

Transcript Document No. 7(a)

**Final Authorizing Resolution  
Utica Property Development LLC Facility**

Date: September 18, 2018

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 18th day of September, the following members of the Agency were:

PRESENT:           John Buffa  
                          Vincent J. Gilroy, Jr.  
                          Mark Curley  
                          Emmett Martin  
                          John Zegarelli

ALSO PRESENT:   Jack Spaeth  
                          Pamela Salmon (Utica College)  
                          Robert Calli (Utica Property Development LLC)

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 (Utica Property Development Facility) and the leasing of the facility to Utica Property Development LLC.

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

John Buffa voting aye  
Vincent J. Gilroy, Jr. voting aye  
Mark Curley voting aye  
Emmett Martin voting aye  
John Zegarelli voting aye

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE THE LEASE AGREEMENT, LEASEBACK AGREEMENT, PILOT AGREEMENT, ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT, MORTGAGE AND RELATED DOCUMENTS WITH RESPECT TO THE UTICA PROPERTY DEVELOPMENT LLC FACILITY LOCATED AT A PORTION OF 1600 BURRSTONE ROAD 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, Utica Property Development, LLC (hereinafter referred to as the "Company") has presented an application (the "Application") to the City of Utica Industrial Development Agency (the "Agency") requesting that the Agency provide financial assistance relating to the construction of three, three-story residence buildings containing 144 beds plus two residential directors units, a one-story community building and 183± parking spaces (collectively, the "Improvements") situated on a 6.3± acre parcel of land located on the Utica College (the "College") campus, 1600 Burrstone Road, City of Utica, Oneida County, New York (the "Land") and the acquisition and installation of machinery and equipment in the Improvements (the "Equipment"), all for the purpose of providing on-campus housing to meet the increased demands of the College (the Land, Improvements and Equipment collectively, the "Facility" and the construction and equipping of the Facility is referred to as the "Project"); and

WHEREAS, the College leases the Land to the Company pursuant to the terms of a Ground Lease dated as of August 17, 2018 (the "Ground Lease") between the College and the Company; and

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

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

WHEREAS, the Company will license the Facility to the College, which will in turn sublease individual units to students of the College, to be determined from time to time (each a "Sublessee" and collectively, the "Sublessees"); and

WHEREAS, the Agency by resolution duly adopted on June 14, 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 exemptions from sales tax, exemptions from mortgage recording tax and abatement of real property tax for a period of twelve years (the "Financial Assistance"), which Financial Assistance represents a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"); and

WHEREAS, on August 27, 2018 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, Community Bank, N.A., a national banking association having its chief executive office at 8 Southwoods Boulevard., Suite 201, Albany, New York 12211, and its successors and assigns (the "Bank") intends to finance a portion of the costs of the Facility by way of a loan to the Company in the principal sum of Ten Million Five Hundred Forty Seven Thousand Seven Hundred Ninety and 00/100 Dollars (\$10,547,790.00) Dollars (the "Loan") to be secured by a Building Loan and Permanent Ground Lease Mortgage with Assignment of Leases and Rents dated September 28, 2018 (the "Mortgage") from the Agency and the Company to the Bank; and

WHEREAS, representatives of the Company and the College appeared before the Agency, at the request of the Agency, to answer questions relating to the ownership structure of the Company, the structure of the transaction and the operation of the Facility; 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, the license of the Facility to the College 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, 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 June 14, 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 form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Company conveys to the Agency a leasehold interest in the Facility; and

(i) the Leaseback Agreement, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency leases the Facility back to the Company; and

(j) the Payment-In-Lieu-of-Tax Agreement by and between the Agency and the Company (the "PILOT Agreement"), in form 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 among the Agency, the College and the Company, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Company and the College agree 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; and

(l) The Mortgage, in form satisfactory to the Chairman and Agency Counsel, will be effective instruments whereby the Agency and the Company mortgage to the Bank their respective interests in the Facility.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) acquire a leasehold interest in the Facility from the Company pursuant to the Lease Agreement; (ii) execute, deliver and perform the Lease Agreement; (iii) lease the Facility back to 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) grant a security interest in the Facility to the Lender pursuant to the Mortgage, (viii) execute, deliver and perform the Mortgage; and (ix) 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, the Environmental Compliance and

Indemnification Agreement and the Mortgage (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 Lease Agreement, the Leaseback Agreement, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and the Mortgage, 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 August 27, 2018 he deposited in a post office box regularly maintained by the United States Government in the City of Utica, New York, a copy of a Notice of Deviation from Uniform Tax Exemption Policy regarding the **Utica Property Development, LLC facility**, regarding a meeting to be held on September 4, 2018 at 8:30AM, local time, at Utica City Hall, 1 Kennedy Plaza, City of Utica, Oneida County, New York 13502, copy of said Notice is 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

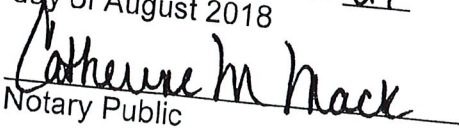
Robert M. Palmieri  
Mayor, City of Utica  
One Kennedy Plaza  
Utica, New York 13502

Louis LaPolla, President  
Board of Education  
Utica City School District  
106 Memorial Parkway  
Utica, New York 13501

Bruce Karam, Superintendent  
Utica City School District  
106 Memorial Parkway  
Utica, New York 13501

  
Jack N. Spaeth

Sworn to before me this 27<sup>th</sup>  
day of August 2018

  
Notary Public

CATHERINE M. MACK  
Notary Public, State of New York  
Reg.# 01MA6061896  
Appointed in Oneida County  
My Commission Expires July 23, 2021





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 SPAETH  
EXECUTIVE DIRECTOR

August 27, 2018

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

**Re: Utica Property Development LLC Facility**

Dear Sir:

On September 4, 2018 at 8:30 a.m. local time at Utica City Hall, Department of Urban and Economic Development Conference Room, One Kennedy Plaza, Utica, New York, the City of Utica Industrial Development Agency (the "Agency") will meet to consider a final authorizing resolution regarding this project for the use of Utica Property Development LLC (the "Company").

The Company has applied to the Agency to enter into a transaction in which the Agency will assist in construction of three, three-story residence buildings containing 144 beds plus two residential directors units, a one-story community building and 183± parking spaces (collectively, the "Improvements") situated on a 6.3± acre parcel of land located on the Utica College (the "College") campus, 1600 Burrstone Road, City of Utica, Oneida County, New York (the "Land") and the acquisition and installation of machinery and equipment in the Improvements (the "Equipment"), all for the purpose of providing on-campus housing to meet the increased demands of the College (the Land, Improvements and Equipment collectively, the "Facility" and the construction and equipping of the Facility is referred to collectively as the "Project").

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 years, during which time the Company will pay the following annual fixed PILOT Payments: \$25,000 during years 1-5; \$27,000 during years 6-10; \$29,000 during years 11-15; \$31,000 during years 16-20; \$33,000 during years 21-25; \$35,000 during years 26-30 and 100% of taxes thereafter.

The Agency is also contemplating granting exemptions from sales tax and exemptions from

mortgage recording tax, which is consistent with the Agency's Policy.

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

- ✓ The nature of the proposed Facility – **The purpose of the Facility is to fill a demand for on-campus housing at Utica College. The Agency wishes to support the growth of the College.**
- ✓ The nature of the property before the project begins – **The Facility is being constructed on vacant land that is currently tax-exempt.**
- ✓ The impact of the proposed Facility on existing and proposed businesses and economic development projects in the vicinity
- ✓ The estimated value of tax exemptions to be provided
- ✓ The impact of the project and the proposed tax exemptions on affected tax jurisdictions – **The Project will generate PILOT Payments for the tax jurisdictions on Land that is currently tax-exempt, and will eventually become taxable.**
- ✓ The amount of private sector investment generated or likely to be generated by the proposed Facility - **Additional phases of housing development are anticipated for the future meaning the College will be well-poised for later growth.**
- ✓ 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 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 Agency's Financial Assistance is necessary to make housing costs to students affordable, now and in the future.**


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/Isr



# CITY OF UTICA

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

**ROBERT PALMIERI**  
MAYOR

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CHAIRMAN

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ROBERT PALMIERI  
MAYOR

VINCENT GILROY, JR  
CHAIRMAN

JACK SPAETH  
EXECUTIVE DIRECTOR

August 27, 2018

Bruce Karam, Superintendent  
Utica City School District  
106 Memorial Parkway  
Utica, New York 13501

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Jack N. Spaeth, Executive Director

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