

RESOLUTION OF THE CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION TOWARD THE ISSUANCE OF TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS IN AN AMOUNT SUFFICIENT TO FINANCE CERTAIN COSTS OF THE VEND-UTI PROPERTY MANAGEMENT CO., LLC FACILITY, OR, IN THE ALTERNATIVE, IN CONNECTION WITH A SALE-LEASEBACK OR LEASE-LEASEBACK TRANSACTION FOR SUCH FACILITY, APPOINTING VEND-UTI PROPERTY MANAGEMENT CO., LLC AND/OR AN ENTITY FORMED OR TO BE FORMED ON ITS BEHALF AS AGENT OF THE ISSUER FOR THE PURPOSE OF ACQUIRING, RENOVATING AND EQUIPPING THE FACILITY, AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT.

WHEREAS, VEND-Uti Property Management Co., LLC, on behalf of itself and/or the principals of VEND-Uti Property Management Co., 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 "Issuer") to enter into a transaction in which the Issuer will assist in the acquisition and renovation of an 18,216± manufacturing facility (the "Improvements") located on a \_\_\_± acre parcel of land situated at 900 Oswego Street, 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 purpose of the wholesale manufacture and distribution of baked and frozen bakery products (the Land, Improvements and Equipment collectively, the "Facility"), including, without limitation, the following as they relate to the acquisition, renovation and equipping of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, renovation and equipping, and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the acquisition, renovation and equipping and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under such building; and

WHEREAS, the Company will convey to the Issuer a leasehold interest in the Facility; and

WHEREAS, the Facility will be leased to the Company or such other person as may be designated by the Company and agreed upon by the Issuer, pursuant to Article 18-A of the General Municipal Law of the State of New York and Chapter 710 of the Laws of 1981 of the State of New York, as may be amended from time to time (collectively, the "Act"); and

WHEREAS, the Company intends to sublease the Facility to New York Dough Co., Ohio Baking Enterprises d/b/a Spano's Bakery and Hemstroughts Bakery (each a "Sublessee" and collectively, the "Sublessees") for operation; and

WHEREAS, based on representations made by the Company, the Facility is not primarily used in making retail sales to customers who personally visit such facilities; and

WHEREAS, the Act authorizes and empowers the Issuer to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Issuer contemplates that it will provide financial assistance to the Company in the form of issuance of a lease, exemptions from mortgage recording taxes, exemptions from sales taxes and abatement of real property taxes on the the Facility for a period of ten years, which financial assistance is consistent with the Issuer's Uniform Tax Exemption Policy, to be more particularly described in a Final Authorizing Resolution to be adopted by the Issuer prior to the closing of the transactions described herein; and

WHEREAS, prior to the closing of a sale-leaseback or lease-leaseback transaction, and the granting of any financial assistance, a public hearing (the "Hearing") will be held so that all persons with views in favor of or opposed to either the financial assistance contemplated by the Issuer, or the location or nature of the Facility, can be heard; and

WHEREAS, notice of the Hearing will be given prior to the closing of a sale-leaseback or lease-leaseback transaction, and the granting of any tax benefits, and such notice (together with proof of publication) will be substantially in the form annexed hereto as **Exhibit A**; and

WHEREAS, the minutes of the Hearing are or will be annexed hereto as **Exhibit B**; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43 B of the Consolidated Laws of New York, as amended (the "SEQR Act")

and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the "Regulations"), the Agency constitutes a "State Agency" and desires to determine whether the acquisition, construction and equipping of the Facility may have a "significant effect on the environment" (as said quoted term is defined in the SEQR Act and the Regulations); and

WHEREAS, to aid the Agency in determining whether the acquisition, construction and equipping of the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency a long environmental assessment form (the "EAF"), a copy of which was presented to and reviewed by the Agency at this meeting and copies of which are on file at the office of the Agency; and

WHEREAS, the Agency has examined the EAF in order to make a determination as to the potential environmental significance of the Facility; and

WHEREAS, the Issuer has given due consideration to the application of the Company and to representations by the Company that the proposed sale-leaseback or lease-leaseback transaction, is either an inducement to the Company to maintain and expand the Facility in the County or is necessary to maintain the competitive position of the Company in its industry.

NOW, THEREFORE, BE IT RESOLVED by the City of Utica Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

Section 1.           Based on an examination of the Application and the EAF, and based further upon the Agency's knowledge of the area surrounding the Facility and such further investigation of the Facility and its environmental effects as the Agency has deemed appropriate, the Agency makes the following findings and determinations with respect to the Facility:

- (A)   The Facility is described in the Application, the EAF and the Lead Agency resolution and the supporting documentation attached thereto;
- (B)   The Facility constitutes an "Unlisted Action" (as defined in the Regulations);
- (C)   No potentially significant impacts on the environment are noted in either the EAF for the Facility, and none are known to the Agency;

- (D) The Facility will not result in (i) substantial adverse change in existing air quality; ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; or a substantial increase in potential for erosion, flooding, leaching or drainage problems; (ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of a resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on threatened or endangered species of animal or plant, or the habitat of such species; or (iii) other significant adverse impacts to natural resources;
- (E) The Facility will not affect a critical environmental area as designated pursuant to 6 NYCRR 617.14(g);
- (F) The Facility will not conflict with the community's current plans or goals as officially approved or adopted;
- (G) The Facility will not result in the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;
- (H) The Facility will not result in a major change in the use of either the quantity or type of energy;
- (I) The Facility will not result in the creation of a hazard to human health;
- (J) The Facility will not result in a substantial change in the use, or intensity of use, of land including architectural, open space or recreational resources, or in its capacity to support existing uses;
- (K) The Facility will not result in encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;
- (L) The Facility will not result in the creation of a material demand for other actions that would result in one or more of the above consequences;

- (M) The Facility will not result in changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; and
- (N) The Facility will not result in two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in 6 NYCRR Section 617.7(c).

Section 2. The Agency hereby determines that the Facility will not have a significant impact on the environment and the Agency will not require the preparation of an environmental impact statement with respect to the Facility. This determination constitutes a negative declaration for purposes of SEQRA. Notice of this determination shall be filed to the extent required by the applicable regulations under SEQRA or as may be deemed advisable by the Chairman of the Agency or counsel to the Agency.

- Section 3.
- (a) The acquisition, renovation and equipping of the Facility and the financing thereof by the Issuer, through the sale or lease of the Facility to the Company by the Issuer pursuant to a sale-leaseback or lease-leaseback transaction, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the City of Utica and the people of the State of New York and improve their standard of living, and thereby serve the public purposes of the Act and the same is, therefore, approved;
  - (b) It is desirable and in the public interest for the Issuer to enter into a sale-leaseback or lease-leaseback transaction, for the purpose of financing the costs of the acquisition, renovation and equipping of the Facility, together with necessary incidental expenses in connection therewith as reflected in the Company's application to the Issuer and as amended from time to time prior to the closing of the sale-leaseback or lease-leaseback transaction.

Section 4. The form and substance of a proposed inducement agreement (in substantially the form presented to this meeting) by and between the Issuer and the Company setting forth the undertakings of the Issuer and the Company with respect to the closing of the sale-leaseback or lease-leaseback transaction, and the development of the Facility (the "Agreement") are hereby approved. The Chairman

of the Issuer is hereby authorized, on behalf of the Issuer, to execute and deliver the Agreement, with such changes in terms and form as the Chairman shall approve. The execution thereof by the Chairman shall constitute conclusive evidence of such approval.

Section 5. Subject to the conditions set forth in Section 4.02 of the Agreement, the Issuer shall (i) acquire, renovate and equip the Facility, (ii) lease (with an obligation to purchase) or sell the Facility to the Company pursuant to an agreement by and between the issuer and the Company whereby the Company will be obligated, among other things, to make payments to or for the account of the Issuer.

Section 6. The Company is herewith and hereby appointed the agent of the Issuer to acquire, renovate, equip and complete the Facility. The Company is hereby empowered to delegate its status as agent of the Issuer to agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to acquire, renovate, equip and complete the Facility. The terms and conditions for the appointment of the Company as agent of the Issuer for the purposes described in this resolution are set forth in the form of the attached letter addressed to the Company, marked as **Exhibit C** to this resolution. The form of such letter is incorporated herein by reference and is approved and adopted by the Issuer, and the Chairman or Executive Director of the Issuer or any other duly authorized official of the Issuer are authorized to execute and deliver such letter to the Company. The Issuer hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Issuer solely for purposes of making sales or leases of goods, services, and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agent of the Issuer shall be deemed to be on behalf of the Issuer and for the benefit of the Facility. The Company shall indemnify the Issuer with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Issuer.

