

RESOLUTION OF THE CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION IN CONNECTION WITH A LEASE-LEASEBACK TRANSACTION FOR THE 268 GENESEE STREET, LLC FACILITY, APPOINTING 268 GENESEE STREET, LLC AND/OR AN ENTITY FORMED OR TO BE FORMED ON ITS BEHALF AS AGENT OF THE AGENCY FOR THE PURPOSE OF ACQUIRING, RENOVATING, REHABILITATING AND EQUIPPING THE FACILITY, AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT.

WHEREAS, 268 Genesee Street, LLC, on behalf of itself and/or the principals of 268 Genesee Street, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Agency to enter into a transaction in which the Agency will assist in the 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 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 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"), including, without limitation, the following as they relate to the acquisition, renovation, rehabilitation 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, rehabilitation 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, rehabilitation 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 Agency 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 Agency, 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 will sublease portions of the Facility to other commercial and/or retail tenants for its operation (each a "Sublessee" and collectively the "Sublessees"); and

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

WHEREAS, the Act authorizes and empowers the Agency 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 Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes, exemptions from sales and use taxes on materials incorporated into the Facility and abatement of real property tax for a period of ten years during which time the Company will make PILOT Payments on the following scale: 0% for yrs 1-2, 20%, 20%, 30%, 40%, 50%, 50%, 60%, 70%, and 80%, which financial assistance is a deviation from the Agency's Uniform Tax Exemption Policy, to be more particularly described in a Final Authorizing Resolution to be adopted by the Agency prior to the closing of the transactions described herein; and

WHEREAS, based upon representations made by the Company in the Application, the value of the Financial Assistance is described as follows:

Sales and use tax exemptions estimated at \$348,250.00 but shall not exceed \$383,075.00 in the aggregate;

Mortgage recording tax exemptions estimated at \$41,250.00 but shall not exceed \$45,375.00 in the aggregate;

Real property tax abatement estimated at \$414,036.00; and

WHEREAS, prior to the closing of a 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 Agency, 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 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, based upon the information provided by the Company in the Retail Determination, the Facility will be primarily used in making sales of goods or services to customers who personally visit the Project; and

WHEREAS, prior to the closing of a lease-leaseback transaction, and the granting of any financial assistance, the Agency will adopt a Statement of Finding and request the Mayor of the City of Utica confirm the proposed Financial Assistance; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed 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. (a) The acquisition, renovation, rehabilitation and equipping of the Facility and the financial assistance thereof by the Agency, through the lease of the Facility to the Company by the Agency pursuant to a 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 Agency to enter into a lease-leaseback transaction, for the purpose of providing financial assistance for the acquisition, renovation, rehabilitation and equipping of the Facility, together with necessary incidental expenses in connection therewith as reflected in the Company's

application to the Agency and as amended from time to time prior to the closing of the lease-leaseback transaction.

Section 2. The form and substance of a proposed inducement agreement (in substantially the form presented to this meeting) by and between the Agency and the Company setting forth the undertakings of the Agency and the Company with respect to the closing of the lease-leaseback transaction, and the development of the Facility (the "Agreement") are hereby approved. The Chairman of the Agency is hereby authorized, on behalf of the Agency, 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 3. Subject to the conditions set forth in Section 4.02 of the Agreement, the Agency shall (i) acquire, renovate, rehabilitate 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 Agency and the Company whereby the Company will be obligated, among other things, to make payments to or for the account of the Agency.

Section 4. The Company is herewith and hereby appointed the agent of the Agency to acquire, renovate, rehabilitate, equip and complete the Facility. The Company is hereby empowered to delegate its status as agent of the Agency to agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to acquire, renovate, rehabilitate, equip and complete the Facility. The terms and conditions for the appointment of the Company as agent of the Agency 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 Agency, and the Chairman or Executive Director of the Agency or any other duly authorized official of the Agency are authorized to execute and deliver such letter to the Company. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency 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 Agency shall be deemed to be on behalf of the Agency and for the benefit of the Facility. The Company shall indemnify the Agency 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 Agency.

Section 5. The law firm of Bond, Schoeneck & King, PLLC is appointed Transaction Counsel and Agency Counsel in connection with the lease-leaseback transaction.

Section 6. Counsel to the Agency and Transaction Counsel are hereby authorized to work with counsel to the Company and others to prepare, for submission to the Agency, all documents necessary to effect the lease-leaseback transaction.

Section 7. The Chairman of the Agency 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 8. This resolution shall take effect immediately.

Such AMENDED resolution was passed at a meeting of the Agency duly convened in public session on April 9, 2019 at 8:30 a.m. local time, at Utica, New York which the following members were:

Members Present: Vin Gilroy, Mark Curley, John Zegarelli

Member Excused: John Buffa, Emmett Martin

Also Present: Jack Spaeth (Executive Director)

Others: Linda Romano (BS&K – Agency Counsel)

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

John Zegarelli voting aye; and
Mark Curley voting aye.

Vincent J. Gilroy, Jr. abstained from the vote.

and, therefore, the amended resolution was declared duly adopted.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meetings, (ii) pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), said meetings were open to the general public and public notice of the time and place of said meetings 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 25th day of July 2019.



Jack N. Spaeth, Assistant 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 "Agency") on the ____ day of _____ 2019 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:

268 Genesee Street, LLC, on behalf of itself and/or the principals of 268 Genesee Street, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Agency to enter into a transaction in which the Agency will assist in the 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 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 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"). The Facility will be initially leased, operated and/or managed by the Company.

