

Transcript Document No. 10 (a)

**Final Authorizing Resolution
Artspace Utica Lofts, L.P. Facility**

Date: November 2, 2022

At a meeting of the City of Utica Industrial Development Agency, Utica, New York (the "Agency"), held at One Kennedy Plaza, 2nd Floor, Urban and Economic Development Conference Room, Utica, New York on the 2nd day of November 2022, the following members of the Agency were:

Members Present: Vincent Gilroy, Mark Curley, John Buffa, John Zegarelli

Member Excused: Emmett Martin

Others Present: Jack Spaeth, Executive Director; Linda E. Romano, Esq. and Laura Ruberto, Paralegal (Bond, Schoeneck & King)

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, construction and equipping of a certain industrial development facility more particularly described below (Artspace Utica Lofts, L.P. Facility) and the leasing of the facility to Artspace Utica Lofts, L.P.

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

Vincent Gilroy voting aye;
Mark Curley voting aye;
John Buffa voting aye;
John Zegarelli voting aye.

RESOLUTION APPROVING FINANCIAL ASSISTANCE, 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, ALL WITH RESPECT TO THE ARTSPACE UTICA LOFTS, L.P. FACILITY LOCATED AT 1012 PARK AVENUE, 1018 PARK AVENUE AND 1022 PARK 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, Artspace Utica Lofts, L.P., on behalf of itself and/or the principals of Artspace Utica Lofts, L.P. and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") and Artspace Utica Lofts Housing Development Fund Company, Inc., a housing development funding company to be formed pursuant to Article XI of the Private Housing Financing Law of the State of New York and Section 402 of the Not-For-Profit Corporation Law (the "HDFC") have applied to the City of Utica Industrial Development Agency (the "Agency") to enter into a sale-leaseback or lease-leaseback transaction in which the Agency will assist in (i) acquisition of that certain parcel of vacant land located at 1018 Park Avenue and a portion of those certain parcels of vacant land located at 1012 Park Avenue, 1016 Park Avenue, and 1022 Park Avenue, in the City of Utica, Oneida County, New York (collectively, the "Land"); (ii) construction on the Land of a four-story building measuring approximately 42,640± square feet in the aggregate containing 43 live/work units, an outdoor plaza, approximately 43 parking spaces, utilities, landscaping, and a path and playground that will connect with the City of Utica planned multipurpose event space on the adjacent parcel (collectively, the "Improvements"); and (iii) acquisition and installation of furniture, fixtures and equipment in the Improvements (the "Equipment"), all to be used for the purpose of providing affordable housing and work spaces to artists and their families and to connect artists to the Utica community (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the acquisition, construction and equipping of the Facility is referred to collectively as the "Project"); and

WHEREAS, the HDFC is (or will be) the fee owner of the Facility, as nominee for the Company pursuant to a Nominee Agreement (the "Nominee Agreement")

between the HDFC and the Company, and will enter into the lease-leaseback transaction for the limited purpose of granting a leasehold interest to, and accepting a leasehold interest back from, the Agency; and

WHEREAS, the HDFC and the Company will lease the Facility to the Agency pursuant to a Lease Agreement (the "Lease Agreement"); and

WHEREAS, the Facility will be leased back to the HDFC and the Company for the Company's operation pursuant to a Leaseback Agreement by and among the Agency, the HDFC and the Company (the "Leaseback Agreement") and pursuant to Article 18-A of the General Municipal Law of the State of New York and Chapter 372 of the Laws of 1970 of the State of New York, as may be amended from time to time (collectively, the "Act"); and

WHEREAS, the Company, as beneficial owner, has all rights under the Nominee Agreement to accept a leasehold interest in the Facility, operate the Facility and is compelled to perform all of the obligations under the Leaseback Agreement on behalf of the HDFC; and

WHEREAS, the Company intends to further sublease individual residential units comprising the Facility to residential tenants (each a "Residential Sublessee" and collectively the "Residential Sublessees"); and

WHEREAS, Bank of America, N.A. ("Bank") intends to finance a portion of the costs of the Facility by extending a construction loan to the Company; and

WHEREAS, the New York State Homes and Community Renewal ("NYS HCR") intends to finance a portion of the costs of the Facility through the issuance of low income housing tax credits to be secured by a mortgage from the Company and HDFC to NYS HCR; and

WHEREAS, the City of Utica ("City") intends to finance a portion of the costs of the Facility by extending a loan to the Company to be secured by a mortgage from the Company and HDFC to the City; and

WHEREAS, by resolution duly adopted on August 17, 2022 (the "Resolution") the Agency 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 conducted a public hearing on September 21, 2022 and minutes of the hearing were provided to the members; and

WHEREAS, the Agency contemplates providing financial assistance to the Company in the form of reduced real property taxes for a period of thirty-two years, during which time the Company shall pay as PILOT Payments a sum equal to (i) all taxes with respect to the Facility prior to completion of the Project, provided that such payments shall not exceed the taxes for the Facility for the 2022 – 2023 tax year and (ii) after completion of the Project, seven percent (7.00%) of the effective gross income of the Facility for a period of 30 years (the “Financial Assistance”), which Financial Assistance represents a deviation from the Agency’s Uniform Tax Exemption Policy (the “Policy”); and

WHEREAS, the value of the Financial Assistance is as follows:

Sales and use tax exemption	\$0
Mortgage recording tax exemption	\$0
Real property tax abatement	\$6,845,270.00 (approximately)

WHEREAS, on September 27, 2022 the Agency delivered 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, as an alternative to mortgaging the Agency’s leasehold interest in the Facility, the HFA, the NYS HCR and the City have requested the Agency subordinate the Lease Agreement and the Leaseback Agreement to the liens of their 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, 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 Residential 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, 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 November 2, 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

(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.

Re: CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

STATE OF NEW YORK)
) SS:
COUNTY OF ONEIDA)

JACK N. SPAETH, being duly sworn, deposes and says:

On September 27, 2022 he (a) hand-delivered or deposited in a post office box regularly maintained by the United States Government in the City of Utica, New York and (b) delivered via electronic mail, a copy of the notice of intent to deviate from Uniform Tax Exemption Policy at a meeting to be conducted by the City of Utica Industrial Development Agency on October 5, 2022 at 9:00 a.m. local time in connection with the **Artspace Utica Lofts, L.P. Facility**, copies of said notices are attached hereto and made a part hereof, to the following parties at their respective addresses set forth below:

Anthony J. Picente, Jr.
Oneida County Executive
Oneida County Office Building
800 Park Avenue
Utica, New York 13501

Robert Palmieri
Mayor, City of Utica
One Kennedy Plaza
Utica, New York 13502

Joseph Hobika, Jr., President
Board of Education
Utica City School District
929 York Street
Utica, New York 13502

Bruce Karam, Superintendent
Utica City School District
929 York Street
Utica, New York 13502



Jack N. Spaeth

Sworn to before me this 27th
day of September 2022



Notary Public

CATHERINE M. MACK
Notary Public, State of New York
Reg.# 01MA6061896
Appointed in Oneida County
My Commission Expires July 23, 20 25



ROBERT PALMIERI
MAYOR

CITY OF UTICA

Utica Industrial Development Agency
1 Kennedy Plaza, Utica, New York 13502
(315)792-0195 fax: (315)797-6607

VINCENT GILROY, JR.
CHAIRMAN

JACK N. SPAETH
EXECUTIVE DIRECTOR

September 27, 2022

Anthony J. Picente, Jr.
Oneida County Executive
Oneida County Office Building
800 Park Avenue
Utica, New York 13501

Re: Artspace Utica Lofts, L.P. Facility

Dear Sir:

On October 5, 2022 at 9:00 a.m., local time, at One Kennedy Plaza, 2nd Floor, Urban and Economic Development Conference Room, Utica, New York 13502, the City of Utica Industrial Development Agency (the "Agency") will meet to consider a final authorizing resolution regarding the above-referenced project for the use of Artspace Utica Lofts, L.P. (the "Company").

The Company and a housing development funding company to be formed pursuant to Article XI of the Private Housing Financing Law of the State of New York and Section 402 of the Not-For-Profit Corporation Law (the "HDFC") have applied to the Agency to enter into a lease-leaseback transaction in which the Agency will assist in (i) acquisition of those certain parcels of vacant land located at 1012 Park Avenue, 1018 Park Avenue and 1022 Park Avenue, in the City of Utica, Oneida County, New York (collectively, the "Land"); (ii) construction on the Land of a four-story building measuring approximately 42,640± square feet in the aggregate containing 43 live/work units, an outdoor plaza, approximately 43 parking spaces, utilities, landscaping, and a path and playground that will connect with the City of Utica planned multipurpose event space on the adjacent parcel (collectively, the "Improvements"); and (iii) acquisition and installation of furniture, fixtures and

equipment in the Improvements (the "Equipment"), all to be used for the purpose of providing affordable housing and work spaces to artists and their families and to connect artists to the Utica community (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the acquisition, construction and equipping of the Facility is referred to collectively as the "Project"). The Facility will be beneficially owned by the HDFC, as nominee for the Company, which is the beneficial owner.

The financial assistance contemplated by the Agency constitutes a deviation from its Uniform Tax Exemption Policy (the "Policy") in the following respects: the Agency shall lease the Facility to the Company for a period of thirty-two years, during which time the Company shall pay as PILOT Payments an amount equal to (i) all taxes with respect to the Facility prior to completion of the Project, provided that such payments shall not exceed the taxes for the Facility for the 2022 – 2023 tax year and (ii) after completion of the Project, seven percent (7.00%) of the effective gross income of the Facility for a period of 30 years, which represents a deviation from the Agency's Uniform Tax Exemption Policy, to be more particularly described in a Final Authorizing Resolution to be adopted by the Agency prior to the closing of the transactions described herein (collectively, the "Financial Assistance").

