

Transcript Document No. 8

**Final Authorizing Resolution
Lahinch Utica III LLC (Mayro) Facility**

Date: August 9, 2023

At a meeting of the City of Utica Industrial Development Agency, Utica, New York (the "Agency"), held at One Kennedy Plaza, Utica, New York on August 9, 2023, the following members of the Agency were:

Members Present: Vin Gilroy, Mark Curley, John Zegarelli

Excused: John Buffa, Emmett Martin

Also Present: Jack Spaeth (Executive Director), Laura Ruberto and Linda Romano (BSK – Agency Counsel)

Others: Enessa Carbone (167 Genesee Street, LLC), Preston MacDiarmid (MacSpace)

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, partial demolition, rehabilitation, renovation and equipping of a certain industrial development facility more particularly described below (Lahinch Utica III LLC – Facility) and the leasing of the facility to Lahinch Utica III LLC.

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

Vin Gilroy voting aye;
Mark Curley voting aye;
John Zegarelli voting aye.

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE THE LEASE AGREEMENT, LEASEBACK AGREEMENT, PILOT AGREEMENT, ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT, MORTGAGE, ASSIGNMENT AND RELATED DOCUMENTS WITH RESPECT TO THE LAHINCH UTICA III LLC (MAYRO) FACILITY LOCATED AT 239 GENESEE STREET IN THE CITY OF UTICA, ONEIDA COUNTY.

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, Lahinch Utica III LLC, on behalf of itself and/or the principals of Lahinch Utica III LLC, 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 the acquisition, partial demolition, historic rehabilitation and renovation of a six-story historic commercial building measuring 70,150± square feet commonly known as the "Mayro Building" into a mixed-use building with 48 market rate residential units with common area amenities and 17,800± square feet of retail/commercial space (collectively, the "Improvements") situated on a parcel of land measuring 0.909± acres located at 239 Genesee Street, City of Utica, Oneida County, New York (the "Land"), and the acquisition and installation of equipment in the Improvements (the "Equipment"), all for the adaptive reuse of the Improvements to lease to commercial and/or retail and/or residential tenants in furtherance of the Downtown Revitalization Initiative, the Oneida County Vision2020 initiative and the City of Utica Housing Study, and to enhance economic development and retain employment in downtown Utica (the Land, the Improvements and the Equipment referred to collectively as the "Facility" and the partial demolition, renovation, historic rehabilitation and equipping of the Facility referred to collectively 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 further sublease portions of the Facility to residential tenants, to be identified from time to time (the “Residential Sublessees”); and

WHEREAS, the Company will further sublease portions of the Facility to commercial and/or retail tenants, to be identified (the “Commercial Sublessees” and together with the Residential Sublessees, the “Sublessees”); and

WHEREAS, NBT Bank, National Association (the “Bank”) intends to finance a portion of the costs of the Facility by way of a loan to the Company in the maximum principal amount of \$11,308,113.00 to be secured by (a) a Building Loan and Project Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (the “Mortgage”) from the Agency and the Company to the Bank; and (b) an Assignment of Leases and Rents (the “Assignment”) from the Agency and the Company to the Bank; and

WHEREAS, the Company has submitted to the Agency a “Limited Scope Market Study Proposed Redevelopment Mayro Building, 239 Genesee Street, Utica, New York” prepared by Newmark Valuation and Advisory dated February 21, 2023 (the “Market Study”) that supports: (i) the Project will help to fill the need for housing identified in the study entitled, *Oneida County Vision 2020 – Path Toward Prosperity Initiative* and the Utica Housing Study dated June 2022 by providing modern residential units in downtown Utica at a price that is affordable to middle income professionals; (ii) the Project will increase the density and residential stock in downtown Utica; (iii) the Project will provide housing options for residents of downtown Utica as well as individuals looking to relocate to downtown Utica; (iv) by redeveloping and stabilizing the existing buildings (which are historic, distressed and underutilized), the Project is in furtherance of the Downtown Revitalization Initiative and is consistent with the Master Plan for the City of Utica; and (v) the Project will support and complement current and future development projects, including the Mohawk Valley Health Services downtown campus, the Nexus Center and the Wolfsped facility; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of:

- Exemptions from sales and use taxes on materials and equipment purchased in connection with the Project, the value of which is estimated at \$788,741; and
- Exemptions from mortgage recording taxes, the value of which is estimated at \$84,811; and

- Abatement of real property taxes for a period of twelve years, the value of which is estimated at \$634,338, during which time the Company will make the following payments:

Yr 1	no taxes
Yr 2 – Yr 8	100% of taxes on base assessment*
Yr 9	100% of taxes on base assessed value + 20% of taxes on increase between base and final assessments **
Yr 10	100% of taxes on base assessed value + 40% of taxes on increase between base and final assessments
Yr 11	100% of taxes on base assessed value + 60% of taxes on increase between base and final assessments
Yr 12	100% of taxes on base assessed value + 80% of taxes on increase between base and final assessments
Yr 13	Full taxes based on final assessment

* Base assessed value is equal to the assessed value as determined by City Assessor on March 1, 2023

** Final assessed value is equal to assessed value upon completion of Project as determined by City Assessor

which financial assistance represents a deviation from the Agency’s Uniform Tax Exemption Policy (the “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 Agency is contemplating deviating from Policy for the following reasons:

- ✓ The nature of the proposed Facility – **The mixed-use nature of the Facility will provide necessary amenities, is in furtherance of the Downtown Revitalization Initiative and is consistent with the Master Plan for the City of Utica. The Facility will also fill a demand for housing identified in the Vision2020 initiative and the City of Utica Housing Study.**
- ✓ The nature of the Facility before the project begins -- **The Mayro Building is an historic building that is underutilized and in need of rehabilitation.**

- ✓ The economic condition of the area at the time of the application – **the Facility is located in an area that has been designated an economic development zone pursuant to Article 18-B of the General Municipal Law, and is therefore located in a "highly distressed area" (as defined in Section 854(18) of the New York General Municipal Law) because the Facility is located in a former Empire Development Zone as described in Article 18-B of the General Municipal Law**
- ✓ The impact of the proposed Facility on existing and proposed businesses and economic development projects in the vicinity – **redeveloping and stabilizing the Facility will help to revitalize downtown Utica and will support and complement new and future projects, including the Mohawk Valley Health Services downtown campus, the Nexus Center and the Wolfsped facility.**
- ✓ The extent to which the Facility will retain and increase permanent, private sector jobs
- ✓ The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located – **as the building has been underutilized for several years, private development and ownership will be a boost to the local taxing jurisdictions by providing for additional real property tax revenues through a higher assessed value.**

WHEREAS, the Agency by resolution duly adopted on June 7, 2023 (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 June 20, 2023 the Agency mailed notices to all affected taxing jurisdictions describing the Financial Assistance and the Agency's reasons for deviating from its Policy, and also providing the date and time of the public hearing and this meeting so that each may have the opportunity to comment on the proposed Financial Assistance; and

WHEREAS, the Agency has reviewed the minutes of the public hearing conducted on July 6, 2023 and all comments submitted in connection thereto; 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, partial demolition, rehabilitation, renovation and equipping of the Facility, the financing of the Facility, the leasing of the Facility to the Company and the subleasing of the Facility to the Sublessees 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, rehabilitation, renovation and equipping 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 made by the Company and based upon the Market Study, the Facility will promote employment opportunities and prevent economic deterioration in the area served by the Agency; and

(f) 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

(g) 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

(h) The SEQRA findings adopted by the Agency on June 7, 2023 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, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Company conveys to the Agency a leasehold interest in the Facility; and

(j) the Leaseback Agreement, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency leases the Facility back to the Company; and

(k) the Payment-In-Lieu-of-Tax Agreement by and between the Agency and the Company (the "PILOT Agreement"), in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency and the Company set forth the terms and conditions of their Agreement regarding the Company's payments in lieu of real property taxes; and

(l) The Environmental Compliance and Indemnification Agreement (the "Environmental Compliance and Indemnification Agreement") by and between the Agency and the Company, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Company agrees 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

(m) The Mortgage, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency and the Company mortgage to the Bank their respective interests in the Facility; and

(n) The Assignment, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency and the Company assign to the Bank its respective interests in the leases and rents.

Section 2. In consequence of the foregoing, 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 PILOT Agreement, (vi) execute, deliver and perform the Environmental Compliance and Indemnification Agreement, (vii) grant a security interest in the Facility to the Lender pursuant to the Mortgage and the Assignment, (viii) execute, deliver and perform the Mortgage and the Assignment; and (ix) deviate from its Policy and authorize 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 (each in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved. The form and substance of the Mortgage and the Assignment are hereby approved, subject to approval by Agency Counsel and the condition they contain the Agency's standard provisions.

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, and the Assignment, in form satisfactory to the Chairman and Agency Counsel, 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 August 9, 2023 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 and the Assignment contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or 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, (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 December 22, 2023.

CITY OF UTICA INDUSTRIAL
DEVELOPMENT AGENCY

By:



Jack Spaeth, Assistant Secretary