The Company owns the Facility and will lease the Facility to the Agency, and the Agency will lease the Facility back to the Company. At the end of the lease term, the Agency will terminate its leasehold interest in the Facility. The Agency contemplates that 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 real property taxes for a period of ten years, which proposed financial assistance represents a deviation from the Agency's Uniform Tax Exemption Policy, to be more particularly described in a Final Authorizing Resolution to be adopted by the Agency prior to the closing of the transactions described herein.

A representative of the Agency 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 Agency, including an analysis of the costs and benefits of the proposed Facility, is available for public inspection at the offices of the Agency, One Kennedy Plaza, Utica, New York.

CITY OF UTICA INDUSTRIAL
DEVELOPMENT AGENCY

Dated: _____, 2019

By: /s/ Vincent J. Gilroy, Jr., Chairman

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON _____, 2019

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY
LEASE-LEASEBACK TRANSACTION
(268 GENESEE STREET, LLC FACILITY)

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1. Jack N. Spaeth, Executive Director of the City of Utica Industrial Development Agency (the "Agency"), called the hearing to order.
 2. The Executive Director, also being the Assistant Secretary of the Agency, recorded the minutes of the hearing.
 3. The Executive Director then described the proposed financial assistance and the location and nature of the Facility to be financed as follows:

268 Genesee Street, LLC, on behalf of itself and/or the principals of 268 Genesee Street, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Agency to enter into a transaction in which the Agency will assist in the 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 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 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"). The Facility will be initially leased, operated and/or managed by the Company.

The Company owns the Facility and will lease the Facility to the Agency, and the Agency will lease the Facility back to the Company. At the end of the lease term, the Agency will terminate its leasehold interest in the Facility. The Agency contemplates that 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 real property taxes for a period of ten years, which proposed financial assistance represents a deviation from the Agency's Uniform Tax Exemption Policy, to be more particularly described in a Final Authorizing

Resolution to be adopted by the Agency prior to the closing of the transactions described herein.

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 Facility. The following is a listing of the persons heard and a summary of their views:

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

Jack N. Spaeth, Assistant Secretary

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 foregoing copy of the minutes of a public hearing held by the City of Utica Industrial Development Agency (the "Agency") on _____, 2019 at _____, 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 Agency, 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 _____, 2019.

Jack N. Spaeth, Assistant Secretary

EXHIBIT C

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

_____, 2019

Michael L. Pezzolanella, Member
268 Genesee Street, LLC
520 Seneca Street #401
Utica NY 13502

RE: *City of Utica Industrial Development Agency Lease-Leaseback Transaction
(268 Genesee Street, LLC Facility)*

Dear Mr. Pezzolanella:

Pursuant to a resolution duly adopted on February 19, 2019 as amended on April 9, 2019, the City of Utica Industrial Development Agency (the "Agency") appointed 268 Genesee Street, LLC, on behalf of itself and/or the principals of 268 Genesee Street, LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") the true and lawful agent of the Agency to enter into a transaction in which the Agency will assist in the 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 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 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").

It is the intent of the Agency that this agency appointment include, from the effective date of such appointment, authority to purchase, lease and otherwise use on behalf of the Agency all materials, equipment, goods, services and supplies to be incorporated into and made an integral part of the Facility and also include the following activities as they relate to the renovation, rehabilitation and equipping of the Facility, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of the Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the renovation, rehabilitation and equipping of the Facility; (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the

renovation, rehabilitation and equipping of the Facility including all utility services 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, the Company, its agents, subagents, contractors and subcontractors, should give the supplier or vendor a copy of this letter to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency. Renovation, rehabilitation contracts, purchase orders and other agreements relating to the project should be executed by the Company, or any sub-agent appointed by the Company, as agent of the Agency. Also, purchases must be billed or invoiced by the vendor to the Company, or any sub-agent appointed by the Company, as agent of the Agency (e.g. "268 Genesee Street, LLC as agent for the City of Utica Industrial Development Agency"). The supplier or vendor should identify the Facility as the "**268 Genesee Street, LLC Facility**" on each bill or invoice and indicate thereon that the Company, its agents, subagents, contractors and subcontractors acted as agent for the City of Utica Industrial Development 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 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 acquiring, renovating and equipping the Facility. **Failure to comply with these requirements may result in loss of sales tax exemptions for the Facility.**

You should be aware that the New York State General Municipal Law requires you to file with the New York State Department of Taxation and Finance Form ST-340 (Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority) 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. This statement must be filed on an annual basis for as long as the Company is claiming a sales tax exemption. **The**

penalty for failure to file such statement is the removal of your authority to act as an agent.

The value of exemptions from sales and use taxes on materials and equipment currently authorized by the Agency is estimated at \$348,250.00 but shall not exceed \$383,075.00 in the aggregate. If the exemptions claimed by the Company exceed (i) \$100,000.00 for purchases made between February 19, 2019 and April 16, 2019 or (ii) \$383,075.00 in the aggregate, it may subject the Company to recapture of New York State sales tax.

The aforesaid appointment of the Company as agent of the Agency to renovate, rehabilitate and equip the Facility shall **expire on February 19, 2020**. 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.

Please sign and return a copy of this letter for our files.

Very truly yours,

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Jack N. Spaeth, Executive Director

ACCEPTED and AGREED

268 GENESEE STREET, LLC

By: _____
Name:
Title: