

Transcript Document No. 9(a)

**Final Authorizing Resolution  
Utica Sunset Associates LLC Facility**

Date: June 14, 2019

At a meeting of the City of Utica Industrial Development Agency, Utica, New York (the "Agency"), held at One Kennedy Plaza, Utica, New York on the 14th day of June 2019, the following members of the Agency were:

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

**Member Excused:** John Buffa

**Also Present:** Jack Spaeth (Executive Director)

**Others:** Linda Romano (BS&K – Agency Counsel), Rick Schmalz (Schmalz Realty)

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, demolition, construction and equipping of a certain industrial development facility more particularly described below (Utica Sunset Associates LLC Facility) and the leasing of the facility to Utica Sunset Associates LLC.

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

Vincent Gilroy voting aye;  
Emmett Martin voting aye;  
John Zegarelli voting aye; and  
Mark Curley voting aye.

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE THE LEASE AGREEMENT, LEASEBACK AGREEMENT, PILOT AGREEMENT, ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT AND RELATED DOCUMENTS, AND TO SUBORDINATE ITS LEASES TO THE LIENS OF THE MORTGAGES, WITH RESPECT TO THE UTICA SUNSET ASSOCIATES LLC FACILITY LOCATED AT 2507 – 2513 SUNSET AVENUE 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, the Company desires to (i) acquire two parcels of land measuring 1.634± acres in the aggregate located at 2507 – 2513 Sunset Avenue in the City of Utica, Oneida County, New York (collectively, the “Land”) and the four-story blighted building located thereon (the “Existing Improvements”); (ii) demolish the Existing Improvements; (iii) construct on the Land a four-story mixed-income, mixed-use residential development consisting of sixty (60) affordable workforce apartments, 6,890± square feet of office/program space (the “Commercial Facility”) to be subleased to The Kelberman Center, Inc. (the “Sublessee”), greenspace, amenities and onsite parking to service the same (collectively, the “Improvements”); and (iv) acquire and install furniture, fixtures and equipment in the Improvements (the “Equipment”), all to be used for the purpose of providing affordable housing for low-income individuals and families and individuals with intellectual/developmental disabilities to be known as Kelberman at Sunset (the Land, the Existing Improvements, the Improvements and the Equipment are referred to collectively as the “Facility” and the acquisition, demolition, construction and equipping of the Facility is referred to collectively as the “Project”); and

WHEREAS, the Facility will help satisfy the need for housing identified in Oneida County’s Vision 20/20 Initiative by providing low-income rental housing; and

WHEREAS, the HDFC is the fee owner of the Facility, as nominee for the Company pursuant to a Declaration of Interest and Nominee Agreement (the “Nominee Agreement”) between the HDFC and the Company; and

WHEREAS, the Company, as beneficial owner, has all rights under the Nominee Agreement to grant and to accept a leasehold interest in the Facility,

operate the Facility and perform all of the obligations on behalf of the HDFC under the contemplated transaction; and

WHEREAS, the Company and the HDFC has agreed to lease the Facility to the Agency pursuant to a Lease Agreement (the "Lease Agreement") by and among the Agency, the HDFC and the Company; and

WHEREAS, the Agency has agreed to lease the Facility back to the Company and the HDFC pursuant to a Leaseback Agreement by and among the Agency, the HDFC and the Company (the "Leaseback Agreement") for operation by the Company; and

WHEREAS, the Company will further sublease the Facility to residential tenants to be determined from time to time (the "Residential Sublessees"); and

WHEREAS, the Company will further sublease the Commercial Facility to the Sublessee pursuant to a Sublease Agreement (the "Sublease Agreement"); and

WHEREAS, the Agency by resolution duly adopted on December 12, 2018 (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, the Agency contemplates providing financial assistance to the Company in the form of reduced real property tax for a period of thirty years, during which time the Company shall pay as PILOT Payments a sum equal to 3.00% of the Effective Gross Income generated by the Project (the "Financial Assistance"), which Financial Assistance represents a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"); and

WHEREAS, on June 4, 2019 the Agency mailed notices to all affected taxing jurisdictions describing the Financial Assistance and the Agency's reasons for deviating from its Policy, and also providing the date and time of this meeting so that each may have the opportunity to comment on the proposed Financial Assistance; and

