

Transcript Document No. 7(a)

**Final Authorizing Resolution
Utica Travelers Building LLC Facility**

Date: June 23, 2021

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 the 23rd day of June 2021, the following members of the Agency were:

PRESENT: Vincent J. Gilroy, Jr.
Mark Curley
John Zegarelli

ALSO PRESENT: Jack Spaeth
Linda E. Romano, Esq. (via WebEx)

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, rehabilitation, renovation and equipping of a certain industrial development facility more particularly described below (Utica Travelers Building LLC Facility) and the leasing of the facility to Utica Travelers Building 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
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 UTICA TRAVELERS BUILDING LLC FACILITY LOCATED AT 64 – 74 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, Utica Travelers Building LLC (hereinafter referred to as the "Company") has presented an application (the "Application") to the City of Utica Industrial Development Agency (the "Agency") requesting that the Agency provide financial assistance relating to the acquisition, partial demolition, historic rehabilitation and renovation of an existing $\pm 39,000$ square foot vacant historic industrial building into a mixed-use building with 32-units of market rate residential units and $10,000\pm$ square feet of commercial space with on-site parking (collectively, the "Improvements") situated on a $1.354\pm$ acre parcel of land located at 64 – 74 Genesee Street (mailing address 70 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 and the Oneida County Vision2020 initiative, 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 the Facility to Utica Travelers MT LLC (the "Master Sublessee") for its operation pursuant to a Master

Lease Agreement (the "Master Sublease") between the Company and the Master Sublessee; and

WHEREAS, the Master Sublessee will further sublease portions of the Facility to residential tenants, to be identified from time to time (the "Residential Sublessees"); and

WHEREAS, the Master Sublessee 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, the Agency by resolution duly adopted on May 12, 2021 (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, the Agency contemplates providing financial assistance to the Company in the form of exemptions from sales tax, exemptions from mortgage recording tax and abatement of real property tax for a period of twelve years (the "Financial Assistance"), which Financial Assistance represents a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"); and

WHEREAS, on May 20, 2021 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 this meeting so that each may have the opportunity to comment on the proposed Financial Assistance; 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 \$7,500,000.00 to be secured by (a) a 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 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, 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, based upon representations made by the Company, the Facility will promote employment opportunities and prevent economic deterioration in the area served by the Agency; 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 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 SEQRA findings adopted by the Agency on June 23, 2021 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
- (h) 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

(i) 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

(j) 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

(k) The Environmental Compliance and Indemnification Agreement (the "Environmental Compliance and Indemnification Agreement") by and among the Agency, the Company and the Master Sublessee, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Company and the Master 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 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

(m) 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 by granting 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 and the Assignment (each in substantially the forms presented 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, 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.

