., a New York business corporation.

"Twinbrook" means Twinbrook Realty LLC, a New York limited liability company.

Section 2. The following defined terms set forth in Section 1.1 of the Lease Agreement are hereby amended and restated in their entirety to read as follows:

"Assignment" means that certain assignment of leases and rents dated July 31, 2023 from the Agency and the Company in favor of the Lender, as said assignment of leases and rents may be amended or supplemented from time to time.

"Bill of Sale means collectively (i) the bill of sale from Twinbrook to the Lessor conveying Twinbrook's interest in the Equipment. and (ii) the bill of sale from the Company to the Lessor conveying the Company's interest in the Equipment.

"Company" means GMS Realty, LLP (doing business in New York State as GMS Realty Partners LLC), a limited liability partnership organized and existing under the laws of the State of Vermont and its successors and permitted assigns.

"Equipment" means collectively the 2017 Equipment and the 2023 Equipment.

“Holder” means The Adirondack Trust Company, and its successors and permitted assigns.

“Loan” means the loan or loans from the Lender to the Company in the aggregate principal amount of \$14,000,000.00 evidenced by the Note.

“Mortgage” means the mortgage or mortgages in the aggregate principal amount of \$14,000,000.00 from the Company and the Lessor in favor of the Holder, as said mortgage, security agreement and assignment of rents and leases may be modified, supplemented, consolidated or amended from time to time.

“Note” means the promissory note or notes in the aggregate principal amount of \$14,000,000.00 executed and delivered by the Company to the Holder, as said promissory note or notes may be amended, modified, supplemented, consolidated or extended.

“PILOT Agreement” means the amended and restated payment in lieu of tax agreement dated July 31, 2023 by and between the Lessor and the Company, as said payment in lieu of tax agreement may be amended or supplemented from time to time.

“Project Agreement” means that certain amended and restated uniform agency project agreement dated July 31, 2023 by and between the Lessor and the Company, as such may be amended or restated from time to time.

“Resolution” means collectively the resolutions duly adopted by the Lessor on October 16, 2017 and July 27, 2023 authorizing the execution and delivery of the Leasing Documents to which the Lessor is a party.

“Tenant” means each of GMES and SKS.

Section 3. Section 12.2 of the Lease Agreement is hereby amended and restated in its entirety to read as follows:

SECTION 12.2. NOTICES. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (A) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means (including overnight delivery) as shall provide the sender with documentary evidence of such delivery, or (B) delivery is refused by the addressee, as evidenced by the affidavit of the person who attempted to effect such delivery. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

GMS Realty, LLC
356 Rathe Road
Colchester, Vermont 05446
Attention: Josh Laber

With a copy to:

Harris Beach PLLC
677 Broadway, Suite 1102
Albany, New York 12207
Attention: Jeremy H. Speich, Esq.

IF TO THE LESSOR

County of Saratoga Industrial Development Agency
Saratoga County Municipal Center
50 West High Street
Ballston Spa, New York 12020
Attention: Executive Director

WITH A COPY TO:

Lemery Greisler LLC
60 Railroad Place, Suite 502
Saratoga Springs, New York 12866
Attention: James A. Carminucci, Esq.

IF TO THE LENDER:

The Adirondack Trust Company
473 Broadway
Saratoga Springs, New York 12866
Attention: Commercial Lending

Section 4. This Amendment shall be governed exclusively by the applicable laws of the State.

Section 5. This Amendment may be executed in several counterparts, each of which shall constitute an original but when taken together shall constitute but one instrument.

IN WITNESS WHEREOF, the Lessor and the Company have caused this Amendment to be executed in their respective names by their respective Authorized Representatives, all as of the day and year first above written.

COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY

By: [Signature]
Rodney J. Sutton, Chairman

GMS REALTY, LLP

By: [Signature]
Josh Laber, Partner

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

On this 27th day of July, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared **Rodney J. Sutton**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public
JAMES A. CARMINUCCI
NOTARY PUBLIC STATE OF NEW YORK
REG. NO. 02CA4864025
QUALIFIED IN SARATOGA COUNTY
COMMISSION EXPIRES JUN 9, 2026

STATE OF New York)
)SS.:
COUNTY OF Saratoga)

On this 31st day of July, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared **Josh Laber**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public
KADAN SAMPLE
Notary Public - State of New York
No. 02SA6165278
Qualified in Saratoga County
My Commission Expires September 19, 2023