

**Final Authorizing Resolution  
268 Genesee St., LLC  
Facility**

Date: July 25, 2019

At a meeting of the City of Utica Industrial Development Agency, Utica, New York (the "Agency"), held at 8:30 a.m. at One Kenndy Plaza, Utica, New York on the 25th day of July 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

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 and financing of a certain industrial development facility more particularly described below (268 Genesee St., LLC Facility) and the leasing of the facility to 268 Genesee St., LLC.

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

Vin Gilroy voting aye;  
Mark Curley voting aye;  
John Zegarelli voting aye;  
Emmett Martin voting aye.

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE THE LEASE AGREEMENT, LEASEBACK AGREEMENT, THE PILOT AGREEMENT, THE ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE 268 GENESEE ST., LLC FACILITY LOCATED AT 247 ELIZABETH STREET IN THE CITY OF UTICA, ONEIDA COUNTY AND MAKING CERTAIN FINDINGS RELATING TO THE FACILITY.

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, 268 Genesee St., LLC (the "Company") has requested the Agency assist in a certain industrial development facility consisting of renovation and rehabilitation of a 45,000± square foot, five-story vacant historic building commonly known as the Oneida National Bank Building (the "Improvements") situated on 11 parcels of land totaling 1.974± acres in the aggregate located at 268 Genesee St., City of Utica, Oneida County, New York (the "Land") and acquisition and installation of machinery and equipment in the Improvements (the "Equipment"), all for the adaptive reuse of the Improvements as a mixed-use facility for lease to commercial and/or retail tenants for the purpose of providing a banking facility, a restaurant/banquet facility, commercial office space and a commercial kitchen incubator, and to enhance economic development and retain employment in downtown Utica (the Land, Improvements and Equipment collectively, the "Facility" and the renovation, rehabilitation and equipping of the Facility is referred to as the "Project"); 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 lease the stand-alone drive-thru portion of the Facility (the "Drive-Thru Facility") to a related entity to be formed at a later date (the "Drive-Thru Sublessee") for its operation pursuant to a Sublease Agreement to be entered into between the Company and the Drive-Thru Sublessee (the "Drive-Thru Sublease Agreement"); and

WHEREAS, the Company will further lease other portions of the Facility to commercial and/or retail tenants to be identified from time to time (each a "Commercial Sublessee" and collectively the "Commercial Sublessees" and together with the Drive-Thru Sublessee, the "Sublessees") pursuant to sublease agreements (the "Commercial Sublease Agreements" and together with the Drive-Thru Sublease Agreement, the "Sublease Agreements"); and

WHEREAS, Bank of Utica (the "Bank") has agreed to finance a portion of the costs of the Facility (excepting the Drive-Thru Facility) by extending a loan to the Company in the principal amount of \$5,500,000.00 to be secured by a Mortgage (the "Mortgage") from the Agency and the Company to the Bank; and

WHEREAS, the Company intends to finance a portion of the costs of the Drive-Thru Facility by securing a loan with another lender, to be identified at a later time; and

WHEREAS, the Agency contemplates granting financial assistance to the company in the form of exemptions from sales tax and reduced real property taxes for a period of ten years (the "Financial Assistance"), which Financial Assistance is a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"); and

WHEREAS, the Agency provided written notice of its intention to deviation from Policy to the affected taxing jurisdictions by letter dated July 15, 2019; and

WHEREAS, by resolution dated May 16, 2019, the Agency found that (1) the Project 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 designated Empire Development Zone as described in Article 18-B of the General Municipal Law, (2) the predominant purpose of the Project would be to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of that section of the City of Utica because of a lack of reasonably accessible retail trade facilities offering such goods or services; and (3) the Project will preserve permanent, private sector jobs in the State of New York and thereby serve the public purposes of the Act, and the Agency determined to request the chief executive officer of its sponsoring municipality confirms the proposed action of the Agency; and

WHEREAS, the Mayor of the City of Utica confirmed the proposed action of the Agency in writing by certificate dated May 19, 2019; and

WHEREAS, the Agency by resolution duly adopted on February 19, 2019 as amended on April 9, 2019 (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 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, renovation, rehabilitation and equipping of the Facility and the leasing of the Facility to the Company 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

(d) The acquisition, renovation, rehabilitation 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 February 19, 2019, 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 will be an effective instrument whereby the Company conveys to the Agency a leasehold interest in the Facility; and

(i) the Leaseback Agreement will be an effective instrument whereby the Agency leases the Facility back to the Company; and

(j) The Environmental Compliance and Indemnification Agreement (the "Environmental Compliance and Indemnification Agreement") by and between the Agency and the Company 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

(k) The Payment-In-Lieu-of-Tax Agreement (the "PILOT Agreement") between the Agency and the Company will be an effective instrument whereby the Company agrees to make payments in lieu of taxes for the term of the Leaseback Agreement.

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 Environmental Compliance and Indemnification Agreement, (vi) execute, deliver and perform the PILOT Agreement; and (vii) deviate from Policy and grant 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 Lease Agreement, the Leaseback Agreement, the PILOT Agreement and the Environmental Compliance and Indemnification Agreement, all in substantially the forms thereof presented to this meeting 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 extract of the minutes of the meeting of the City of Utica Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on the 25th day of July 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 form 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 25th day of July 2019.

CITY OF UTICA INDUSTRIAL  
 DEVELOPMENT AGENCY  
 By:   
 Jack Spaeth, Assistant Secretary