

FOR CONSIDERATION

September 17, 2009

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Hicksville (Nassau County) – Sleepy's Capital – JOBS Now Program – Capital Grant

REQUEST FOR: Findings and Determinations Pursuant to Section 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions; Determination of No Significant Effect on the Environment

General Project Plan

I. Project Summary

Grantee: Sleepy's, LLC (“Sleepy’s” or the “Company”)

ESD* Investment: A grant of up to \$1,500,000 to be used for a portion of the cost of construction of a new headquarters and distribution facility.

* The New York State Urban Development Corporation doing business as the Empire State Development Corporation (“ESD” or the “Corporation”)

Project Location: 1000 South Oyster Bay Road, Hicksville, Nassau County

NYS Empire Zone: N/A

Proposed Project: Sleepy’s will relocate all corporate headquarters and distribution jobs to a newly constructed 450,000 square foot facility in Hicksville, NY.

ESD Incentive Offer Accepted: June 12, 2006

Project Completion: August 2009

Number of Employees at Project Location:

Initial employment (at time of ESD Incentive Offer): 401**
 Current employment level: 519***
 Minimum employment on January 1, 2015: 551

** 384 Full-time and 34 Part-time (equivalent of 17 Full-time)

*** 509 Full-time and 20 Part-time (equivalent of 10 Full-time)

Grantee Contact: Adam S. Blank, Chief Operating Officer and General Counsel
 1000 South Oyster Bay Road
 Hicksville, NY 11801
 Phone: (516) 861-8810
 Fax: (516) 844-7853

Anticipated
 Appropriation
 Source:

JOBS Now Program

ESD Project No.: U294

Project Team: Origination Barry Greenspan
 Project Management Susan Shaffer
 Affirmative Action Laverne Poole
 Finance Yang Song
 Environmental Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Land Acquisition	\$6,500,000
Building Construction	42,531,000
Machinery and Equipment	5,100,000
Furniture and Fixtures	1,800,000
Technology	4,400,000
Soft Costs	<u>9,394,000</u>
Total Project Costs	<u>\$69,725,000</u>

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate/Term/Lien</u>
ESD-Grant	\$1,500,000	2.2%	
Eurohypo Loan*	48,348,000	69.3%	Agent's base rate or LIBOR+1.5%/ 2 yrs/first lien on RE
Furniture and Equipment			
Leasing/Financing	7,600,000	10.9%	
Company Equity	<u>12,277,000</u>	<u>17.6%</u>	
Total Project Financing	<u>\$69,725,000</u>	<u>100.0%</u>	

III. Project Description

A. Background

Sleepy's is a family-owned business that began when Louis Acker opened a mattress store in Brooklyn in 1931. After Louis passed away, his son Harry Acker continued the business, creating Sleepy's in 1957. In 1986, the Company built a 60,000-square-foot headquarters in Port Washington, NY to accommodate its 32 showrooms. After acquiring the Kleinsleep chain in 1993 and opening its 75th store in 1994, Sleepy's moved its headquarters to a 230,000-square-foot warehouse/office building in Bethpage, NY. By the end of 2007, Sleepy's had expanded its growth to nearly 700 stores in 11 states, having acquired Sleepy City in Pennsylvania, Mattress Firm in Connecticut and Massachusetts, and OTB (Off Track Bedding) and Rockaway Bedding in New York. As the Company grew, it entered new markets in Maryland, Virginia, and the District of Columbia. Its major competitors in New York are Raymour & Flanigan, Macy's, and, until recently, 1-800-Mattress.

Today, Sleepy's five distribution centers, located in New York, New Jersey, Connecticut, Massachusetts, and Maryland, ensure that customers receive merchandise in a timely and efficient manner. Sleepy's showrooms offer the largest selection of mattresses of all of Sleepy's competitors, carrying products from all major mattress manufacturers including Sealy, Simmons, Serta, and Tempur-Pedic. Sleepy's is the largest specialty mattress retailer in the United States, and it is still growing, although expansion has slowed in light of the current economic climate. Continued expansion is targeted in internet sales. To further that goal, Sleepy's obtained United States Bankruptcy Court approval to acquire the intellectual property of 1-800-Mattress. The closing on this \$25 million purchase was completed on August 18, 2009.