- Section 7. The law firm of Bond, Schoeneck & King, PLLC is appointed Transaction Counsel and Issuer Counsel in connection with the sale-leaseback or lease-leaseback transaction.
- Section 8. Counsel to the Issuer and Transaction Counsel are hereby authorized to work with counsel to the Company and others to prepare, for submission to the Issuer, all documents necessary to effect the sale-leaseback or lease-leaseback transaction.
- Section 9. The Chairman of the Issuer is hereby authorized and directed (i) to distribute copies of this resolution to the Company, and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.
- Section 10. This resolution shall take effect immediately.

STATE OF NEW YORK }  
COUNTY OF ONEIDA } ss:

I, the undersigned Secretary of the City of Utica Industrial Development Agency  
DOES HEREBY CERTIFY THAT:

I have compared the foregoing copy of a resolution of the City of Utica Industrial  
Development Agency (the "Issuer"), with the original thereof on file in the office of the  
Issuer, and that the same is a true and correct copy of such resolution and of the  
proceedings of the Issuer in connection with such matter.

Such resolution was passed at a meeting of the Issuer duly convened in public  
session on December 2, 2014 at 12:00 p.m. local time, at Fort Schuyler Club, 254  
Genesee Street, Utica, New York which the following members were:

PRESENT: Emmett Martin II  
Vincent J. Gilroy, Jr.  
John Buffa  
Joseph H. Hobika, Sr.  
John Zegarelli

ALSO PRESENT: Jack Spaeth, Executive Director  
Laura Ruberto (Bond, Schoeneck & King)  
Richard Viti (VEND-Uti Property Management Co.)

The question of the adoption of the foregoing resolution was duly put to vote on  
roll call, which resulted as follows:

Aye

Vincent Gilroy  
Emmett Martin II  
Joseph H. Hobika, Sr.  
John Zegarelli

John Buffa abstained from the vote

and, therefore, the resolution was declared duly adopted.

The Agreement and the Application are in substantially the form presented to  
and approved at such meeting.



I FURTHER CERTIFY that (i) all members of the Issuer 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 103a and 104, (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 this 2nd day of December 2014.

  
\_\_\_\_\_  
Emmett Martin II, Secretary

**EXHIBIT A  
NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York State General Municipal Law, will be held by the City of Utica Industrial Development Agency (the "Issuer") on the \_\_\_\_ day of January 2015 at 8:45 a.m., local time, at Utica City Hall, Common Council Chambers, First Floor, One Kennedy Plaza, Utica, New York in connection with the following matters:

VEND-Uti Property Management Co., LLC, on behalf of itself and/or the principals of VEND-Uti Property Management Co., LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Issuer to enter into a transaction in which the Issuer will assist in the acquisition and renovation of an 18,216± manufacturing facility (the "Improvements") located on a \_\_\_\_± acre parcel of land situated at 900 Oswego Street, 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 the wholesale manufacture and distribution of baked and frozen bakery products (the Land, Improvements and Equipment collectively, the "Facility"). The Facility will be initially owned, operated and/or managed by the Company.

The Issuer will acquire a leasehold interest in the Facility from the Company and lease the Facility back to the Company. The Company intends to sublease the Facility to New York Dough Co., Ohio Baking Enterprises d/b/a Spano's Bakery and Hemstroughts Bakery (each a "Sublessee" and collectively, the "Sublessees") for operation. At the end of the lease term, the Issuer will terminate its leasehold interest. The Issuer contemplates it will provide financial assistance to the Company in the form of exemptions from sales and use taxes, exemptions from mortgage recording taxes and abatement of property taxes on the Facility for a period of ten years, which proposed financial assistance is consistent with the Issuer's Uniform Tax Exemption Policy.

A representative of the Issuer will at the above-stated time and place hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the Facility. A copy of the Application for Financial Assistance filed by the Company with the Issuer, including an analysis of the costs and benefits of the proposed Facility, is available for public inspection at the offices of the Issuer, One Kennedy Plaza, Utica, New York.

CITY OF UTICA INDUSTRIAL  
DEVELOPMENT AGENCY

Dated: \_\_\_\_\_, 2015

By: /s/ Joseph H. Hobika, Sr., Chairman

**EXHIBIT B**

MINUTES OF PUBLIC HEARING HELD ON \_\_\_\_\_, 2013

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY  
2013 LEASE-LEASEBACK TRANSACTION  
(VEND-UTI PROPERTY MANAGEMENT CO., LLC FACILITY)

- 
1. Joseph H. Hobika, Sr., Chairman of the City of Utica Industrial Development Agency (the "Issuer"), called the hearing to order.
  2. The Chairman then appointed Emmett Martin, Secretary of the Issuer, to record the minutes of the hearing.
  3. The Chairman then described the proposed issuance of the Bonds and the location and nature of the Project Facility to be financed as follows:

VEND-Uti Property Management Co., LLC, on behalf of itself and/or the principals of VEND-Uti Property Management Co., LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Issuer to enter into a transaction in which the Issuer will assist in the acquisition and renovation of an 18,216± manufacturing facility (the "Improvements") located on a \_\_\_\_± acre parcel of land situated at 900 Oswego Street, 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 the wholesale manufacture and distribution of baked and frozen bakery products (the Land, Improvements and Equipment collectively, the "Facility"). The Facility will be initially owned, operated and/or managed by the Company.

The Issuer will acquire a leasehold interest in the Facility from the Company and lease the Facility back to the Company. The Company intends to sublease the Facility to New York Dough Co., Ohio Baking Enterprises d/b/a Spano's Bakery and Hemstroughts Bakery (each a "Sublessee" and collectively, the "Sublessees") for operation. At the end of the lease term, the Issuer will terminate its leasehold interest. The Issuer contemplates it will provide financial assistance to the Company in the form of exemptions from sales and use taxes, exemptions from mortgage recording taxes and abatement of property taxes on the Facility for a period of ten years, which proposed financial assistance is consistent with the Issuer's Uniform Tax Exemption Policy.

A representative of the Issuer will at the above-stated time and place hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the Facility. A copy of the Application for Financial Assistance filed by the Company with the Issuer, including an analysis of the costs and benefits of the proposed Facility, is available for public inspection at the offices of the Issuer, One Kennedy Plaza, Utica, New York.

4. The Chairman then opened up the hearing for comments from the floor for or against the proposed financial assistance and the location and nature of the Project Facility. The following is a listing of the persons heard and a summary of their views:
  
5. The Chairman then asked if there were any further comments, and, there being none, the hearing was closed at \_\_\_\_\_ AM.

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Emmett Martin II, Secretary

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

I, the undersigned Secretary of the City of Utica Industrial Development Agency,  
DO HEREBY CERTIFY:

That I have compared the foregoing copy of the minutes of a public hearing held  
by the City of Utica Industrial Development Agency (the "Issuer") on  
\_\_\_\_\_, 2015 at 8:45AM, local time, at the Utica City Hall,  
Common Council Chambers, First Floor, One Kennedy Plaza, Utica, New York, with the  
original thereof on file in the office of the Issuer, and that the same is a true and correct  
copy of the minutes in connection with such matter.

I FURTHER CERTIFY that (i) pursuant to Section 147(f) of the Internal Revenue  
Code of 1986, as amended, and Title 1 of Article 18-A of the New York General  
Municipal Law, said hearing was open to the general public, and public notice of the  
time and place of said hearing was duly given in accordance with such Section 147(f)  
and Title 1 of Article 18-A, (ii) the hearing in all respects was duly held, and (iii)  
members of the public had an opportunity to be heard.

IN WITNESS WHEREOF, I have hereunto set my hand as of  
\_\_\_\_\_, 2015.

\_\_\_\_\_  
Emmett Martin II, Secretary

## EXHIBIT C

(To be copied on Issuer letterhead and delivered to the Company when appropriate.)

\_\_\_\_\_, 2015

Richard P. Viti, President  
VEND-Uti Property Management Co., LLC  
900 Oswego Street  
Utica NY 13502

Re: *City of Utica Industrial Development Agency 2015 Lease-Leaseback Transaction  
(VEND-Uti Property Management Co., LLC Facility)*

Dear Mr. Viti:

Pursuant to a resolution duly adopted on December 2, 2014, City of Utica Industrial Development Agency (the "Agency") appointed VEND-Uti Property Management Co., LLC, on behalf of itself and/or the principals of VEND-Uti Property Management Co., LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") its agent in connection with a transaction in which the Agency will assist in the acquisition and renovation of an 18,216± manufacturing facility (the "Improvements") located on a \_\_\_\_± acre parcel of land situated at 900 Oswego Street, 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 purpose of the wholesale manufacture and distribution of baked and frozen bakery products (the Land, the Improvements and the Equipment is referred to collectively as the "Facility" and the acquisition, renovation and equipping of the Facility is referred to collectively as the "Project"). The Facility will be initially operated and/or managed by the Company.

This appointment includes authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Facility, and the following activities as they relate to any renovation, equipping and completion of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with renovation and equipping (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with renovation and equipping and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs), installed or placed in, upon or under such building, including all repairs and replacements of such property.

The agency appointment includes the power to delegate such agency appointment, in whole or in part, to agents, subagents, contractors, subcontractors, materialmen, suppliers and vendors of the Company and to such other parties as the Company chooses so long as they are engaged, directly or indirectly, in the activities hereinbefore described.

In exercising this agency appointment, you and each of your properly appointed agents and subagents must claim the sales tax exemption for all purchases by giving your vendors New York State Form ST-123. The supplier or vendor should identify the Facility on each bill or invoice as the "**VEND-Uti Property Management Co., LLC Facility**" and indicate thereon that the Company, its agents, subagents, contractors and subcontractors acted as agent for the Agency in making the purchase.

You and each of your agents, subagents, contractors and/or subcontractors claiming a sales tax exemption in connection with the Facility must also execute a copy of the Contract in Lieu of Exemption Certificate attached hereto, and must complete a New York State Department of Taxation and Finance Form ST-60. Original copies of each Contract in Lieu of Exemption Certificate and completed Form ST-60 must be delivered to the Agency within five (5) days of the appointment of each of your agents, subagents, contractors or subcontractors. Any agent, subagent, contractor or subcontractors of the Company which delivers completed Form ST-60 to the Agency will be deemed to be the agent, subagent, contractor or subcontractor of the Agency for purposes of constructing, renovating and equipping the Facility, and shall only then be authorized to use Form ST-123 as described above. Failure to comply with these requirements may result in loss of sales tax exemptions for the Facility.

It is important to note that contractors and subcontractors who have not been appointed subagent cannot use the sales tax exemption for equipment rental, tools, supplies and other items that do not become part of the finished project. Contractors and subcontractors must be appointed as agent or sub-agent of the Agency to use the Agency sales tax exemption for these purchases. Contractors and subcontractors who have not been appointed a subagent must claim the sales tax exemption for construction materials by giving their vendors a completed "Contractor Exempt Purchase Certificate" (Form ST-120.1) checking box (a).

The aforesaid appointment of the Company as agent of the Agency to acquire, renovate and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, or (b) December 2, 2015, provided, however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time, and further provided that the Agency shall not unreasonably withhold its consent to the extension of such appointment.

You should be aware that the New York State General Municipal Law requires you to file an Annual Statement with the New York State Department of Taxation and Finance regarding the value of sales tax exemptions you, your agents, consultants or subcontractors have claimed pursuant to the authority we have conferred on you with respect to this Project. The penalty for failure to file such statement is the removal of your authority to act as an agent.

If, for some reason, this transaction never closes, you will be liable for payment of the sales tax, if applicable and you are not otherwise exempt, on all materials purchased.

Mr. Richard P. Viti  
\_\_\_\_\_, 2015  
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Please sign and return a copy of this letter for our files.

Very truly yours,

CITY OF UTICA INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Name Jack N. Spaeth  
Title: Executive Director

ACCEPTED & AGREED:

VEND-UTI PROPERTY MANAGEMENT CO., LLC

By: \_\_\_\_\_  
Name:  
Title:



TO: All Contractors, Subcontractors,  
Suppliers and Vendors, etc. of  
VEND-Uti Property Management Co., LLC

Attached please find a "Contract in Lieu of Exemption Certificate" (the "Contract") which will serve as documentation for not charging VEND-Uti Property Management Co., LLC, on behalf of itself and/or the principals of VEND-Uti Property Management Co., LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") sales or use tax in connection with any purchase, lease, rental or other use of materials, equipment, goods, services or supplies at the facility to be owned or leased by the City of Utica Industrial Development Agency (the "Agency") and described in Addendum A to the aforesaid Contract (the "Facility").

In accordance with the authority granted to the Company by the Agency, you are hereby appointed as agent of the Agency for the purpose of making purchases or leases of materials, equipment, goods, services and supplies with respect to the Facility. Enclosed is a completed Form ST-123 that evidences your appointment, and which should be presented at the time of making each exempt purchase.

Your appointment as agent of the Agency is contingent upon your completing the attached Form ST-60 and returning it to us and the Form ST-60 then being filed by the Agency with the New York State Department of Taxation and Finance.

Very truly yours,

VEND-UTI PROPERTY MANAGEMENT CO., LLC

By: \_\_\_\_\_  
Name:  
Title:

cc: City of Utica Industrial Development Agency

## CONTRACT IN LIEU OF EXEMPTION CERTIFICATE

This Contract is entered into by and between **VEND-Uti Property Management Co., LLC** (the "Company"), as agent for and on behalf of the City of Utica Industrial Development Agency, a public benefit corporation and a governmental agency of the State of New York (the "Agency") in connection with renovation and equipping of the facility described in Addendum A hereto (the "Facility") and the contractor or the subcontractor more particularly described on page 2 hereof (the "Contractor").

Pursuant to the authority granted to the Company, as agent of the Agency, the Contractor is hereby appointed agent of said Agency for purposes of completing, executing or otherwise carrying out the obligations imposed under this Contract.

The Contractor acknowledges that the Agency has acquired or will acquire title to or a leasehold interest in the Facility and the Agency is a public benefit corporation and governmental entity of the State of New York. By reason of such status, Agency and its agents acting on its behalf are exempt from payment of all New York State and local sales and use taxes on the purchase or lease of all materials, equipment, goods, services and supplies incorporated into and made an integral component part of any structure, building or real property which becomes the property of Agency, and all equipment, machinery and other tangible personal property (including installation costs with respect thereto) which becomes the property of Agency or in which the Agency has a leasehold interest. In addition, Agency and its agents acting on its behalf are exempt from all sales and use taxes arising out of or connected with the following, as they relate to performance under this Contract: (i) purchases, leases, rentals and other uses of tools, machinery and equipment, and (ii) purchases, leases, rentals, uses or consumption of supplies, goods, materials and services of every kind and description; provided, however, that exemption from sales and use tax with respect to clauses (i) and (ii) above shall apply only if the Contractor is then acting as agent for Agency under the terms of this Contract.

Pursuant to these exemptions from sales and use taxes, the Contractor shall not include such taxes in its contract price, bid, or reimbursable costs, as the case may be. If the Contractor does not comply with the requirements for sales and use tax exemptions, as described above, then it shall be responsible for and pay any and all applicable New York State sales and use taxes, and no portion thereof shall be charged or billed to the Agency or the Company directly or indirectly, the intent of this Contract being that neither Agency nor the Company shall be liable for any of the sales or use taxes described above. This Contract may be accepted by the Contractor in lieu of an exemption certificate, and the Contractor shall retain a copy hereof to substantiate the sales and use tax exemption.

The aforesaid appointment of the Company as agent of the Agency to acquire, construct and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, or (b) December 2, 2015, provided, however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time, and further provided that the Agency shall not unreasonably withhold its consent to the extension of such appointment.

The Agency shall have the right to assign this Contract to the Company by written notice to the Contractor and without written consent of the Contractor, in which case Agency shall be relieved of all obligations hereunder. In the event of such assignment, all applicable sales

and use taxes shall be added to the purchase price and paid to the Contractor pursuant to a change order. All of the above provisions with respect to exemptions for New York State sales and use taxes shall apply to all subcontractors and other parties in privity of contract with the Company, Agency or the Contractor pursuant to the terms of this Contract.

OWNER:

\_\_\_\_\_

Insert name of Contractor or  
Subcontractor

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

VEND-UTI PROPERTY MANAGEMENT  
CO., LLC  
as agent for and on behalf of the  
City of Utica Industrial Development Agency

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Address of Contractor or  
Subcontractor

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

cc: City of Utica Industrial Development Agency

ADDENDUM A

DESCRIPTION OF THE FACILITY

The "Facility" consists of the acquisition and renovation of an 18,216± manufacturing facility (the "Improvements") located on a \_\_\_\_± acre parcel of land situated at 900 Oswego Street, 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 purpose of the wholesale manufacture and distribution of baked and frozen bakery products.

STATE OF NEW YORK)  
)ss  
County of Oneida)

Patricia Zehr of the City of Utica, in said county, being duly sworn, says she is the Principal Clerk of the Utica Observer-Dispatch the Publishers of (Observer-Dispatch), a daily newspaper printed and published in the city of Utica, County and State aforesaid, and that an advertisement of which the attached is a copy, cut from the columns of said paper has been regularly published in said paper on each of the following dates:

1/16/2015

*Patricia Zehr*

Sworn to before me this

19<sup>th</sup> day of January 2015  
*Theresa B. McFadden*

NOTARY PUBLIC ONEIDA CO., N.Y.

THERESA B MCFADDEN  
NOTARY PUBLIC STATE OF NEW YORK  
No. 01MC6303620  
Qualified in Madison County  
My Commission Expires May 12, 2018

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York State General Municipal Law, will be held by the City of Utica Industrial Development Agency (the "Issuer") on the 28th day of January 2015 at 9:00 a.m., local time, at Utica City Hall, Common Council Chambers, First Floor, One Kennedy Plaza, Utica, New York in connection with the following matters:

VEND-Uti Property Management Co., LLC, on behalf of itself and/or the principals of VEND-Uti Property Management Co., LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Issuer to enter into a transaction in which the Issuer will assist in the acquisition and renovation of an 18,216± manufacturing facility (the "Improvements") situated at 900 Oswego Street, 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 the wholesale manufacture and distribution of baked and frozen bakery products (the Land, Improvements and Equipment collectively, the "Facility"). The Facility will be initially owned, operated and/or managed by the Company.

The Issuer will acquire a leasehold interest in the Facility from the Company and lease the Facility back to the Company. The Company intends to sublease the Facility to New York Dough

Co., Ohio Baking Enterprises d/b/a Spano's Bakery and Hamstroughts Bakery (each a "Sublessee" and collectively, the "Sublessees") for operation. At the end of the lease term, the Issuer will terminate its leasehold interest. The Issuer contemplates it will provide financial assistance to the Company in the form of exemptions from sales and use taxes, exemptions from mortgage recording taxes and abatement of property taxes on the Facility for a period of ten years, which proposed financial assistance is consistent with the Issuer's Uniform Tax Exemption Policy.

A representative of the Issuer will at the above-stated time and place hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the Facility. A copy of the Application for Financial Assistance filed by the Company with the Issuer, including an analysis of the costs and benefits of the proposed Facility, is available for public inspection at the offices of the Issuer, One Kennedy Plaza, Utica, New York.

CITY OF UTICA  
INDUSTRIAL  
DEVELOPMENT AGENCY

Dated: January 14, 2015

MINUTES OF PUBLIC HEARING HELD ON JANUARY 28, 2015

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY  
2015 LEASE-LEASEBACK TRANSACTION  
(VEND-UTI PROPERTY MANAGEMENT CO., LLC FACILITY)

1. Jack N. Spaeth, Executive Director of the City of Utica Industrial Development Agency (the "Issuer"), called the hearing to order.
2. The Executive Director then appointed Emmett Martin II, Secretary of the Issuer, to serve as secretary and record the minutes of the hearing.
3. The Executive Director then described the proposed financial assistance and the location and nature of the Project Facility to be financed as follows:

VEND-Uti Property Management Co., LLC, on behalf of itself and/or the principals of VEND-Uti Property Management Co., LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Issuer to enter into a transaction in which the Issuer will assist in the acquisition and renovation of an 18,216± manufacturing facility (the "Improvements") located at 900 Oswego Street, 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 the wholesale manufacture and distribution of baked and frozen bakery products (the Land, Improvements and Equipment collectively, the "Facility"). The Facility will be initially owned, operated and/or managed by the Company.

The Issuer will acquire a leasehold interest in the Facility from the Company and lease the Facility back to the Company. The Company intends to sublease the Facility to New York Dough Co., Ohio Baking Enterprises d/b/a Spano's Bakery and Hemstroughts Bakery (each a "Sublessee" and collectively, the "Sublessees") for operation. At the end of the lease term, the Issuer will terminate its leasehold interest. The Issuer contemplates it will provide financial assistance to the Company in the form of exemptions from sales and use taxes, exemptions from mortgage recording taxes and abatement of property taxes on the Facility for a period of ten years, which proposed financial assistance is consistent with the Issuer's Uniform Tax Exemption Policy.

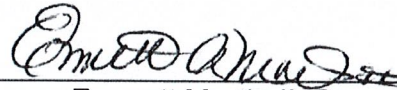
A representative of the Issuer will at the above-stated time and place hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the Facility.

A copy of the Application for Financial Assistance filed by the Company with the Issuer, including an analysis of the costs and benefits of the proposed Facility, is available for public inspection at the offices of the Issuer, One Kennedy Plaza, Utica, New York.

4. The Executive Director then opened up the hearing for comments from the floor for or against the proposed financial assistance and the location and nature of the Project Facility. The following is a listing of the persons heard and a summary of their views:

None.

5. The Executive Director then asked if there were any further comments, and, there being none, the hearing was closed at 9:30AM.



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Emmett Martin II, Secretary

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

I, the undersigned Secretary of the City of Utica Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the foregoing copy of the minutes of a public hearing held by the City of Utica Industrial Development Agency (the "Issuer") on January 28, 2015 at 9:00AM, local time, at the Utica City Hall, Common Council Chambers, First Floor, One Kennedy Plaza, Utica, New York, with the original thereof on file in the office of the Issuer, and that the same is a true and correct copy of the minutes in connection with such matter.

I FURTHER CERTIFY that (i) pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended, and Title 1 of Article 18-A of the New York General Municipal Law, said hearing was open to the general public, and public notice of the time and place of said hearing was duly given in accordance with such Section 147(f) and Title 1 of Article 18-A, (ii) the hearing in all respects was duly held, and (iii) members of the public had an opportunity to be heard.

IN WITNESS WHEREOF, I have hereunto set my hand as of March 26, 2015.

  
\_\_\_\_\_  
Emmett Martin II, Secretary







# CITY OF UTICA

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

ROBERT PALMIERI  
MAYOR

JOSEPH HOBKA, SR.  
CHAIRMAN

JACK SPAETH  
EXECUTIVE DIRECTOR

January 14, 2015

Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica NY 13501

Re: *VEND-Uti Property Management Co., LLC*

Dear Mr. Picente:

On January 28, 2014 at 9:00AM, local time, at Utica City Hall, Common Council Chambers, First Floor, One Kennedy Plaza, Utica, New York 13502, the City of Utica Industrial Development Agency (the "Agency") will conduct a public hearing regarding a proposed project for VEND-Uti Property Management Co., LLC. Attached is a copy of the Notice of Public Hearing describing the project and the financial assistance contemplated by the Agency. The Notice has been submitted to *Observer-Dispatch* for publication.

You are welcome to attend such hearing 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 792-0195.

Very truly yours,

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

By: \_\_\_\_\_

Jack N. Spaeth, Executive Director



# CITY OF UTICA

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

ROBERT PALMIERI  
MAYOR

JOSEPH HOBIKA, SR.  
CHAIRMAN

JACK SPAETH  
EXECUTIVE DIRECTOR

January 14, 2015

Robert Palmieri, Mayor  
City of Utica  
One Kennedy Plaza  
Utica NY 13502

Re: *VEND-Uti Property Management Co., LLC*

Dear Mayor Palmieri:

On January 28, 2014 at 9:00AM, local time, at Utica City Hall, Common Council Chambers, First Floor, One Kennedy Plaza, Utica, New York 13502, the City of Utica Industrial Development Agency (the "Agency") will conduct a public hearing regarding a proposed project for VEND-Uti Property Management Co., LLC. Attached is a copy of the Notice of Public Hearing describing the project and the financial assistance contemplated by the Agency. The Notice has been submitted to *Observer-Dispatch* for publication.

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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 792-0195.

Very truly yours,

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

By: 

Jack N. Spaeth, Executive Director

c: Patricia A. Lindsey, City Clerk



# CITY OF UTICA

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

ROBERT PALMIERI  
MAYOR

JOSEPH HOBICA, SR.  
CHAIRMAN

JACK SPAETH  
EXECUTIVE DIRECTOR

January 14, 2015

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

Re: *VEND-Uti Property Management Co., LLC*

Dear Mr. Karam:

On January 28, 2014 at 9:00AM, local time, at Utica City Hall, Common Council Chambers, First Floor, One Kennedy Plaza, Utica, New York 13502, the City of Utica Industrial Development Agency (the "Agency") will conduct a public hearing regarding a proposed project for VEND-Uti Property Management Co., LLC. Attached is a copy of the Notice of Public Hearing describing the project and the financial assistance contemplated by the Agency. The Notice has been submitted to *Observer-Dispatch* for publication.

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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 792-0195.

Very truly yours,

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

By: \_\_\_\_\_

Jack N. Spaeth, Executive Director