

Transcript Document No. 8(a)

**Final Authorizing Resolution  
DePaul Utica, LLC Facility**

Date: April 9, 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 9th day of April 2019, the following members of the Agency were:

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

**Members Excused:** John Buffa, Emmet Martin

**Also Present:** Jack Spaeth, Linda Romano, Amela Hrustic

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

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

Vincent Gilroy 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, FIRST MORTGAGE, HCR SUBSIDY MORTGAGE (OR SUBORDINATE ITS LEASES TO THE LIENS OF THE FIRST MORTGAGE AND THE HCR SUBSIDY MORTGAGE) AND RELATED DOCUMENTS WITH RESPECT TO THE DEPAUL UTICA, LLC FACILITY LOCATED AT 1914 DWYER AVENUE, 309 GILBERT STREET AND (NO NUMBER ASSIGNED) GILBERT STREET 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, DePaul Utica, LLC, on behalf of itself and/or the principals of DePaul Utica, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the City of Utica Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in (i) acquisition of four parcels of land measuring 5.31± acres in the aggregate located at 1914 Dwyer Avenue, 309 Gilbert Street and (no number assigned) Gilbert Street in the City of Utica, Oneida County, New York (collectively, the "Land") and the 40,000± square foot commercial building located thereon (the "Existing Improvements"); (ii) demolition of the Existing Improvements; (iii) construction on the Land of a three-story, 63,000± square foot multi-family residential development consisting of sixty (60) rental units, and amenities, offices and parking facilities to service the same (collectively, the "Improvements"); and (iv) the acquisition and installation of furniture, fixtures and equipment in the Improvements (the "Equipment"), all to be used for the purpose of providing low income and supported housing (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 be beneficially owned by the Company, as nominee for a housing development fund company to be formed pursuant to Article 11 of the Private Housing Finance Law ("HDFC"); 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 further sublease the Facility to residential tenants to be determined from time to time (the "Residential Sublessees"); and

WHEREAS, the Project will be managed by DePaul Properties, Inc., an affiliate of the Company; and

WHEREAS, the Agency by resolution duly adopted on September 4, 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 8.5% 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 April 1, 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, New York State Housing Finance Agency (the "HFA") intends to finance a portion of the costs of the Facility by way of a loan to the Company to be secured by a Fee and Leasehold Mortgage, and Security Agreement (the "First Mortgage") from the Agency and the Company to the HFA; and a HCR Subsidy Mortgage (the "HCR Subsidy Mortgage") from the Agency and the Company to the HFA and a Regulatory Agreement (the "Regulatory Agreement") from the Agency and the Company to the HFA; and

WHEREAS, as an alternative to joining in the First Mortgage and the HCR Subsidy Mortgage, the HFA may request the Agency to subordinate the Lease

Agreement and the Leaseback Agreement to the liens of the First Mortgage, the HCR Subsidy Mortgage and the Regulatory 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 September 4, 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 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 Company; and

(j) the Payment-In-Lieu-of-Tax Agreement by and between the Agency 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; and

(l) The First Mortgage, the HCR Subsidy Mortgage and the Regularity Agreement, containing the Agency's customary language together with any changes satisfactory to the Chairman and Agency Counsel, will be effective instruments whereby the Agency and the Company mortgage to the HFA 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) either

grant a security interest in the Facility to the Lender pursuant to the First Mortgage, the HCR Subsidy Mortgage and the Regulatory Agreement or subordinate the Lease Agreement and Leaseback Agreement to the liens of the First Mortgage, the HCR Subsidy Mortgage and the Regulatory Agreement, (viii) execute, deliver and perform the First Mortgage, the HCR Subsidy Mortgage and the Regulatory Agreement if requested; 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, the First Mortgage, the HCR Subsidy Mortgage and the Regulatory 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 Lease Agreement, the Leaseback Agreement, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement, the First Mortgage, the HCR Subsidy Mortgage and the Regulatory 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.







# CITY OF UTICA

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

**ROBERT PALMIERI**  
MAYOR

VINCENT GILROY, JR.  
CHAIRMAN

JACK N. SPAETH  
EXECUTIVE DIRECTOR

April 1, 2019

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

**Re: DePaul Utica, LP Facility**

Dear Sir:

On April 9, 2019 at 8:30 AM, local time, at One Kennedy Plaza, 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 DePaul Utica, LP (the "Company").

The Company has applied to the Agency to enter into a transaction in which the Agency will assist in (i) acquisition of four parcels of land measuring 5.31± acres in the aggregate located at 1914 Dwyer Avenue, 309 Gilbert Street and (no number assigned) Gilbert Street in the City of Utica, Oneida County, New York (collectively, the "Land") and the 40,000± square foot commercial building located thereon (the "Existing Improvements"); (ii) demolition of the Existing Improvements; (iii) construction on the Land of a three-story, 63,000± square foot multi-family residential development consisting of sixty (60) rental units, and amenities, offices and parking facilities to service the same (collectively, the "Improvements"); and (iv) the acquisition and installation of furniture, fixtures and equipment in the Improvements (the "Equipment"), all to be used for the purpose of providing low income and supported housing (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"). The Facility will be beneficially owned by the Company, as nominee for a housing development fund company to be formed pursuant to Article 11 of the Private Housing Finance Law ("HDFC"). The Project will be managed by DePaul Properties, Inc., an affiliate of the Company.

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 shall pay as PILOT Payments an amount equal to 7.00% of the Effective Gross Income of the Facility.

The Company has not requested exemptions from sales tax or mortgage recording tax.

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

- ✓ The nature of the proposed Facility – **The Facility will provide needed residential housing for persons and families of low-income and developmental disabilities, and is consistent with the Master Plan for the City of Utica.**
- ✓ 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 – **redeveloping and stabilizing the neighborhood**
- ✓ 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 - **providing real property taxes from a facility versus land**
- ✓ 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

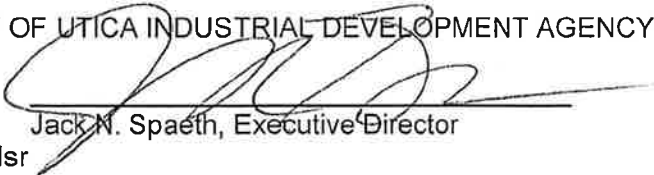
The Agency will consider a final authorizing resolution authorizing financial assistance. You are welcome to attend such meeting at which time you will have an opportunity, both orally and in writing, to present your views with respect to the project. We are providing this notice to you, pursuant to 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

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

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CHAIRMAN

JACK N. SPAETH  
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April 1, 2019

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

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- ✓ 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 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.

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April 1, 2019

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

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- ✓ The impact of the proposed Facility on existing and proposed businesses and economic development projects in the vicinity – **redeveloping and stabilizing the Facility will help to revitalize downtown Utica**
- ✓ The estimated value of tax exemptions to be provided
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- ✓ 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 - **providing real property taxes from a facility versus land**
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By: 

Jack N. Spaeth, Executive Director

JNS/lsr

c: Bruce Karam, Superintendent of Schools  
Pamela Backman, Treasurer