

Transcript Document No. 7(a)

**Inducement Resolution
Macartovin Apartments LLC Facility**

RESOLUTION OF THE CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION IN CONNECTION WITH A SALE-LEASEBACK OR LEASE-LEASEBACK TRANSACTION WITH MACARTOVIN APARTMENTS LLC, THE PRINCIPALS OF MACARTOVIN APARTMENTS LLC, AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT, AUTHORIZING A PUBLIC HEARING AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT.

WHEREAS, Macartovin Apartments LLC, on behalf of itself and/or the principals of Macartovin Apartments LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") and Macartovin Apartment Housing Development Funding Corporation, a housing development funding company formed pursuant to Article XI of the Private Housing Financing Law of the State of New York and Section 402 of the Not-For-Profit Corporation Law (the "HDFC") have applied to the City of Utica Industrial Development Agency (the "Agency") to enter into a sale-leaseback or lease-leaseback transaction in which the Agency will assist in (i) acquisition of one parcel of land measuring 0.43± acres in the aggregate located at 7 Devereux Street in the City of Utica, Oneida County, New York (collectively, the "Land") and the four-story mixed-use building and amenities located thereon (the "Improvements"); (ii) renovation of the Improvements into a mixed-use residential and commercial development consisting of sixty-six (66) affordable apartments comprising 98,000± square feet on the three upper floors and 16,000± square feet of commercial space on the ground floor (the "Commercial Improvements"); and (iii) acquisition and installation of furniture, fixtures and equipment in the Improvements (the "Equipment"), all to be used for the purpose of rehabilitation of an historic property and providing affordable housing for the elderly and disabled (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the acquisition, renovation and equipping of the Facility is referred to collectively as the "Project"); and

WHEREAS, the HDFC is the fee owner of the Facility, as nominee for the Company pursuant to a Nominee Agreement (the "Nominee Agreement") between the HDFC and the Company, and will enter into the lease-leaseback transaction for the

limited purpose of granting a leasehold interest to, and accepting a leasehold interest back from, the Agency; and

WHEREAS, the HDFC and the Company will lease the Facility to the Agency pursuant to a Lease Agreement; and

WHEREAS, the Facility will be leased back to the Company for its operation pursuant to a Leaseback Agreement by and among the Agency, the HDFC and the Company (the "Leaseback Agreement") and pursuant to Article 18-A of the General Municipal Law of the State of New York and Chapter 372 of the Laws of 1970 of the State of New York, as may be amended from time to time (collectively, the "Act"); and

WHEREAS, the Company, as beneficial owner, has all rights under the Nominee Agreement to accept a leasehold interest in the Facility, operate the Facility and is compelled to perform all of the obligations under the Leaseback Agreement on behalf of the HDFC; and

WHEREAS, the Company intends to further sublease individual residential units comprising the Facility to residential tenants (each a "Residential Sublessee" and collectively the "Residential Sublessees"); and

WHEREAS, the Company intends to further sublease the Commercial Improvements to commercial and/or retail tenants to be identified from time to time (each a "Commercial Sublessee" and collectively the "Commercial Sublessees"); and

WHEREAS, New York State HFA ("HFA") intends to finance a portion of the costs of the Facility by extending a loan to the Company in the maximum principal sum of \$2,640,000.00 to be secured by a Mortgage (the "HFA Mortgage") from the Company and HDFC to HFA; and

WHEREAS, _____ ("_____") intends to finance a portion of the costs of the Facility by extending a loan to the Company in the maximum principal sum of \$700,000.00 to be secured by a Mortgage (the "First Mortgage") from the Agency, the Company and HDFC to _____; and

WHEREAS, the City of Utica (the "City") intends to finance a portion of the costs of the Facility by extending a HOME loan to the Company in the maximum principal sum of \$125,000.00 to be secured by a Mortgage (the "HOME Mortgage") from the Agency, the Company and HDFC to the City; and