By 2006, the Company had outgrown its Bethpage headquarters. For example, no offices were available for new hires, and parking spots and loading bays needed to be doubled. Inefficiencies resulting from lack of space hindered both operations and growth, and, as a result, the Company considered options for a larger facility. While the Company preferred to stay in Nassau County, an attractive option was relocating to Robbinsville, New Jersey, where the Company owns a distribution facility that had been recently expanded. Sleepy's obtained approval to expand the location further to include its corporate headquarters and was offered economic incentives from the state of New Jersey. To reduce the cost differential between New Jersey and New York locations, ESD offered the Company a \$1,500,000 grant in June 2006. With ESD's incentive offer and the assistance of the Nassau County Industrial Development Agency, Sleepy's decided to remain in New York and build a new headquarters and New York distribution facility in Hicksville on two parcels at the former Grumman Aircraft facility. The project will result in the retention of 401 jobs and creation of 150 new jobs by 2013.

B. The Project

Through a joint venture with Steel Equities, an unrelated third party, Sleepy's acquired property in Hicksville and constructed a state-of-the-art 450,000-square-foot building to house its new corporate headquarters and New York distribution facility. After receiving a temporary certificate of occupancy in March 2009, the warehouse portion of the building began operations, servicing customers throughout Manhattan, Long Island, and upstate New York. The final certificate of occupancy was

received in June 2009, and Sleepy's will move its administrative staff to the new building in mid-September. The headquarters portion of the building will house a majority of Sleepy's administrative personnel and will contain a training center with stadium seating for 90 people. All machinery and equipment acquired for the warehouse and headquarters is new and includes racking, forklifts, order pickers, and related warehouse equipment. The Company is also acquiring new computer hardware, software, furniture, fixtures, and equipment. Sleepy's has already added the equivalent of 118 full-time employees, including some from 1-800-Mattress, for a total of 519 staff in the new facility.

Evaluated over a seven-year period, the following are anticipated project impacts (dollar values are present value):

- Fiscal benefits to NYS government from the project are estimated at \$22,535,855;
- Fiscal cost to NYS government is estimated at \$2,576,381;
- Project cost to NYS government per direct job is \$7,348;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$3,552;
- Ratio of project fiscal benefits to costs to NYS government is 8.75:1;
- Fiscal benefits to all governments (state and local) are estimated at \$50,630,651;
- Fiscal cost to all governments is \$7,925,790;
- All government cost per direct job is \$22,605;
- All government cost per total job is \$10,926;
- The fiscal benefit to cost ratio for all governments is 6.39:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$235,881,221, or \$325,179 per job (direct and indirect);
- The economic benefit to cost ratio is 29.76:1;
- Project construction cost is \$56,325,000 which is expected to generate 414 direct job years and 253 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 1.67 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is 1 year.

(See Project Summary Benefit-Cost Evaluation attached for detail and definitions.)

C. Financial Terms and Conditions

1. At the time of disbursement, the Company will reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will demonstrate no material adverse change in its financial condition prior to disbursement.
3. Sleepy's Holdings LLC will guarantee the grant repayment obligation of its subsidiary, Sleepy's, LLC, in the event of an Employment Shortfall or other default, as defined in these materials or the Grant Disbursement Agreement.
4. The Company or the Company's owners will contribute at least 10% in equity to the Project. Equity is defined as any non-debt source of capital, and should be auditable through Company financial statements or Company accounts, if so requested by ESD.

5. Prior to disbursement, the Company must employ at least the number of Full-time Permanent Employees set forth as the Baseline Employment in the table below. A Full-time Permanent Employee shall mean (a) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties.

6. Up to \$1,500,000 will be disbursed to the Grantee in three installments as follows:
 - a) an Initial Disbursement of an amount equal to 50% of the grant (\$750,000) upon documentation of project costs totaling \$60,000,000, completion of the project substantially as described in these materials, a certificate of occupancy, and documentation of the employment of at least 401 Full-time Permanent Employees at the Project Location, assuming that all project approvals have been completed and funds are available;
 - b) a Second Disbursement of an amount equal to 25% of the grant (\$375,000) will be disbursed upon documentation of the employment of at least 476 Full-time Permanent Employees at the Project Location (Employment Increment of 75), provided Grantee is otherwise in compliance with program requirements;
 - c) a Third Disbursement of an amount equal to 25% of the grant (\$375,000) will be disbursed upon documentation of the employment of at least 551 Full-time Permanent Employees at the Project Location (Employment Increment of 75), provided Grantee is otherwise in compliance with program requirements.