The Agency is deviating from its Policy for the following reasons:

- ✓ The nature of the proposed Facility – **The Facility will provide quality affordable live/work housing with preference given to artists and their families.**
- ✓ The nature of the Facility before the project begins -- **The Facility is to be located on several parcels of vacant land.**
- ✓ The economic condition of the area at the time of the application – **the Facility is located in an area that has been designated an economic development zone pursuant to Article 18-B of the General Municipal Law, and is therefore located in a "highly distressed area" (as defined in Section 854(18) of the New York General Municipal Law) because the Facility is located in a former Empire Development Zone as described in Article 18-B of the General Municipal Law**
- ✓ The impact of the proposed Facility on existing and proposed businesses and economic development projects in the vicinity – **The proposed Facility will help to stabilize the neighborhood and encourage further development. The proposed Facility will connect with the City of Utica planned multipurpose event space on the adjacent parcel.**
- ✓ The estimated value of tax exemptions to be provided
- ✓ The impact of the project and the proposed tax exemptions on affected tax jurisdictions
- ✓ The amount of private sector investment generated or likely to be generated by the proposed Facility

- ✓ The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located – **the property is vacant and currently not generating any tax revenue**
- ✓ The extent to which the proposed Facility will provide a benefit (economic or otherwise) not otherwise available within the municipality in which the project is located – **the Project includes a landscaped outdoor plaza and playground**

The Agency will consider a final authorizing resolution authorizing Financial Assistance. You are welcome to attend such meeting at which time you will have an opportunity, both orally and in writing, to present your views with respect to the project. We are providing this notice to you, pursuant to Chapters 356 and 357 of the Laws of 1993, as the chief executive officer of an affected tax jurisdiction within which the project is located.

Should you desire to discuss this matter or if you have any questions concerning this notice please feel free to contact Jack Spaeth at the Agency at telephone number 315-792-0195.

Very truly yours,

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

By: 

Jack N. Spaeth, Executive Director

JNS/lsr



ROBERT PALMIERI
MAYOR

CITY OF UTICA

Utica Industrial Development Agency
1 Kennedy Plaza, Utica, New York 13502
(315)792-0195 fax: (315)797-6607

VINCENT GILROY, JR
CHAIRMAN

JACK N. SPAETH
EXECUTIVE DIRECTOR

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One Kennedy Plaza
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The Agency is deviating from its Policy for the following reasons:

- ✓ The nature of the proposed Facility – **The Facility will provide quality affordable live/work housing with preference given to artists and their families.**
- ✓ The nature of the Facility before the project begins – **The Facility is to be located on several parcels of vacant land.**
- ✓ The economic condition of the area at the time of the application – **the Facility is located in an area that has been designated an economic development zone pursuant to Article 18-B of the General Municipal Law, and is therefore located in a "highly distressed area" (as defined in Section 854(18) of the New York General Municipal Law) because the Facility is located in a former Empire Development Zone as described in Article 18-B of the General Municipal Law**
- ✓ The impact of the proposed Facility on existing and proposed businesses and economic development projects in the vicinity – **The proposed Facility will help to stabilize the neighborhood and encourage further development. The proposed Facility will connect with the City of Utica planned multipurpose event space on the adjacent parcel.**
- ✓ The estimated value of tax exemptions to be provided
- ✓ The impact of the project and the proposed tax exemptions on affected tax jurisdictions
- ✓ The amount of private sector investment generated or likely to be generated by the proposed Facility
- ✓ The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located – **the property is vacant and currently not generating any tax revenue**

- ✓ The extent to which the proposed Facility will provide a benefit (economic or otherwise) not otherwise available within the municipality in which the project is located – **the Project includes a landscaped outdoor plaza and playground**

The Agency will consider a final authorizing resolution authorizing financial assistance. You are welcome to attend such meeting at which time you will have an opportunity, both orally and in writing, to present your views with respect to the project. We are providing this notice to you, pursuant to Chapters 356 and 357 of the Laws of 1993, as the chief executive officer of an affected tax jurisdiction within which the project is located.

Should you desire to discuss this matter or if you have any questions concerning this notice please feel free to contact Jack Spaeth at the Agency at telephone number 315-792-0195.

Very truly yours,

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

By:



Jack N. Spaeth, Executive Director

JNS/lsr



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- ✓ The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located – **the property is vacant and currently not generating any tax revenue**
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Very truly yours,

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

By 
Jack N. Spaeth, Executive Director

JNS/lsr

c: Bruce Karam, Superintendent of Schools
Haylee Lallier, Treasurer

