

Transcript Document No. 9(c)

**Final Authorizing Resolution
Carbone Commercial Property, LLC
Fitness Mill Facility**

Date: May 15, 2020

At a meeting of the City of Utica Industrial Development Agency, Utica, New York (the "Agency"), held at One Kennedy Plaza, Utica, New York at 8:30 a.m. on the 3rd day of March 2020, the following members of the Agency were:

Members Present: Vin Gilroy, Mark Curley, Emmett Martin

Member Excused: John Zegarelli, John Buffa

Also Present: Jack Spaeth (Executive Director), Linda Romano (BS&K – Agency Counsel)

Others: Bill Maxim and Marie Smithgall (North Atlantic States Reg Council of Carpenters)

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of a leasehold interest in and financing of a certain industrial development facility more particularly described below (Carbone Commercial Property, LLC Facility) and the leasing of the facility to Carbone Commercial Property, LLC.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Vincent J. Gilroy, Jr. voting aye;
Mark Curley voting aye; and
Emmett Martin voting aye.

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE THE LEASE AGREEMENT, LEASEBACK AGREEMENT, THE PILOT AGREEMENT, THE ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT, LOAN DOCUMENTS, AND RELATED DOCUMENTS WITH RESPECT TO THE CARBONE COMMERCIAL PROPERTY, LLC FACILITY LOCATED AT 1532 ERIE STREET IN THE CITY OF UTICA, ONEIDA COUNTY AND MAKING CERTAIN FINDINGS RELATING TO THE FACILITY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 710 of the Laws of 1981 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, Carbone Commercial Property, LLC (the "Company") has requested the Agency assist in a certain industrial development facility consisting of acquisition of a 4.3± acre parcel of vacant land located at 1532 Erie Street, City of Utica, Oneida County, New York (the "Land"); construction on the Land of a 47,541± square foot, single-story building and a 226-space parking lot to service the same (collectively, the "Improvements"); and acquisition and installation of machinery and equipment in the Improvements (the "Equipment"), all for the purpose of providing a full-service fitness facility and complementary retail services (the Land, Improvements and Equipment collectively, the "Facility" and the construction and equipping of the Facility is referred to as the "Project"); and

WHEREAS, the Company has agreed to lease the Facility to the Agency pursuant to a Lease Agreement (the "Lease Agreement") between the Agency and the Company; and

WHEREAS, the Agency has agreed to lease the Facility back to the Company pursuant to a Leaseback Agreement between the Agency and the Company (the "Leaseback Agreement") for its operation; and

WHEREAS, the Company will sublease a 32,541± square foot portion of the Improvements (the "Fitness Facility") to Carbone Athletics LLC (the "Sublessee") for its operation pursuant to a Sublease Agreement dated February 14, 2020 [as amended by a Lease Addendum dated as of January 1, 2021 (collectively, the "Sublease Agreement"); and

WHEREAS, the Company will sublease a 14,000± square foot portion of the Improvements (the "Retail Facility") to retail tenants to be identified at

a later time (the “Retail Sublessees”), which Retail Sublessees will provide services that complement the Fitness Facility;

WHEREAS, Adirondack Bank (the “Bank”) has agreed to finance a portion of the costs of the Facility by extending a loan to the Company in a principal amount not to exceed \$3,000,000.00 to be secured by (a) a Fee and Leasehold Mortgage and Security Agreement (the “Mortgage”) from the Agency and the Company to the Bank, (b) a Collateral Assignment of Leases and Rents (the “Assignment”) from the Agency and the Company to the Bank and (c) a Commercial Security Agreement (the “Security Agreement”) from the Agency and the Company to the Bank; and

WHEREAS, the Agency contemplates granting financial assistance to the company in the form of exemptions from sales tax, exemptions from mortgage recording tax and reduced real property taxes for a period of five years (the “Financial Assistance”), which Financial Assistance is a deviation from the Agency’s Uniform Tax Exemption Policy (the “Policy”); and

WHEREAS, the Agency by resolution duly adopted on January 7, 2020 as amended on March 3, 2020 (collectively, the “Resolution”) decided to proceed under the provisions of the Act to lease the Facility and directed that a public hearing be held so that all persons with views in favor of or opposed to either the financial assistance contemplated by the Agency, or the location or nature of the Facility, could be heard; and

WHEREAS, on February 6, 2020 a notice of the public hearing was published in the *Observer-Dispatch* and on February 5, 2020 written notice of the public hearing was mailed to the chief executive officer of the affected taxing jurisdictions in which the Facility is located; and

WHEREAS, because the project involves the removal or abandonment of a facility in the Village of New York Mills, the Agency also provided written notice of the public hearing to the affected tax jurisdictions pursuant to Section 859-a(5)(d) of the General Municipal Law; and

WHEREAS, the Agency determined by way of a Statement of Findings dated March 3, 2020 (the “Statement of Findings”) that the Facility is located in a “highly distressed area” as such term is defined in Section 854(18) of the General Municipal Law of the State of New York because the Facility is located in a designated Empire Development Zone as described in Article 18-B of the General Municipal Law, that the predominant purpose of the Project is to make available services which would not, but for the Project, be reasonably accessible to the residents of the City of Utica because of a lack of reasonably accessible retail trade

facilities offering such services, and the Facility will preserve and increase the overall number of permanent, private sector jobs in the State; and

WHEREAS, in accordance with Section 862(c) of the General Municipal law of the State of New York, the Agency is submitting the Statement of Findings to the Mayor of the City of Utica so that he may sign a Certificate of Chief Executive Officer (the "Certificate of Chief Executive Officer"), confirming the proposed action of the Agency with respect to the Facility; and

WHEREAS, on February 26, 2020 the Agency provided written notice to all affected taxing jurisdictions describing the Financial Assistance and citing the reasons it intends to deviate from the Policy, and inviting all to make comment on the Financial Assistance before considering this resolution; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities which may arise in connection with the transaction contemplated by the lease of the land and the transfer of a leasehold interest in the Facility.

NOW, THEREFORE, BE IT RESOLVED by the City of Utica Industrial Development Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(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; and

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) The acquisition, construction and equipping of the Facility, the leasing of the Facility to the Company, and the financing of the Facility through the Bank will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the City of Utica and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The acquisition, construction, equipping and financing of the Facility is reasonably necessary to induce the Company to maintain and expand its business operation in the State of New York; and

(e) Based upon representations of the Company and the Company's Counsel, the Facility conforms with the local zoning laws and planning regulations of the City of Utica and all regional and local land use plans for the area in which the Facility is located; and

(f) It is desirable and in the public interest for the Agency to acquire a leasehold interest in the Facility and lease the Facility to the Company; and

(g) the Project is reasonably necessary to discourage the Company from removing the Facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Company in its industry; and

(h) The SEQRA findings adopted by the Agency on February 4, 2020, encompassed the actions to be undertaken by this resolution and no changes have been made since that time to the proposed action that would create new or increased adverse environmental impacts; and

(i) The Lease Agreement will be an effective instrument whereby the Company conveys to the Agency a leasehold interest in the Facility; and

(j) the Leaseback Agreement will be an effective instrument whereby the Agency leases the Facility back to the Company; and

(k) The Environmental Compliance and Indemnification Agreement (the "Environmental Compliance and Indemnification Agreement") by and among the Agency, the Company and the Sublessee will be an effective instrument whereby the Company and the Sublessee agree to comply with all Environmental Laws (as defined therein) applicable to the Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws; and

(l) The Payment-In-Lieu-of-Tax Agreement (the "PILOT Agreement") between the Agency and the Company will be an effective instrument whereby the Company agrees to make payments in lieu of taxes for the term of the Leaseback Agreement; and

(m) The Mortgage, the Assignment and the Security Agreement will each be an effective instrument whereby the Agency and the Company grant the Bank a security interest in their respective interests in the Facility.

Section 2. In consequence of the foregoing, and subject to receipt of the signed Certificate of Chief Executive Officer, the Agency hereby determines to: (i) acquire a leasehold interest in the Facility from the Company pursuant to the Lease Agreement; (ii) execute, deliver and perform the Lease Agreement; (iii) lease the

Facility back to the Company pursuant to the Leaseback Agreement, (iv) execute, deliver and perform the Leaseback Agreement, (v) execute, deliver and perform the Environmental Compliance and Indemnification Agreement, (vi) execute, deliver and perform the PILOT Agreement; (vii) grant the Bank a security interest in the Facility; (viii) execute, deliver and perform the Mortgage, the Assignment and the Security Agreement; and (ix) deviate from Policy and grant the Financial Assistance.

Section 3. The Agency is hereby authorized to accept a leasehold interest in the real property described in Exhibit A to the Lease Agreement and the personal property described in Exhibit B to the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 4. The form and substance of the Lease Agreement, the Leaseback Agreement, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement, the Mortgage, the Assignment and the Security Agreement (each in substantially the forms customary to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 5.

(a) The Chairman, Vice Chairman, Secretary or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Lease Agreement, the Leaseback Agreement, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement, the Mortgage, the Assignment and the Security Agreement, each in substantially the forms customary to the Agency with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Secretary or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "Closing Documents"). The execution thereof by the Chairman, Vice Chairman, or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, Secretary or member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Leaseback Agreement).

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 Closing Documents,

and to execute and deliver all such additional certificates, instruments and documents, 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 the Closing Documents binding upon the Agency.

Section 7. This resolution shall take effect immediately.

STATE OF NEW YORK)
 : ss.:
COUNTY OF ONEIDA)

I, the undersigned Assistant Secretary of the City of Utica Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the City of Utica Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on the 3rd day of March 2020 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 such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Lease Agreement, the Leaseback Agreement, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement, the Mortgage, the Assignment and the Security Agreement contained in this transcript of proceedings are each in substantially the form approved by said meeting.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections 103a and 104, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand as of January 29, 2021.

CITY OF UTICA INDUSTRIAL
DEVELOPMENT AGENCY

By:



Jack Spaeth, Assistant Secretary