WHEREAS, KeyBank National Association ("Key") intends to finance a portion of the costs of the Facility by extending a construction loan to the Company in the maximum principal sum of \$11,312,825, to be secured by a Mortgage (the "Key Mortgage") from the Company and HDFC to Key; and

WHEREAS, New York State Housing Trust Fund Corporation (“HTF”) intends to finance a portion of the costs of the Facility by extending a permanent loan to the Company in the maximum principal sum of \$2,400,000, to be secured by a Mortgage at permanent conversion (the “HTF Mortgage”) from the Company and HDFC to HTF; and

WHEREAS, HTF intends to finance a portion of the costs of the Facility by extending a permanent loan to the Company in the maximum principal sum of \$1,312,921 of Community Reinvestment Funds, to be secured by a Mortgage at permanent conversion (the “CIF Mortgage”) from the Company and HDFC to HTF; and

WHEREAS, New York State Office for People with Developmental Disabilities (“OPWDD”) intends to finance a portion of the costs of the Facility by extending permanent a loan to the Company in the maximum principal sum of \$1,781,152, to be secured by a Mortgage at permanent conversion (the “OPWDD Mortgage”) from the Company and HDFC to OPWDD; and

WHEREAS, City of Utica (“Utica”) intends to finance a portion of the costs of the Facility by extending a loan to the Company in the maximum principal sum of \$300,000 of HOME funds, to be secured by a Mortgage (the “HOME Mortgage”) from the Company and HDFC to Utica; and

WHEREAS, the Sublessee intends to finance a portion of the costs of the Facility by extending a SLIHC loan to the Company in the maximum principal sum of \$3,209,290 of SLIHC proceeds, to be secured by a Mortgage (the “SLIHC Mortgage”) from the Company and HDFC to the Sublessee; and

WHEREAS, the Sublessee intends to finance a portion of the costs of the Facility by extending a sponsor loan to the Company in the maximum principal sum of \$56,000 of NYSERDA funds, to be secured by a Mortgage (the “Sponsor Mortgage”) from the Company and HDFC to the Sublessee; and

WHEREAS, the Key Mortgage, the HTF Mortgage, the CIF Mortgage, the OPWDD Mortgage, the HOME Mortgage, the SLIHC Mortgage and the Sponsor Mortgage are referred to collectively as the “Mortgages;” and

WHEREAS, as an alternative to joining in the Mortgages, the lenders have requested the Agency subordinate the Lease Agreement and the Leaseback Agreement to the liens of the Mortgages (except for Unassigned Rights as defined in the Leaseback Agreement); 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, demolition, construction and equipping of the Facility, the financing of the Facility, the leasing of the Facility to the Company and the subleasing of the Facility to the Sublessees 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, based upon representations made by the Company, the Facility will promote employment opportunities and prevent economic deterioration in the area served by the Agency; and

(d) The acquisition, demolition, construction and equipping 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 12, 2018, 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, in the Agency's customary form together with any changes satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Company and the HDFC conveys to the Agency a leasehold interest in the Facility; and

(i) the Leaseback Agreement, in the Agency's customary form together with any changes satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency leases the Facility back to the HDFC and the Company for operation by the Company; and

(j) the Payment-In-Lieu-of-Tax Agreement by and among the Agency, the HDFC and the Company (the "PILOT Agreement"), in the Agency's customary form together with any changes 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 and between the Agency and the Company, in the Agency's customary form together with any changes satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Company agrees 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.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) acquire a leasehold interest in the Facility from the Company and the HDFC pursuant to the Lease Agreement; (ii) execute, deliver and perform the Lease Agreement; (iii) lease the Facility back to the HDFC and 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) subordinate the Lease Agreement and Leaseback Agreement to the liens of the Mortgages; and (viii) deviate from its Policy by granting 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 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.

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 the Lease Agreement, the Leaseback Agreement, the PILOT Agreement and the Environmental Compliance and Indemnification Agreement, in form satisfactory to the Chairman and Agency Counsel, 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 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 extracts of the minutes of the meetings of the City of Utica Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on the 14<sup>th</sup> day of June 2019, 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 Lease Agreement, the Leaseback Agreement, the PILOT Agreement and the Environmental Compliance and Indemnification Agreement contained in this transcript of proceedings are each in substantially the forms presented to the Agency and/or 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, (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 this 22nd day of October 2019.

CITY OF UTICA INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Jack Spaeth, Assistant Secretary