WHEREAS, the City intends to finance a portion of the costs of the Facility by extending a façade loan to the Company in the maximum principal sum of \$22,500.00 to be secured by a Mortgage (the “Façade Mortgage”) from the Agency, the Company and HDFC to the City; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording tax and abatement of real property tax for a period of thirty (30) years, during which time the Company will pay as PILOT Payments an amount equal to 7.00% of the Effective Gross Income of the Facility (the “Financial Assistance”), which Financial Assistance is a deviation from the Agency’s Uniform Tax Exemption Policy, to be more particularly described in a Final Authorizing Resolution to be adopted by the Agency prior to the closing of the transactions described herein; and

WHEREAS, the value of the proposed Financial Assistance is as follows:

Sales and use tax exemption estimated at \$318,010.00 but not to exceed \$349,812.00; and

Mortgage recording tax exemption estimated at \$23,000.00 but not to exceed \$25,300.00; and

Real property tax abatement estimated at \$2,908,250.00; and

WHEREAS, prior to the closing of a sale-leaseback or lease-leaseback transaction, and the granting of any Financial Assistance, a public hearing (the “Hearing”) will 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, can be heard; and

WHEREAS, notice of the Hearing will be given prior to the closing of a sale-leaseback or lease-leaseback transaction, and the granting of any Financial Assistance, and such notice (together with proof of publication) will be substantially in the form annexed hereto as **Exhibit A**; and

WHEREAS, the minutes of the Hearing are or will be annexed hereto as **Exhibit B**; and

WHEREAS, the Agency has given due consideration to the Application for Financial Assistance of the Company and the HDFC dated May 4, 2018 (the "Application") and to representations by the Company and the HDFC that the proposed sale-leaseback transaction or lease-leaseback transaction, is either an inducement to the Company to maintain and expand the Facility in the City of Utica or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the "SEQR Act" or "SEQRA"), the Agency constitutes a "State Agency"; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form and related documents (the "Questionnaire") with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, prior to the granting of any tax benefits, the Agency will complete its environmental review and make determinations for purposes of SEQRA.

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

- Section 1. (a) The acquisition, renovation and equipping of the Facility and the financial assistance thereof by the Agency, through the lease of the Facility to the Company by the Agency pursuant to a lease-leaseback transaction, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the City of Utica and the people of the State of New York and improve their standard of living, and thereby serve the public purposes of the Act and the same is, therefore, approved;
- (b) It is desirable and in the public interest for the Agency to enter into a lease-leaseback transaction, for the purpose of providing financial assistance for the acquisition, renovation and equipping of the Facility, together with necessary incidental expenses in connection therewith as reflected in the Application.

- Section 2. The form and substance of a proposed inducement agreement (in substantially the form presented to this meeting) by and between the Agency and the Company setting forth the undertakings of the Agency and the Company with respect to the closing of the lease-leaseback transaction, and the development of the Facility (the "Agreement") are hereby approved. The Chairman of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agreement, with such changes in terms and form as the Chairman shall approve. The execution thereof by the Chairman shall constitute conclusive evidence of such approval.
- Section 3. Subject to the conditions set forth in Section 4.02 of the Agreement, the Agency shall (i) acquire, renovate and equip the Facility, (ii) lease (with an obligation to purchase) or sell the Facility to the Company pursuant to an agreement by and between the Agency and the Company whereby the Company will be obligated, among other things, to make payments to or for the account of the Agency.
- Section 4. The Company is herewith and hereby appointed the agent of the Agency to acquire, renovate, equip and complete the Facility. The Company is hereby empowered to delegate its status as agent of the Agency to agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to acquire, renovate, equip and complete the Facility. The terms and conditions for the appointment of the Company as agent of the Agency for the purposes described in this resolution are set forth in the form of the attached letter addressed to the Company, marked as **Exhibit C** to this resolution. The form of such letter is incorporated herein by reference and is approved and adopted by the Agency, and the Chairman or Executive Director of the Agency or any other duly authorized official of the Agency are authorized to execute and deliver such letter to the Company. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency solely for purposes of making sales or leases of goods, services, and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agent of the Agency shall be deemed to be on behalf of the Agency and for the benefit of the Facility. The Company shall indemnify the Agency with respect to

any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Agency.

