

**RESOLUTION AUTHORIZING TERMINATION OF BASIC DOCUMENTS
UPAC LLC PROJECT**

A regular meeting of Ulster County Industrial Development Agency (the “Issuer”) was convened in public session at the Ulster County Office Building, Legislative Chambers, 6th floor located at 244 Fair Street in the City of Kingston, Ulster County, New York on October 25, 2023 at 9:00 a.m., local time.

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

PRESENT:

Michael J. Ham	Chair
Rachel Silverman, Esq.	Assistant Treasurer
Rashida Tyler	Assistant Secretary
Kaustubh Wahal	Member

ABSENT:

Lynn Archer	Vice Chair
Diane Eynon, Ed.D.	Secretary
Steven L. Kelley, FACHE	Treasurer

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Hillary Nichols	Executive Director
Lisa Purcell	Agency Administrative Assistant
A. Joseph Scott, III, Esq.	Special Counsel

The following resolution was offered by Rachel Silverman, Esq., seconded by Kaustubh Wahal, to wit:

Resolution No. 1023-_____

RESOLUTION CONSENTING TO AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS WITH RESPECT TO A MERGER AND RESULTING TERMINATION OF BASIC DOCUMENTS REGARDING THE UPAC LLC PROJECT.

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, (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 warehousing 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, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on or about May 25, 2017, the Agency entered into a lease agreement dated as of May 1, 2017 (the “Lease Agreement”), which granted financial assistance in connection with a project (the “Project”) for the benefit of UPAC LLC (the “Company”). The Project consisted 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 Bardavon 1869 Opera House, Inc., a New York State not-for-profit corporation (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 or sale of the Project Facility to the Company pursuant to the Lease Agreement; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the “Closing”), (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of May 1, 2017 (the “Lease to Agency”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company leased to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”); and (2) a certain bill of sale dated as of May 1, 2017 (the “Bill of Sale to Agency”), which conveyed to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency executed and delivered (1) a certain payment in lieu of tax agreement dated as of May 1, 2017 (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company is obligated in circumstances described in the Payment in Lieu of Tax Agreement to pay payments in lieu of taxes with respect to the Project Facility, (2) 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; (C) the Agency and the Company executed and delivered a certain uniform agency project agreement dated as of May 1, 2017 (the “Uniform Agency Project Agreement”) by and between the Agency and the Company relating to the terms of the granting by the Agency of the Financial Assistance to the Company; (D) the Agency filed with the assessor and mail to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement, (E) the Agency executed and delivered to the Company 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 and (F) the Agency filed with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”) (along with the Lease Agreement to be collectively referred to as the “Basic Documents”); and

WHEREAS, subsequent to the Closing, the Agency has received a request from the Company dated as of October 18, 2023 (the "Request"), attached hereto as Exhibit A, requesting that the Agency consider the granting of written consent for the early termination of the Basic Documents pursuant to Section 11.1 of the Lease Agreement and liquidation of the Company with the merging into the Applicant pursuant to Section 8.4 of the Lease Agreement; 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 adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination on the above described termination (the "Termination"); and

WHEREAS, pursuant to SEQRA, the Agency has reviewed the Request in order to make a determination as to whether the Termination is subject to SEQRA, and it appears that the Request is not an "Action" under SEQRA;

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

Section 1. Based upon an examination of the Request, the Agency hereby determines that the Termination is not an "Action" under SEQRA and therefore is not subject to SEQRA review by the Agency.

Section 2. The Agency hereby consents to the liquidation of the Company and the resulting merger into the Applicant, pursuant to Section 8.4 of the Lease Agreement and the subsequent termination of the Basic Documents pursuant to Section 11.1 of the Lease Agreement, subject in each case, however to the following conditions: (1) receipt of confirmation that all real property taxes and payments in lieu of taxes required by the Project have been satisfied; (2) approval by Special Counsel to the Agency of the form of the appropriate documents to be terminated, as outlined in the Basic Documents and any other documents needed to be executed by the Agency in connection with the Termination (collectively, the "Termination and Conveyance Documents"); (3) receipt by the Agency of its administrative fee relating to the Request, and all fees and expenses incurred by the Agency with respect to the Request, including the fees and expenses incurred by Special Counsel with respect thereto; and (4) the following additional conditions: _____.

