

Transcript Document No. 9

**Final Authorizing Resolution  
VEND-Uti Property Management  
Co., LLC Facility**

Date: February 3, 2015

At a meeting of the City of Utica Industrial Development Agency, Utica, New York (the "Agency"), held at Urban and Economic Development Conference Room, One Kennedy Plaza, Utica, New York on the 2nd day of October 2012, the following members of the Agency were:

PRESENT: Vincent Gilroy  
John Buffa  
Emmett Martin

EXCUSED: Joseph Hobika, Sr.  
John Zegarelli

ALSO PRESENT: Jack N. Spaeth, Executive Director  
Fran Hardy and Robert Wilmott (Carpenters  
Union)

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 and financing of a certain industrial development facility more particularly described below (VEND-Uti Property Management Co., LLC Facility) and the leasing of the facility to VEND-Uti Property Management Co., LLC.

Prior to a formal vote on this matter, Mr. Buffa disclosed he has a conflict of interest as his employer, NBT Bank, is providing funding for this project. Members of the Agency acknowledged Mr. Buffa's conflict and that Mr. Buffa does not directly profit from his involvement. As such, Mr. Martin made a motion, seconded by Mr. Gilroy to waive the conflict of interest. With no further discussion, the motion passed.

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

Vincent Gilroy voting aye;  
John Buffa voting aye; and  
Emmett Martin voting aye.

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE THE LEASE AGREEMENT, LEASEBACK AGREEMENT, PILOT AGREEMENT, ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE VEND-UTI PROPERTY MANAGEMENT CO., LLC FACILITY LOCATED AT 900 OSWEGO 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, VEND-Uti Property Management Co., LLC (the "Company") has requested the Agency assist in a certain industrial development facility consisting of the acquisition and renovation of an 18,216± manufacturing facility (the "Improvements") situated at 900 Oswego Street, City of Utica, Oneida County, New York (the "Land") and the acquisition and installation of machinery and equipment in the Improvements (the "Equipment") all for the purpose of the wholesale manufacture and distribution of baked and frozen bakery products (the Land, Improvements and Equipment collectively, the "Facility"); 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 intends to sublease a portion of the Facility to Ohio Baking Enterprises, Inc. ("Ohio Baking") for its operation, pursuant to the terms of a Sublease Agreement (the "Ohio Sublease"); and

WHEREAS, the Company intends to sublease a portion of the Facility to New York Dough Company, Inc. ("New York Dough") for its operation, pursuant to the terms of a Sublease Agreement (the "New York Dough Sublease"); and

WHEREAS, the Company intends to sublease a portion of the Facility to Hemstrought Bakeries, Inc. for its operation, pursuant to the terms of a Sublease Agreement (the "Hemstrought Sublease") (the Ohio Sublease, the New York Dough

Sublease and the Hemstrought Sublease referred to collectively as the "Subleases" and Ohio Baking, New York Dough and Hemstrought Bakeries referred to collectively as the "Sublessees"); and

WHEREAS, NBT Bank, National Association, a national banking association (the "Bank") intends to finance a portion of the costs of the Facility by making (a) a loan to the Company in the principal amount not to exceed \$288,000.00, to be secured by, among other instruments, a Mortgage (the "Mortgage") from the Agency and the Company to the Bank; and by making (b) a Loan to Hemstrought Bakeries in the principal amount not to exceed \$125,000.00, to be secured by, among other instruments, a Mortgage (the "Second Mortgage") from the Agency and the Company to the Bank; and

WHEREAS, the Agency by resolution duly adopted on December 2, 2014 (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, based upon representations made by the Company, the Facility will not be "primarily used in making retail sales to customers who personally visit" the Facility, as such phrase is used in connection with Section 862 of the General Municipal Law; 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, renovation and equipping of the Facility, the leasing of the Facility to the Company, the subleasing of the Facility to the Sublessees, and the financing of the Facility through the Bank 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, renovation, equipping and financing 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 December 2, 2014, 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 will be an effective instrument whereby the Company conveys to the Agency a leasehold interest in the Facility; and

(i) the Leaseback Agreement will be an effective instrument whereby the Agency leases the Facility back to the Company; and

(j) the PILOT 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 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 the Company and the Sublessees in favor of the Agency and the Bank will be an effective instrument whereby the Company and the Sublessees 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 will be an effective instrument whereby the Agency and the Company grant the Bank a security interest in their respective interests in the Facility; and

(m) The Second Mortgage will be an effective instrument whereby the Agency and the Company grant the Bank a security interest in their respective interests in the Facility.

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 to the Bank a mortgage and security interest in the Agency's interest in the Facility; and (viii) execute, deliver and perform the Mortgage and the Second Mortgage.

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. The form and substance of the Mortgage, the Second Mortgage and any other instruments the Bank may require to secure the Company Loan and the Hemstrought Loan are hereby approved, subject to review and approval by Agency counsel.

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 Second Mortgage, all in substantially the forms thereof presented to this meeting 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, including but not limited to any financing documents (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.

