

Transcript Document No. 7(a)

**Final Authorizing Resolution
Doyle Hardware Building LLC Facility**

Date: October 3, 2017

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 3rd day of October 2017, the following members of the Agency were:

PRESENT: John Buffa
 Vincent J. Gilroy, Jr.
 Joseph Hobika, Sr. (by phone)
 Emmett Martin
 John Zegarelli

ALSO PRESENT: Jack Spaeth
 Linda E. Romano, Esq. (Bond, Schoeneck & King)

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 (Doyle Hardware Building Facility) and the leasing of the facility to Doyle Hardware Building LLC.

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

John Buffa voting aye
Vincent J. Gilroy, Jr. voting aye
Joseph Hobika, Sr. voting aye
Emmett Martin voting aye
John Zegarelli voting aye

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE THE LEASE AGREEMENT, LEASEBACK AGREEMENT, PILOT AGREEMENT, ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT, CONSTRUCTION MORTGAGE, PROJECT MORTGAGE, ASSIGNMENT AND RELATED DOCUMENTS WITH RESPECT TO THE DOYLE HARDWARE BUILDING LLC FACILITY LOCATED AT 322 – 328 MAIN STREET AND 330 – 334 MAIN 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, Doyle Hardware 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 renovation and rehabilitation of an existing $\pm 83,000$ square foot, four-story building (the "Improvements") situated on two parcels of land totaling 1.108 \pm acres in the aggregate, located at 322 – 328 Main Street and 330 – 334 Main Street, City of Utica, Oneida County, New York (the "Land"), and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the adaptive reuse of the Improvements to create 56 market rate residential units and commercial and/or retail space, all for lease to commercial and/or retail and/or residential tenants and to enhance economic development and retain employment in downtown Utica (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the renovation, rehabilitation 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 Agency by resolution duly adopted on September 5, 2017 (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 September 19, 2017 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, CPC Funding SPE 1 LLC, a New York limited liability company, whose address is c/o The Community Preservation Corporation, 28 East 28th Street, 9th Floor, New York, New York 10016-7943, as beneficiary, and its successors and assigns (the "Bank") intends to finance a portion of the costs of the Facility by way of (a) a loan to the Company in the maximum principal amount of \$788,000.00 to be secured by a Multifamily Project Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (the "Project Loan Mortgage") from the Agency and the Company to the Bank; and (b) a loan to the Company in the maximum principal amount of \$11,212,000.00 to be secured by a Multifamily Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (the "Construction Loan Mortgage") 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 September 5, 2017, 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 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

(l) The Project Mortgage and the Construction Mortgage, in forms satisfactory to the Chairman and Agency Counsel, will be effective instruments 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 Project Mortgage, the Construction Mortgage and the Assignment, (viii) execute, deliver and perform the Project Mortgage, the Construction 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 Project Mortgage, the Construction 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 Project Mortgage, the Construction 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:

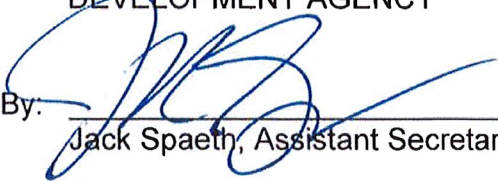
That I have compared the annexed extract of the minutes of the meeting of the City of Utica Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on the 3rd day of October 2017 with the original thereof on file in my office, and that the same is a true and correct 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 Project Mortgage, the Construction 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 this 19th day of October 2017.

CITY OF UTICA INDUSTRIAL
DEVELOPMENT AGENCY

By: 

Jack Spaeth, Assistant Secretary



CITY OF UTICA

Utica Industrial Development Agency
1 Kennedy Plaza, Utica, New York 13502
(315)792-0195 fax: (315)797-6607

ROBERT PALMIERI
MAYOR

JOSEPH HOBICA, SR
CHAIRMAN

JACK SPAETH
EXECUTIVE DIRECTOR

September 19, 2017

Anthony J. Picente, Jr.
Oneida County Executive
Oneida County Office Building
800 Park Avenue
Utica, New York 13501

Re: Doyle Hardware Building, LLC Facility

Dear Sir:

On October 3, 2017 at 8:30 a.m. local time at Utica City Hall, Department of Urban and Economic Development Conference Room, One Kennedy Plaza, Utica, New York, the City of Utica Industrial Development Agency (the "Agency") will meet to consider a final authorizing resolution regarding this project for the use of Doyle Hardware Building, LLC (the "Company").

The Company has applied to the Agency for financial assistance in connection with a project consisting of the acquisition, rehabilitation and renovation of an existing $\pm 83,000$ square foot, four-story building (the "Improvements") situated on two parcels of land totaling 1.108 \pm acres in the aggregate, located at 322 – 328 Main Street and 330 – 334 Main 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 create 56 market rate residential units and commercial and/or retail space, all for lease to commercial and/or retail and/or residential tenants and to enhance economic development and retain employment in downtown Utica (the Land, the Improvements and the Equipment referred to collectively as the "Facility").