New positions may not be filled by transferring employees from other New York State locations. Jobs at various retail locations will not be counted toward this Project's job retention and creation goals.

Payment will be made upon presentation to ESDC of an invoice and such other documentation as ESDC may reasonably require. Expenses must be incurred on or after June 12, 2006, to be considered eligible project costs. All disbursements must be requested by April 1, 2013.

7. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$1,500,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Company and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.

8. In consideration for the making of the Grant, Grantee will achieve the Employment Goals set forth in Column B of the table below. If the Full-time Permanent Employee Count for the year prior to the reporting date set forth in Column A of the table below is less than eighty-

five percent (85%) of the Employment Goal set forth in Column B (an “Employment Shortfall”), then upon demand by ESD, Grantee shall be obligated to repay to ESD a portion of each disbursement of the Grant, as follows:

The Recapture Amount is based on the time that has lapsed between when the Grant funds were disbursed and when the Employment Shortfall occurred. The Recapture Amount shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

- (i) 100% of the disbursed amount if the Employment Shortfall occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
- (ii) 80% of the disbursed amount if the Employment Shortfall occurred in the second full calendar year after the disbursement was made;
- (iii) 60% of the disbursed amount if the Employment Shortfall occurred in the third full calendar year after the disbursement was made;
- (iv) 40% of the disbursed amount if the Employment Shortfall occurred in the fourth full calendar year after the disbursement was made;
- (v) 20% of the disbursed amount if the Employment Shortfall occurred in the fifth full calendar year after the disbursement was made.

The Grantee’s number of Full-time Permanent Employees shall be deemed to be the greater of the number as of the last payroll date in the month of December for such year or the average employment for the 12 month period computed by quarter.

Baseline Employment	401
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A	B
Reporting Date	Employment Goals
February 1, 2011	401+X+Y
February 1, 2012	401+X+Y
February 1, 2013	401+X+Y
February 1, 2014	401+X+Y
February 1, 2015	401+X+Y

X = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in section C.5 above (i.e. X=75, and Employment Goals shall equal [401 + X = 476] if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Second Disbursement has not yet been made, then X=0.

Y = Grantee’s Employment Increment that will be the basis of the Third Disbursement of the Grant as described in section C.5 above (i.e. Y=75, and Employment Goals shall equal [401 + X + Y = 551] if the Third Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Third Disbursement has not yet been made, then Y=0.

IV. Statutory Basis

The project meets the statutory requirement of a JOBS Now 100 Project because the Company will create at least 100 new full-time permanent private sector jobs. No residential relocation is required as there are no families or individuals residing on the site.

V. Environmental Review

ESD staff has determined that, although the funding of this project by ESD may constitute an “action” as defined by the State Environmental Quality Review Act (“SEQRA”), the project itself has been previously completed. ESD’s action in the funding decision will not alter the adverse environmental impacts, if any, of the project as completed. ESD staff accordingly believes that funding the completed project will not have any significant adverse impacts on the environment.

VI. Affirmative Action

ESD’s Non-discrimination and Affirmative Action policy will apply. The Company is encouraged to include minorities and women in any job opportunities created by the project, and to solicit and utilize Minority and Women-owned Business Enterprises for any contractual opportunities generated in connection with the project.

VII. ESD Financial Assistance Subject to Availability of Funds and Additional Approval

The provision of ESD financial assistance is contingent upon the availability of funds and the approval of the State Division of the Budget.

VIII. Additional Submissions to Directors

Resolutions
New York State Map
Project Finance Memorandum
Cost-Benefit Analysis

September 17, 2009

Hicksville (Nassau County) – Sleepy's Capital – JOBS Now Program – Capital Grant – Findings and Determinations Pursuant to Section 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the Sleepy's Capital – JOBS Now Program – Capital Grant Project (the “Project”), the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the “Plan”) for the Project submitted to this meeting, together with such changes therein as the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing, and that upon such written finding being made, the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Sleepy's, LLC a grant for a total amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000) from the JOBS Now Program, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) be, subsequent to the making of the grant, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the grant as he or she may deem necessary or appropriate in the administration of the grant; and be it further

RESOLVED, that the provision of ESD financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

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September 17, 2009

Hicksville (Nassau County) – Sleepy's Capital – JOBS Now Program – Capital Grant –
Determination of No Significant Effect on the Environment

RESOLVED, that based on the material submitted to the Directors with respect to the Sleepy's Capital Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment.

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