

Transcript Document No. 9(a)

**Final Authorizing Resolution
Macartovin Apartments LLC Facility**

Date: November 12, 2019

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 12th day of November 2019, the following members of the Agency were:

Members Present: Mark Curley, John Buffa, John Zegarelli

Member Excused: Vin Gilroy, Emmett Martin

Also Present: Jack Spaeth (Executive Director)

Others: Laura Ruberto (BS&K – Agency Counsel)

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, renovation and equipping of a certain industrial development facility more particularly described below (Macartovin Apartments LLC Facility) and the leasing of the facility to Macartovin Apartments LLC.

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

John Buffa voting aye;
John Zegarelli voting aye; and
Mark Curley voting aye.

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE THE LEASE AGREEMENT, LEASEBACK AGREEMENT, PILOT AGREEMENT, ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT AND RELATED DOCUMENTS, AND TO SUBORDINATE ITS LEASES TO THE LIENS OF THE HFA MORTGAGE AND THE FIRST MORTGAGE, WITH RESPECT TO THE MACARTOVIN APARTMENTS LLC FACILITY LOCATED AT 7 DEVEREUX 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, 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 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 (the "Lease Agreement"); and

WHEREAS, the Facility will be leased back to the HDFC and the Company for the Company's 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 together with the Residential Sublessees, the "Sublessees"); and

WHEREAS, New York State Housing Finance Agency (the "HFA") intends to finance a portion of the costs of the Facility by (i) 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 (ii) extending a loan to the Company in the maximum principal amount of \$1,200,000.00 to be secured by a Mortgage (the "First Mortgage") from the Company and HDFC to HFA; 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 Agency by resolution duly adopted on May 8, 2018 (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 reduced real property taxes for a period of thirty years, during which time the Company shall pay as PILOT Payments a sum equal to 7.00% of the Effective Gross Income generated by the Project (the "Financial Assistance"), which Financial Assistance represents a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"); and

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

- a) Sales and use tax exemption estimated at \$318,010.00 but not to exceed \$349,812.00; and
- b) Mortgage recording tax exemption estimated at \$23,000.00 but not to exceed \$25,300.00; and
- c) Real property tax abatement estimated at \$2,908,250.00; and

WHEREAS, on November 8, 2019, the Company and the HDFC submitted to the Agency an amended Application for Financial Assistance (the "Amended Application"), citing increased project costs but not requesting increased Financial Assistance; and

WHEREAS, on November 8, 2019 the Agency emailed 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, as an alternative to joining in the Mortgages, the HFA has requested the Agency subordinate the Lease Agreement and the Leaseback Agreement to the liens of the HFA Mortgage and the First Mortgage (except for Unassigned Rights as defined in the Leaseback Agreement); and

WHEREAS, the Agency is not being requested at this time to extend the mortgage recording tax exemption to the HFA Mortgage, the First Mortgage, the HOME Mortgage or the Façade Mortgage, and a supplemental resolution will be

required in order to approve the form and execution of said documents if the Agency is requested to join in the instruments; 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 Agency hereby accepts the Amended Application for Financial Assistance, and the Facility described therein constitutes a "project", as such term is defined in the Act; and

(c) The acquisition, 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, 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 May 8, 2018, 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 the Agency's customary form together with any changes satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Company and the HDFC conveys to the Agency a leasehold interest in the Facility; and

(i) the Leaseback Agreement, in the Agency's customary form together with any changes satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency leases the Facility back to the HDFC and the Company for operation by the Company; and

(j) the Payment-In-Lieu-of-Tax Agreement by and among the Agency, the HDFC and the Company (the "PILOT Agreement"), in the Agency's customary form together with any changes 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 the Agency's customary form together with any changes 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.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) accept the Amended Application and acquire a leasehold interest in the Facility from the Company and the HDFC pursuant to the Lease Agreement; (ii) execute, deliver and perform the Lease Agreement; (iii) lease the Facility back to the HDFC and 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) subordinate the Lease Agreement and Leaseback Agreement to the liens of the HFA Mortgage and the First Mortgage; and (viii) 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 and 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.

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 the Lease Agreement, the Leaseback Agreement, the PILOT Agreement and the Environmental Compliance and Indemnification Agreement, 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 extracts of the minutes of the meetings of the City of Utica Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on the 12th day of November 2019, 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 and the Environmental Compliance and Indemnification Agreement contained in this transcript of proceedings are each in substantially the forms 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 18th day of December 2019.

CITY OF UTICA INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Jack Spaeth, Assistant Secretary