The financial assistance contemplated by the Agency constitutes a deviation from its Uniform Tax Exemption Policy (the "Policy") in the following respects: the Company shall make the following payments-in-lieu-of-taxes for the Facility:

Year 1	no taxes
Year 2 – 8	100% of taxes on base assessment*
Year 9	100% of taxes on base assessed value + 20% of taxes on increase between base and final assessments **

Year 10	100% of taxes on base assessed value + 40% of taxes on increase between base and final assessments
Year 11	100% of taxes on base assessed value + 60% of taxes on increase between base and final assessments
Year 12	100% of taxes on base assessed value + 80% of taxes on increase between base and final assessments
Year 13 and after	Full taxes based on final assessment

* Base assessed value is equal to the assessed value in 2017

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

The Agency is also contemplating granting financial assistance in the form of exemptions from sales tax and mortgage recording tax, which is consistent with the Agency's Policy.

The Agency is deviating from its policy for the following reasons:

- ✓ The nature of the proposed Facility – **The mixed-use nature of the Facility will provide necessary amenities and is consistent with the Master Plan for the City of Utica. The Facility will also fill a demand for housing identified in the Vision 2020 study.**
- ✓ The nature of the Facility before the project begins -- **The Facility is a distressed property in the Bagg's Square Historic District.** 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**
- ✓ The extent to which the Facility will retain and increase permanent, private sector jobs
- ✓ The likelihood of accomplishing the proposed Facility in a timely fashion – **stabilization of the building has taken place as further deterioration of the structure would render it undevelopable**
- ✓ The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located – **private development and ownership will be a boost to the local taxing jurisdictions by providing for additional real property tax revenues.**

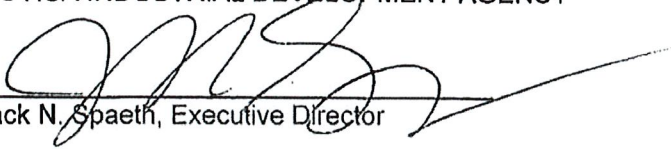
You are welcome to attend such meeting at which time you will have an opportunity, both orally and in writing, to present your views with respect to the project. We are providing this notice to you, pursuant to Chapters 356 and 357 of the Laws of 1993, as the chief executive officer of an affected tax jurisdiction within which the project is located.

Should you desire to discuss this matter or if you have any questions concerning this notice please feel free to contact Jack Spaeth at the Agency at telephone number 315-792-0195.

Very truly yours,

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

By:



Jack N. Spaeth, Executive Director

JNS/lsr



CITY OF UTICA

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1 Kennedy Plaza, Utica, New York 13502
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ROBERT PALMIERI
MAYOR

JOSEPH HOBICA, SR
CHAIRMAN

JACK SPAETH
EXECUTIVE DIRECTOR

September 19, 2017

Robert Palmieri
Mayor, City of Utica
One Kennedy Plaza
Utica, New York 13502

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- ✓ 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**
- ✓ The extent to which the Facility will retain and increase permanent, private sector jobs
- ✓ The likelihood of accomplishing the proposed Facility in a timely fashion – **stabilization of the building has taken place as further deterioration of the structure would render it undevelopable**
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Should you desire to discuss this matter or if you have any questions concerning this notice please feel free to contact Jack Spaeth at the Agency at telephone number 315-792-0195.

Very truly yours,

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

By:

A handwritten signature in black ink, appearing to read 'JNS', written over a horizontal line.

Jack N. Spaeth, Executive Director

JNS/lr



CITY OF UTICA

Utica Industrial Development Agency
1 Kennedy Plaza, Utica, New York 13502
(315)792-0195 fax: (315)797-6607

ROBERT PALMIERI
MAYOR

JOSEPH HOBICA, SR
CHAIRMAN

JACK SPAETH
EXECUTIVE DIRECTOR

September 19, 2017

Christopher Salatino, President
Board of Education
Utica City School District
106 Memorial Parkway
Utica, New York 13501

Re: Doyle Hardware Building, LLC Facility

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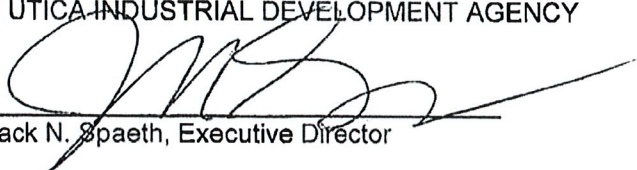
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Very truly yours,

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

By:



Jack N. Spaeth, Executive Director

JNS/lsr



CITY OF UTICA

Utica Industrial Development Agency
1 Kennedy Plaza, Utica, New York 13502
(315)792-0195 fax: (315)797-6607

ROBERT PALMIERI
MAYOR

JOSEPH HOBICA, SR
CHAIRMAN

JACK SPAETH
EXECUTIVE DIRECTOR

September 19, 2017

Bruce Karam, Superintendent
Utica City School District
106 Memorial Parkway
Utica, New York 13501

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- ✓ 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**
- ✓ The extent to which the Facility will retain and increase permanent, private sector jobs
- ✓ The likelihood of accomplishing the proposed Facility in a timely fashion – **stabilization of the building has taken place as further deterioration of the structure would render it undevelopable**
- ✓ 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 off the tax rolls for five years, private development and ownership will be a boost to the local taxing jurisdictions by providing for additional real property tax revenues.**


You are welcome to attend such meeting at which time you will have an opportunity, both orally and in writing, to present your views with respect to the project. We are providing this notice to you, pursuant to Chapters 356 and 357 of the Laws of 1993, as the chief executive officer of an affected tax jurisdiction within which the project is located.

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Very truly yours,

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

By:



Jack N. Spaeth, Executive Director

JNS/lst