

Transcript Document No. 8

**Final Authorizing Resolution
1002 Oswego Street, LLC
United Auto Supply 2022 Facility Expansion**

Date: March 23, 2022

At a meeting of the City of Utica Industrial Development Agency, Utica, New York (the "Agency"), held at One Kennedy Plaza, Utica, New York at 9:00 a.m. on the 23rd day of March 2022, the following members of the Agency were:

Members Present: Vin Gilroy, Mark Curley, John Zegarelli, Emmett Martin

Excused: John Buffa

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

Others: Tyler Griffith (Sturges Manufacturing; Wendy Loughnot (1002 Oswego Street, LLC 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 authorizing extension of a leasehold interest in and financial assistance for a certain industrial development facility more particularly described below (1002 Oswego Street, LLC/United Auto Supply of Syracuse West, Inc. Facility) and the leasing of the facility to 1002 Oswego Street, 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;

Emmet Martin voting aye; and

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE THE FIRST AMENDED AND RESTATED LEASE AGREEMENT, THE FIRST AMENDED AND RESTATED LEASEBACK AGREEMENT, THE FIRST AMENDED AND RESTATED PILOT AGREEMENT, THE FIRST AMENDED AND RESTATED ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT, THE LOAN DOCUMENTS, AND RELATED DOCUMENTS WITH RESPECT TO THE 1002 OSWEGO STREET, LLC (UNITED AUTO SUPPLY) FACILITY LOCATED AT 1002 OSWEGO STREET IN THE CITY OF UTICA, ONEIDA COUNTY AND MAKING CERTAIN FINDINGS RELATING TO THE FACILITY.

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, City of Utica Industrial Development Agency (the "Agency") previously provided financial assistance to 1002 Oswego Street, LLC (the "Company") relating to the (a) acquisition of a 7.00± acre parcel of vacant land formerly known as the Bossert Site located at 1002 Oswego Street, City of Utica, Oneida County, New York (the "Land"); (b) construction on the Land of a 20,000± square foot mixed-use commercial and retail building (the "Commercial Improvements") and acquisition and installation of machinery and equipment in the Commercial Improvements (the "Commercial Equipment") all for the purpose of the distribution of automotive parts and lubricants and providing a regional headquarters for United Auto Supply (the Commercial Improvements and the Commercial Equipment collectively, the "Commercial Facility"); and (c) the proposed construction on a 2.00± acre out-parcel situated on the Land of a commercial/retail structure (the "Retail Improvements") and acquisition and installation of machinery and equipment in the Retail Improvements (the "Retail Equipment") all for providing a retail convenience store or other equivalent retail/commercial use (the Retail Improvements and the Retail Equipment collectively, the "Retail Facility" and together with the Commercial Facility, the "Existing Facility"); and

WHEREAS, the Company leases the Existing Facility to the Agency pursuant to a Lease Agreement dated as of May 1, 2013 (the "Lease Agreement"), and the Agency leases the Existing Facility back to the Company pursuant to a leaseback agreement dated as of May 1, 2013 as amended on February 12, 2014 and September 30, 2016 (collectively, the "Existing Leaseback Agreement"); and

WHEREAS, the Company in turn subleases portions of the Commercial Facility to (a) United Auto Supply of Syracuse, West, Inc. (the "UAS Sublessee"), (b) Upstate Cerebral Palsy (the "UCP Sublessee") and (c) Orkin (the "Orkin Sublessee") for operation (each a "Sublessee" and collectively, the "Sublessees"); and

WHEREAS, the Company has applied to the Agency to amend the transaction relating to the Existing Facility in which the Agency will assist in (i) the construction of a 21,600 ± square foot building (the "Addition"), which Addition will be constructed in lieu of the Retail Improvements; (ii) the renovation of the Commercial Improvements and (iii) the acquisition and installation of equipment in the Addition and the Commercial Improvements (the "Equipment"), all in furtherance of the Existing Facility to allow for the growth and expansion of the Sublessees (the Addition and the Equipment is referred to as the "2022 Facility," and the construction and equipping of the Addition and the renovation and equipping of the Commercial Facility is referred to as the "2022 Project"), including, without limitation, the following as they relate to the construction and equipping of such 2022 Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such 2022 Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction and equipping, and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with construction and equipping and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under such building; and

WHEREAS, the Company has agreed to lease the Facility to the Agency pursuant to a First Amended and Restated 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 First Amended and Restated Leaseback Agreement between the Agency and the Company (the "Leaseback Agreement") for its operation; and