Section 3. Subject to (A) satisfaction of the conditions contained in Section 2 hereof; and (B) the execution and delivery of the Termination and Conveyance Documents by the other parties thereto, the Chair (or Vice Chair) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Termination and Conveyance 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 substantially the forms thereof approved by Special Counsel to the Agency, with such changes, variations, omissions and insertions as the Chair (or Vice Chair) shall approve, the execution thereof by the Chair (or Vice Chair) to constitute conclusive evidence of such approval.

Section 4. 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 Request, 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 Request.

Section 5. 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 J. Ham	VOTING	YES
Lynn Archer	VOTING	ABSENT
Diane Eynon, Ed.D.	VOTING	ABSENT
Steven L. Kelley, FACHE	VOTING	ABSENT
Rachel Silverman, Esq.	VOTING	YES
Rashida Tyler	VOTING	YES
Kaustubh Wahal	VOTING	YES

The foregoing Resolution was thereupon declared duly adopted.

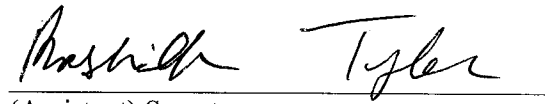
STATE OF NEW YORK)
) SS.:
COUNTY OF ULSTER)

I, the undersigned (Assistant) Secretary of Ulster County Industrial Development Agency (the “Issuer”), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Issuer, including the Resolution contained therein, held on October 25, 2023 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 Issuer 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 Issuer 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 Issuer this 25th day of October, 2023.



(Assistant) Secretary

(SEAL)

EXHIBIT A

REQUEST

- SEE ATTACHED -

October 18, 2023

Ulster County Industrial Development Agency
244 Fair Street
Kingston, New York 12402
Attention: Hillary Nichols, Executive Director

Dear Ms. Nichols,

On or about May 25, 2017, Ulster County Industrial Development Agency (the "Agency") entered into a lease agreement dated as of May 1, 2017 (the "Lease Agreement"), which granted financial assistance in connection with a project (the "Project") for the benefit of UPAC LLC (the "Company"). The Project consisted 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 Bardavon 1869 Opera House, Inc., a New York State not-for-profit corporation (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 or sale of the Project Facility to the Company pursuant to the Lease Agreement.

Simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of May 1, 2017 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company leased to the Agency the Land and all improvements now or hereafter located on said the Land (collectively, the "Leased Premises"); and (2) a certain bill of sale dated as of May 1, 2017 (the "Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency executed and delivered (1) a certain payment in lieu of tax agreement dated as of May 1, 2017 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company is obligated in circumstances described in the Payment in Lieu of Tax Agreement to pay payments in lieu of taxes with respect to the Project Facility, (2) 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; (C) the Agency and the Company executed and delivered a certain uniform agency project agreement dated as of May 1, 2017 (the "Uniform Agency Project Agreement") by and between the Agency and the Company relating to the terms of the granting by the Agency of the Financial Assistance to the Company; (D) the Agency filed with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility

Hillary Nichols, Executive Director
October 18, 2023
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under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (E) the Agency executed and delivered to the Company 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 and (F) the Agency filed with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report") (along with the Lease Agreement to be collectively referred to as the "Basic Documents").

As the Company no longer needs to have the Federal Historic Tax Credit Structure in place, the Company and the Applicant desire to liquidate the Company and merge it into the Applicant. In connection therewith, the Company and the Applicant request the consent of the Agency to the merger of the Company into the Applicant under Section 8.4 of the Lease Agreement and the subsequent termination of the Basic Documents pursuant to Section 11.1 of the Lease Agreement. The Company understands and agrees that the obligations of the Company will survive the merger and termination pursuant to Section 12.8 of the Lease Agreement.

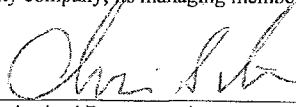
With this letter, signed by an Authorized Representative of the Company, the Company requests that the Agency consider the granting of the written consents described herein.

If you have any questions regarding this letter and the requests contained hereof, do not hesitate to contact us.

Sincerely yours,

UPAC LLC, a New York limited liability
company

By: UPAC Manager LLC, a New York limited
liability company, its managing member

By: 
Authorized Representative

cc: Christina Novotny, Esq. (via e-mail only)
A. Joseph Scott, III, Esq. (via c-mail only)