

**APPROVING RESOLUTION  
BARDAVON 1869 OPERA HOUSE, INC./UPAC LLC PROJECT**

A regular meeting of Ulster County Industrial Development Agency (the "Agency") was convened in public session at the Karen Binder Library, Ulster County Office Building, 6th Floor, 244 Fair Street, Kingston, New York on December 14, 2016 at 8:00 a.m., local time.

The meeting was called to order by the ~~(Vice)~~ Chairman of the Agency and, upon roll being called, the following members of the Agency were:

**PRESENT:**

Michael Horodyski	Chairman
John Morrow	Vice Chairman
Randall Leverette	Treasurer
John Livermore	Assistant Secretary
Michael Bernholz	Member

**ABSENT:**

Robert Kinnin	Secretary
James Malcolm	Assistant Treasurer

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Suzanne Holt	Director, Office of Economic Development
Linda Clark	Office of Economic Development
Christopher Fury	Office of Economic Development
A. Joseph Scott, III, Esq.	Agency Counsel

The following resolution was offered by Randall Leverette, seconded by John Livermore, to wit:

Resolution No. 1216-

**RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION  
WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR UPAC LLC  
(THE "COMPANY").**

WHEREAS, Ulster County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 787 of the 1976 Laws of New York, as amended, constituting Section 923 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of commercial, manufacturing and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, Bardavon 1869 Opera House, Inc., a New York not-for-profit corporation (the “Applicant”), has presented an application (the “Application”) to the Agency, a copy of which Application is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the “Project”) for the benefit of UPAC LLC, a New York limited liability company (the “Company”), a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in a parcel of land containing approximately 12,750 square feet located at 601 Broadway (Tax Map # 56.109-3-19) in the City of Kingston, Ulster County, New York (the “Land”), together with the existing theater/entertainment facility located thereon containing in the aggregate approximately 34,100 square feet of space (collectively, the “Facility”), (2) the reconstruction and renovation of the Facility and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the “Equipment”) (the Land, the Facility and the Equipment being collectively referred to as the “Project Facility”), all of the foregoing to be owned by the Company, managed by the Applicant and operated as a theater/entertainment facility and any directly or indirectly related activities; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on November 9, 2016 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on November 9, 2016 (the “Public Hearing Resolution”), the Chairman of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on November 18, 2016 to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be posted on November 17, 2016 on a public bulletin board located at the City Hall Clerk’s office located at 420 Broadway in the City of Kingston, Ulster County, New York and on the Agency’s website on November 16, 2016, (C) caused notice of the Public Hearing to be published on November 16, 2016 in The Daily Freeman, a newspaper of general circulation available to the residents of City of Kingston, Ulster County, New York, (D) conducted the Public Hearing on November 29, 2016 at 7:00 o’clock, p.m., local time at the Legislative Chambers of the County Legislature, 6th Floor, in the Ulster County Office Building located at 244 Fair Street in the City of Kingston, Ulster County, New York, and (E) prepared a report of the Public Hearing (the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on

December 14, 2016 (the "SEQR Resolution"), the Agency determined that the Project constitutes a "Type II Action" (as such quoted term is defined under SEQRA), and therefore that no further action with respect to the Project was required under SEQRA; and

WHEREAS, in connection with the Project, the Company has requested that the Agency deviate from its uniform tax exemption policy with respect to the terms of the proposed payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility, which proposed deviation is outlined in resolutions (the "Deviation Approval Resolutions") that were provided to The City of Kingston, New York (the "City"), the Kingston City School District (the "School District") and Ulster County, through its elected County Legislature (the "County," and together with the City and the School District, being collectively referred to as the "Affected Tax Jurisdictions"); and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in Ulster County, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of Ulster County, New York by undertaking the Project in Ulster County, New York; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the "Agency Documents"): (A) a certain lease to agency (the "Lease to Agency" or the "Underlying Lease") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises"); (B) a certain license agreement (the "License to Agency" or the "License Agreement") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (1) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (2) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement (as hereinafter defined); (C) a certain lease agreement (and a memorandum thereof) (the "Lease Agreement") by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (D) a certain payment in lieu of tax agreement (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility; (E) a certain uniform agency project agreement (the "Uniform Agency Project Agreement") by and between the Agency and the Company regarding the granting of the financial assistance and the potential recapture of such assistance; (F) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (G) a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance; (H) a New York State Department of Taxation and Finance form entitled "IDA Appointment of Project Operator or Agency for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales

Tax Report”) and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the “Additional Thirty-Day Project Report”); (I) if the Company intends to finance the Project with borrowed money, a mortgage and any other security documents and related documents (collectively, the “Mortgage”) from the Agency and the Company to the Company’s lender with respect to the Project (“the “Lender”), which Mortgage will grant a lien on and security interest in the Project Facility to secure a loan from the Lender to the Company with respect to the Project (the “Loan”); and (J) various certificates relating to the Project (the “Closing Documents”);

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF ULSTER COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. All action taken by the Director, Office of Economic Development of the Agency with respect to the Public Hearing with respect to the Project is hereby ratified and confirmed.

Section 2. The law firm of Hodgson Russ LLP is hereby appointed Special Counsel to the Agency with respect to all matters in connection with the Project. Special Counsel for the Agency is hereby authorized, at the expense of the Company, to work with the Company, counsel to the Company, counsel to the Agency and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution. Special Counsel has prepared and submitted an initial draft of the Agency Documents to staff of the Agency.

Section 3. The Agency hereby finds and determines that:

(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;

(B) The Project constitutes a “project,” as such term is defined in the Act;

(C) The Project site is located entirely within the boundaries of Ulster County, New York;

(D) It is estimated at the present time that the costs of the planning, development, acquisition, reconstruction and installation of the Project Facility (collectively, the “Project Costs”) will be approximately \$4,759,010;

(E) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York;

(F) The Project is likely to attract a significant number of visitors from outside the Mid-Hudson economic development region, and therefore meets the definition of a “tourism destination” project within the meaning of Section 862(2)(a) of the Act. Accordingly, although facilities or projects that are primarily used in making retail sales of goods or services to customers who personally visit such facilities may constitute more than one third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act;

(G) The granting of the Financial Assistance by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Ulster County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;

(H) The Agency has reviewed the Public Hearing Report and has fully considered all comments contained therein;

(I) The Project should receive the Financial Assistance in the form of exemption from sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes based on the description of expected public benefits to occur as a result of this Project, as described on Exhibit A attached hereto; and

(J) Any exemption from real property taxes is subject to receipt by the Agency of resolutions (collectively, the "Deviation Approval Resolutions") from the City of Kingston, New York (the "City"), the Kingston City School District (the "School District") and Ulster County, through its elected County Legislature (the "County," and together with the City and the School District, being collectively referred to as the "Affected Tax Jurisdictions") approving the terms of the Payment in Lieu of Tax Agreement; and

(K) It is desirable and in the public interest for the Agency to enter into the Agency Documents.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (A) accept the License Agreement; (B) lease the Project Facility to the Company pursuant to the Lease Agreement; (C) acquire, reconstruct and install the Project Facility, or cause the Project Facility to be acquired, reconstructed and installed; (D) enter into the Payment in Lieu of Tax Agreement; (E) enter into the Section 875 GML Recapture Agreement; (F) enter into the Uniform Agency Project Agreement; (G) secure the Loan by entering into the Mortgage; and (H) grant the Financial Assistance with respect to the Project.

Section 5. The Agency is hereby authorized (A) to acquire a license in the Licensed Premises pursuant to the License Agreement, (B) to acquire a leasehold interest in the Leased Premises pursuant to the Underlying Lease, (C) to acquire title to the Equipment pursuant to a bill of sale (the "Bill of Sale to Agency") from the Company to the Agency, and (D) to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisitions are hereby approved, ratified and confirmed.

Section 6. The Agency is hereby authorized to acquire, reconstruct and install the Project Facility as described in 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, reconstruction and installation are hereby ratified, confirmed and approved.

Section 7. The Chairman (or Vice Chairman) of the Agency, with the assistance of Agency Counsel and/or Special Counsel, is authorized to negotiate and approve the form and substance of the Agency Documents.

Section 8. (A) The Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in the forms thereof as the Chairman (or Vice Chairman) shall approve,

the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

(B) The Chairman (or Vice Chairman) of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 9. 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 Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, to 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 Agency Documents binding upon the Agency.

Section 10. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Michael Horodyski	VOTING	<u>Yes</u>
John Morrow	VOTING	<u>Yes</u>
Robert Kinnin	VOTING	<u>Absent</u>
Randall Leverette	VOTING	<u>Yes</u>
John Livermore	VOTING	<u>Yes</u>
James Malcolm	VOTING	<u>Absent</u>
Michael Bernholz	VOTING	<u>Yes</u>

The foregoing Resolution was thereupon declared duly adopted.

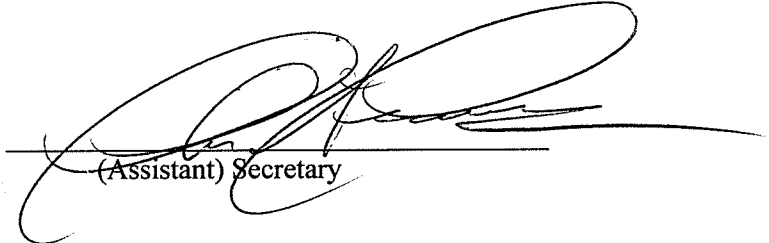
STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ULSTER         )

I, the undersigned (Assistant) Secretary of Ulster County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on December 14, 2016 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 14<sup>th</sup> day of December, 2016.

  
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(Assistant) Secretary

(SEAL)

EXHIBIT A

DESCRIPTION OF THE EXPECTED PUBLIC BENEFITS

In the discussions had between the Project Beneficiary and the Agency with respect to the Project Beneficiary's request for Financial Assistance from the Agency with respect to the Project, the Project Beneficiary has represented to the Agency that the Project is expected to provide the following benefits to the Agency and/or to the residents of Ulster County, New York (the "Public Benefits"):

Description of Benefit		Applicable to Project (indicate Yes or NO)		Expected Benefit
1.	Retention of existing jobs	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	13.3 full time equivalent existing jobs at the Project Facility.
2.	Creation of new permanent jobs	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	3.1 full time equivalent new jobs at the Project Facility within 2 years of the date hereof.
3.	Creation of construction employment for local labor (i.e., labor resident in the area comprised of Ulster, Sullivan, Greene, Columbia, Dutchess and/or Orange Counties)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	At least 50% of the construction workforce will be paid prevailing wages. During the construction phase, 90% of the construction labor will be regional labor.
4.	Private sector investment	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	\$4,759,010 at the Project Facility within 3 years of the date hereof.
5.	Attract customers from outside the Economic Development Region	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The Project will draw visitors from outside the Ulster County, including the entire Hudson Valley, across New York State, Connecticut, New Jersey and New England.