WHEREAS, NBT Bank, National Association (the "Bank") intends to finance a portion of the costs of the 2022 Facility by making a loan to the Company to be secured by a Mortgage (the "Mortgage") from the Agency and the Company to the Bank and any other documents the Bank deems necessary to secure its loan (collectively, the "Loan Documents"); 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

purchases relating to the 2022 Project, exemptions from mortgage recording taxes, and reduction of real property taxes on the increased assessment resulting from the 2022 Project for a period of five years during which time the Company will pay no increased taxes in year one, 30% of increased taxes in year two, 40% of increased taxes in year three, 50% of increased taxes in year four, and 75% of increased taxes in year five, which financial assistance is a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"); and

WHEREAS, the value of the Financial Assistance relating to the 2022 Project is described as follows:

Sales and use tax exemptions estimated at \$218,750.00;

Mortgage recording tax exemptions estimated at \$18,750.00

Real property tax abatement estimated at \$149,769.00; and

WHEREAS, the Agency, by resolution duly adopted on January 12, 2022, 2022 (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 February 5, 2022 a notice of the public hearing was published in the *Observer-Dispatch* and on February 3, 2022 written notice of the public hearing was delivered to the chief executive officer of the affected taxing jurisdictions in which the Facility is located; and

WHEREAS, because the Financial Assistance is a deviation from Policy, written notice was delivered on March 17, 2022 to the chief executive officer of the affected taxing jurisdictions describing the Financial Assistance and the reasons the Agency intends to deviate from Policy; and

WHEREAS, the Agency conducted a public hearing on February 24, 2022 and has reviewed the minutes of said public hearing; 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, construction, renovation and equipping of the Facility, the leasing of the Facility to the Company, 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, construction, 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 extend its leasehold interest in the Facility and lease the Facility to the Company; and

(g) Based upon representations of the Company in its Application for Financial Assistance, the Project is reasonably necessary to discourage the Company from removing the Facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Company in its industry; and

(h) The SEQRA findings adopted by the Agency on October 2, 2012 and January 12, 2022 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 First Amended and Restated Lease Agreement will be an effective instrument whereby the Company conveys to the Agency a leasehold interest in the 2022 Facility; and

(j) the First Amended and Restated Leaseback Agreement will be an effective instrument whereby the Agency leases the Facility back to the Company; and

(k) The First Amended and Restated Environmental Compliance and Indemnification Agreement (the "Environmental Compliance and Indemnification Agreement") by and among the Agency, the Bank, the Company and the Sublessee will be an effective instrument whereby the Company and the Sublessee agree to comply with all Environmental Laws (as defined therein) applicable to the Facility and will indemnify and hold harmless the Agency and the Bank for all liability under all such Environmental Laws; and

(l) The First Amended and Restated Payment-In-Lieu-of-Tax Agreement (the "PILOT Agreement") between the Agency and the Company will be an effective instrument whereby the Company agrees to make payments in lieu of taxes for the Existing Facility and the 2022 Facility for the term of the First Amended and Restated Leaseback Agreement; and

(m) The Loan Documents will be effective instruments 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 2022 Facility from the Company pursuant to the First Amended and Restated Lease Agreement; (ii) execute, deliver and perform the First Amended and Restated Lease Agreement; (iii) lease the Existing Facility together with the 2022 Facility back to the Company pursuant to the First Amended and Restated Leaseback Agreement, (iv) execute, deliver and perform the First Amended and Restated Leaseback Agreement, (v) execute, deliver and perform the First Amended and Restated Environmental Compliance and Indemnification Agreement, (vi) execute, deliver and perform the First Amended and Restated PILOT Agreement; (vii) grant the Bank a security interest in the Facility; (viii) execute, deliver and perform the Loan Documents; and (ix) deviate from 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 First Amended and Restated Lease Agreement and the personal property described in Exhibit B to the First Amended and Restated 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 First Amended and Restated Lease Agreement, the First Amended and Restated Leaseback Agreement, the First Amended and Restated PILOT Agreement and the First Amended and Restated Environmental Compliance and Indemnification Agreement (each in substantially the forms customary to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved. The form and substance of the Loan Documents are hereby approved, conditioned upon inclusion of the Agency's standard exculpatory language and upon 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 First Amended and Restated Lease Agreement, the First Amended and Restated Leaseback Agreement, the First Amended and Restated PILOT Agreement, the First Amended and Restated Environmental Compliance and Indemnification Agreement and the Loan Documents, each in substantially the forms customary to the Agency 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 First Amended and Restated 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 23rd day of March 2022 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 First Amended and Restated Lease Agreement, the First Amended and Restated Leaseback Agreement, the First Amended and Restated PILOT Agreement, First Amended and Restated the Environmental Compliance and Indemnification Agreement and the Loan Documents contained in this transcript of proceedings are each in substantially the form 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 103a and 104, (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 November 4, 2022.

CITY OF UTICA INDUSTRIAL
DEVELOPMENT AGENCY

By:



Jack Spaeth, Assistant Secretary