

**Approving The Deviation By The Ulster County Industrial Development Agency Relating To The Terms And Conditions Of A Certain PILOT Agreement To Be Entered Into Between Ulster County Industrial Development Agency And UPAC LLC In Connection With Bardavon 1869 Opera House, Inc. Project**

Referred to: The Economic Development, Tourism, Housing, Planning and Transit Committee (Chairman Maloney and Legislators Berky, Delaune, Lapp, Litts, Maio and Rodriguez)

Chairman of the Economic Development, Tourism, Housing, Planning, and Transit Committee, James F. Maloney, and Deputy Chairman Hector Rodriguez offer the following:

WHEREAS, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State 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”), the County Legislature has heretofore appointed the Chairman and members of Ulster County Industrial Development Agency (the “Agency”) and has duly caused to be filed in the office of the Secretary of State of the State of New York the certificates required by Section 856 of the Act; 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, Bardavon 1869 Opera House, Inc., a New York not-for-profit corporation (the “Applicant”), submitted an application (the “Application”) to the Agency, 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 UPAC LLC, a New York limited liability company (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

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“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 estate 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, the Company is undertaking the Project on behalf of the Applicant in order to provide for the financing of the Project with the proceeds of a tax credit financing (the “Tax Credit Financing”) and, in connection with the Tax Credit Financing, the Applicant will convey the Project Facility to the Company; and

WHEREAS, the Company has advised the Agency that upon the conveyance of the Project Facility to the Company to provide for the Tax Credit Financing, the Project Facility, which is currently exempt from real property taxes due to the ownership by the Applicant, will become subject to real property taxation; and

WHEREAS, in order to address the issue of the Project Facility being subject to real property taxation, the Company has requested that (1) the Agency execute and deliver a certain payment in lieu of tax agreement (the “PILOT Agreement”) by and between the Agency and the Company, and (2) the proposed payment terms in the PILOT Agreement provide that the Company be required not to pay any payments in lieu of taxes with respect to the Project Facility; and

WHEREAS, the payment terms to be contained in the PILOT Agreement are summarized as follows:

During the period that the Project Facility is owned by the Company and managed by the Applicant, the amount of payments in lieu of taxes payable by the Company with respect to the Project Facility shall be equal to \$-0-; subject to the following: (a) the period of the PILOT Agreement shall not exceed eight (8) years, and (b) in event that the Company or the Applicant sublease all or a portion of the Project Facility to a for-profit corporation, payments in lieu of taxes in an amount equal to “normal taxes” shall be due for the portion of the Project Facility subject to such sublease; and

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WHEREAS, these payment terms constitute a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"); and

WHEREAS, under the Agency's Policy, prior to entering into a payment in lieu of tax agreement that deviates from the Policy's standard payment terms, the Agency shall (1) notify each affected tax jurisdiction, and (2) attempt to obtain the written consent of all the affected tax jurisdictions; and

WHEREAS, the Agency desires that Ulster County, through its County Legislature, as one of the affected tax jurisdictions with respect to the Project Facility, adopt a resolution indicating whether the County Legislature agrees to the terms of the proposed PILOT Agreement; now, therefore be it

RESOLVED by the County Legislature, as follows:

Section 1. For the purpose of satisfying the requirements contained in the Agency's Policy, the County Legislature hereby (1) acknowledges notification of the proposed deviation from the Agency's Policy, and (2) approves the payment terms described above, including the proposed deviation from the Agency's Policy outlined above.

Section 2. The Chairman of the County Legislature is hereby authorized, on behalf of the County Legislature, to execute and deliver the PILOT Agreement for the purpose of evidencing its approval to the proposed deviation from the Agency's Policy, said PILOT Agreement to contain the payment terms substantially in the form presented at this meeting, with such changes, variations, omissions and insertions as the Chairman of the County Legislature shall approve, the execution thereof by the Chairman of the County Legislature to constitute conclusive evidence of such approval.

Section 3. The officers, employees and agents of the County Legislature are hereby authorized and directed for and in the name and on behalf of the County Legislature to do all acts and things required or provided for by the applicable provisions of this Resolution in order to ensure compliance with such provisions as they relate to the execution and delivery of the PILOT Agreement, and to execute and deliver all such additional certificates, instruments and documents, and to do all such further acts and things as may be necessary or, in the opinion of the officer,