Section 5. The law firm of Bond, Schoeneck & King, PLLC is appointed Transaction Counsel and Agency Counsel in connection with the lease-leaseback transaction.

Section 6. Counsel to the Agency and Transaction Counsel are hereby authorized to work with counsel to the Company and others to prepare, for submission to the Agency, all documents necessary to effect the lease-leaseback transaction.

Section 7. The Chairman of the Agency is hereby authorized and directed (i) to distribute copies of this resolution to the Company, and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 8. This resolution shall take effect immediately.

[end of resolution]

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 this 8th day of May 2018.

Jack N. Spaeth, Assistant Secretary

EXHIBIT A
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York State General Municipal Law, will be held by the City of Utica Industrial Development Agency (the "Agency") on the ___ day of _____ 2018 at 9:00AM, local time, at Utica City Hall, Common Council Chambers, First Floor, One Kennedy Plaza, Utica, New York, in connection with the following matters:

Macartovin Apartments, LLC, on behalf of itself and/or the principals of Macartovin Apartments, LLC, as nominee for Macartovin Apartments Housing Development Fund Corporation, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the City of Utica Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in (i) acquisition of one parcel of land measuring 0.43± acres in the aggregate located at 7 Devereux Street in the City of Utica, Oneida County, New York (collectively, the "Land") and the four-story mixed-use building and amenities located thereon (the "Improvements"); (ii) renovation of the Improvements into a mixed-use residential and commercial development consisting of sixty-six (66) affordable apartments comprising 98,000± square feet on the three upper floors and 16,000± square feet of commercial space on the ground floor; and (iii) acquisition and installation of furniture, fixtures and equipment in the Improvements (the "Equipment"), all to be used for the purpose of rehabilitation of an historic property and providing affordable housing for the elderly and disabled (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the acquisition, renovation and equipping of the Facility is referred to collectively as the "Project"). The Facility will be initially owned and operated by the Company.

The Company will own the Facility and will lease the Facility to the Agency for a term of approximately thirty (30) years (the "Lease Term"). The Agency will lease the Facility back to the Company for the Lease Term, and the Company will further sublease the Facility to residential and commercial tenants to be determined from time to time. At the end of the Lease Term, the Agency will terminate its leasehold interest in the Facility. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes, exemptions from sales and use taxes, and abatement of real property tax for a period of thirty (30) years, which financial assistance is a deviation from the Agency's Uniform Tax Exemption Policy, to be more particularly described in a Final Authorizing Resolution to be adopted by the Agency prior to the closing of the transactions described herein.

A representative of the Agency will at the above-stated time and place hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the Facility. A copy of the Application for Financial Assistance filed by the Company with the Agency, including an analysis of the costs and benefits of the proposed Project, is available for public inspection at the offices of the Agency, One Kennedy Plaza, Utica, New York.

CITY OF UTICA INDUSTRIAL
DEVELOPMENT AGENCY

Dated: _____, 2018

By: /s/ Vincent J. Gilroy, Jr., Chairman

EXHIBIT B

MINUTES OF PUBLIC HEARING

City of Utica Industrial Development Agency
2018 Real Estate Lease
Macartovin Apartments LLC Facility

1. Jack Spaeth, Executive Director of the City of Utica Industrial Development Agency (the "Agency"), called the hearing to order.
2. The Executive Director, also being the Assistant Secretary of the Agency, recorded the minutes of the hearing.
3. The Executive Director then described the proposed project and related financial assistance as follows:

Macartovin Apartments, LLC, on behalf of itself and/or the principals of Macartovin Apartments, LLC, as nominee for Macartovin Apartments Housing Development Fund Corporation, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the City of Utica Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in (i) acquisition of one parcel of land measuring 0.43± acres in the aggregate located at 7 Devereux Street in the City of Utica, Oneida County, New York (collectively, the "Land") and the four-story mixed-use building and amenities located thereon (the "Improvements"); (ii) renovation of the Improvements into a mixed-use residential and commercial development consisting of sixty-six (66) affordable apartments comprising 98,000± square feet on the three upper floors and 16,000± square feet of commercial space on the ground floor; and (iii) acquisition and installation of furniture, fixtures and equipment in the Improvements (the "Equipment"), all to be used for the purpose of rehabilitation of an historic property and providing affordable housing for the elderly and disabled (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the acquisition, renovation and equipping of the Facility is referred to collectively as the "Project"). The Facility will be initially owned and operated by the Company.

The Company will own the Facility and will lease the Facility to the Agency for a term of approximately thirty (30) years (the "Lease Term"). The Agency will lease the Facility back to the Company for the Lease Term, and the Company will further sublease the Facility to residential and commercial tenants to be determined from time to time. At the end of the Lease Term, the Agency will terminate its leasehold

interest in the Facility. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes, exemptions from sales and use taxes, and abatement of real property tax for a period of thirty (30) years, which financial assistance is a deviation from the Agency's Uniform Tax Exemption Policy, to be more particularly described in a Final Authorizing Resolution to be adopted by the Agency prior to the closing of the transactions described herein.

A representative of the Agency will at the above-stated time and place hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the Facility. A copy of the Application for Financial Assistance filed by the Company with the Agency, including an analysis of the costs and benefits of the proposed Project, is available for public inspection at the offices of the Agency, One Kennedy Plaza, Utica, New York.

4. The Executive Director then opened up the hearing for comments from the floor for or against the proposed financial assistance and the location and nature of the Facility. Below is a listing of the persons heard and a summary of their views.

5. The Executive Director then asked if there were any further comments, and, there being none, the hearing was closed at ____ a.m.

(Assistant) Secretary

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 foregoing copy of the minutes of a public hearing held by the City of Utica Industrial Development Agency (the "Issuer") on _____, 2018 at _____ a.m. local time, at _____, _____, New York _____ with the original thereof on file in the office of the Issuer, and that the same is a true and correct copy of the minutes in connection with such matter.

I FURTHER CERTIFY that (i) pursuant to Title 1 of Article 18-A of the New York General Municipal Law, said hearing was open to the general public, and public notice of the time and place of said hearing was duly given in accordance with such Title 1 of Article 18-A, (ii) the hearing in all respects was duly held, and (iii) members of the public had an opportunity to be heard.

IN WITNESS WHEREOF, I have hereunto set my hand as of _____, 2018.

(Assistant) Secretary

EXHIBIT C

(To be copied on Agency letterhead and delivered to the Company when appropriate.)

_____, 2018

Amelia Casciani, Vice President of
Real Estate Development
Macartovin Apartments LLC
400 East Avenue
Rochester NY 14607

RE: *City of Utica Industrial Development Agency Lease-Leaseback Transaction
(Macartovin Apartments LLC Facility)*

Dear Ms. Casciani:

Pursuant to a resolution duly adopted on May 8, 2018, the City of Utica Industrial Development Agency (the "Agency") appointed Macartovin Apartments LLC, on behalf of itself and/or the principals of Macartovin Apartments LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") the true and lawful agent of the Agency to enter into a transaction in which the Agency will assist in (i) acquisition of one parcel of land measuring 0.43± acres in the aggregate located at 7 Devereux Street in the City of Utica, Oneida County, New York (collectively, the "Land") and the four-story mixed-use building and amenities located thereon (the "Improvements"); (ii) renovation of the Improvements into a mixed-use residential and commercial development consisting of sixty-six (66) affordable apartments comprising 98,000± square feet on the three upper floors and 16,000± square feet of commercial space on the ground floor; and (iii) acquisition and installation of furniture, fixtures and equipment in the Improvements (the "Equipment"), all to be used for the purpose of rehabilitation of an historic property and providing affordable housing for the elderly and disabled (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the acquisition, renovation and equipping of the Facility is referred to collectively as the "Project").

It is the intent of the Agency that this agency appointment include, from the effective date of such appointment, authority to purchase, lease and otherwise use on behalf of the Agency all materials, equipment, goods, services and supplies to be incorporated into and made an integral part of the Facility and also include the following activities as they relate to the renovation and equipping of the Facility, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of the Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and

equipment in connection with the renovation and equipping of the Facility; (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the renovation and equipping of the Facility including all utility services and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs), installed or placed in, upon or under such building, including all repairs and replacements of such property.

The agency appointment includes the power to delegate such agency appointment, in whole or in part, to agents, subagents, contractors, subcontractors, materialmen, suppliers and vendors of the Company and to such other parties as the Company chooses so long as they are engaged, directly or indirectly, in the activities hereinbefore described.

In exercising this agency appointment, the Company, its agents, subagents, contractors and subcontractors, should give the supplier or vendor a copy of this letter to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency. Construction contracts, purchase orders and other agreements relating to the Project should be executed by the Company, or any sub-agent appointed by the Company, as agent of the Agency. Also, purchases must be billed or invoiced by the vendor to the Company, or any sub-agent appointed by the Company, as agent of the Agency (e.g. "Macartovin Apartments LLC as agent for the City of Utica Industrial Development Agency"). The supplier or vendor should identify the Facility as the **"Macartovin Apartments LLC Facility"** on each bill or invoice and indicate thereon that the Company, its agents, subagents, contractors and subcontractors acted as agent for the City of Utica Industrial Development Agency in making the purchase. You and each of your agents, subagents, contractors and/or subcontractors claiming a sales tax exemption in connection with the Facility must execute a copy of the Contract in Lieu of Exemption Certificate attached hereto, and must complete a New York State Department of Taxation and Finance Form ST-60. Original copies of each Contract in Lieu of Exemption Certificate and completed Form ST-60 must be delivered to the Agency within five (5) days of the appointment of each of your agents, subagents, contractors or subcontractors. Any agent, subagent, contractor or subcontractors of the Company which delivers completed Form ST-60 to the Agency will be deemed to be the agent, subagent, contractor or subcontractor of the Agency for purposes of acquiring, renovating and equipping the Facility. **Failure to comply with these requirements may result in loss of sales tax exemptions for the Facility.**

You should be aware that the New York State General Municipal Law requires you to file with the New York State Department of Taxation and Finance Form ST-340 (Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority) regarding the value of sales tax exemptions you, your agents, consultants or subcontractors have claimed pursuant to the authority

we have conferred on you with respect to this Project. This statement must be filed on an annual basis for as long as the Company is claiming a sales tax exemption. **The penalty for failure to file such statement is the removal of your authority to act as an agent.**

The value of exemptions from sales and use taxes on materials and equipment currently authorized by the Agency is estimated at \$318,010.00 but not to exceed \$349,812.00 in the aggregate. If the exemptions claimed by the Company exceed \$348,812.00 in the aggregate, it may subject the Company to recapture of the New York State portion of sales tax.

The aforesaid appointment of the Company as agent of the Agency to renovate and equip the Facility shall **expire on [ONE YEAR FROM ISSUE DATE]**. If, for some reason, this transaction never closes, you will be liable for payment of the sales tax, if applicable and you are not otherwise exempt, on all materials purchased.

Please sign and return a copy of this letter for our files.

Very truly yours,

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Jack N. Spaeth, Executive Director

ACCEPTED and AGREED

MACARTOVIN APARTMENTS LLC

By: _____
Name:
Title: