

RESOLUTION OF THE CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION IN CONNECTION WITH A LEASE-LEASEBACK TRANSACTION FOR THE 311 MAIN STREET, LLC FACILITY, APPOINTING 311 MAIN STREET, LLC AND/OR AN ENTITY FORMED OR TO BE FORMED ON ITS BEHALF AS AGENT OF THE AGENCY FOR THE PURPOSE OF PARTIALLY DEMOLISHING, CONSTRUCTING, REHABILITATING, RENOVATING AND EQUIPPING THE FACILITY, AUTHORIZING THE AGENCY TO CONDUCT A PUBLIC HEARING, AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT.

WHEREAS, 311 Main Street, LLC, on behalf of itself and/or the principals of 311 Main 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 City of Utica Industrial Development Agency (the “Agency”) to enter into a transaction in which the Agency will assist in the partial demolition, construction, rehabilitation and renovation of a six-story, 35,000± square foot historic building formerly known as the Utica Children’s Museum to provide 11,000± square feet of retail space on the first floor and 24,000± square feet of market rate housing on floors 2 – 5, consisting of twenty loft apartments, together with all infrastructure and amenities to service the same (collectively, the “Improvements”), all situated on a .377± acre parcel of land located at 311 Main Street, City of Utica, Oneida County, New York (the “Land”); and acquisition and installation of machinery, furniture, fixtures, appliances and equipment in the Improvements (the “Equipment”), all for the purpose of filling a demonstrated need for housing identified in the Oneida County Vision 2020 Study and in furtherance of the City of Utica Master Plan (the Land, Improvements and Equipment is referred to collectively as the “Facility” and the partial demolition, construction, rehabilitation, renovation and equipping of the Facility is referred to as the “Project”), including, without limitation, the following as they relate to the partial demolition, construction, rehabilitation, 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 partial demolition, construction, rehabilitation, 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 partial demolition, construction, rehabilitation, 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 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 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 Company will sublease the first floor of the Improvements (the "Restaurant Facility") to a tenant to be identified at a later date (the "Restaurant Sublessee") for its operation; and

WHEREAS, the Company will sublease the housing units to residential sublessees to be identified from time to time (each a "Residential Sublessee," collectively the "Residential Sublessees" and together with the Restaurant Sublessee, the "Sublessees"); and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from sales and use taxes on materials incorporated into the Facility, exemptions from mortgage recording taxes, and reduction of real property taxes for a period of twelve years (the "Financial Assistance"), 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 valued at \$30,625

Mortgage tax exemptions valued at \$48,975

Real property tax reduction estimated at \$451,080

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 Financial Assistance, 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, the Company represented that it will create (or cause the Restaurant Sublessee to create) 20 full time equivalent positions at the Facility within two years of completion of the Project, retain (or cause the Restaurant Sublessee to retain) 10 full time equivalent positions at the Facility, and maintain all for the duration of the Lease Term as a result of undertaking the Project (the "Employment Obligation"), and the Agency will condition the proposed Financial Assistance on the Company achieving the Employment Obligation or it may be subject to recapture or termination of Financial Assistance; and

WHEREAS, prior to the closing of a lease-leaseback transaction, and the granting of any Financial Assistance, the Agency must make a finding, based upon evidence provided by the Company, that the Project will promote employment opportunities and prevent economic deterioration in the area served by the Agency; 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 City of Utica 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 partial demolition, construction, rehabilitation, renovation 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 partial demolition, construction, rehabilitation, renovation 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) partially demolish, construct, rehabilitate, renovate and equip the Facility, and (ii) lease 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 partially demolish, construct, rehabilitate, renovate, 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 partially demolish, construct, rehabilitate, renovate, 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.

STATE OF NEW YORK }
COUNTY OF ONEIDA } ss:

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

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

Such resolution was passed at a meeting of the Agency duly convened in public session on December 15, 2021 at 12:00 p.m. local time, at Fort Schuyler Club, 254 Genesee Street, Utica, New York which the following members were:

Members Present: Vin Gilroy, John Zegarelli, John Buffa, Mark Curley

Member Excused: Emmett Martin

Also Present: Jack Spaeth (Executive Director), Linda Romano and Laura Ruberto (BS&K – Agency Counsel), Brian Thomas (UED Commissioner)

Others: Mike Potrzeba (311 Main Street, LLC)

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

Vin Gilroy voting aye;
Mark Curley voting aye;
John Buffa voting aye; and
John Zegarelli voting aye.

and, therefore, the resolution was declared duly adopted.

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 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 on November 29, 2022.

A handwritten signature in blue ink, appearing to read 'JN Spaeth', with a long horizontal flourish extending to the right.

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 19th day of April 2022, at 9:30 a.m., local time, at Utica City Hall, Urban and Economic Development Conference Room, Second Floor, One Kennedy Plaza, Utica, New York in connection with the following matters:

311 Main Street Holdings LLC, on behalf of itself and/or the principals of 311 Main Street Holdings 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 partial demolition, construction, rehabilitation and renovation of a six-story, 35,000± square foot historic building formerly known as the Utica Children's Museum to provide 11,000± square feet of retail space on the first floor and 24,000± square feet of market rate housing on floors 2 – 5, consisting of twenty loft apartments, together with all infrastructure and amenities to service the same (collectively, the "Improvements"), all situated on a .377± acre parcel of land located at 311 Main Street, City of Utica, Oneida County, New York (the "Land"); and acquisition and installation of machinery, furniture, fixtures, appliances and equipment in the Improvements (the "Equipment"), all for the purpose of filling a demonstrated need for housing identified in the Oneida County Vision 2020 Study and in furtherance of the City of Utica Master Plan (the Land, Improvements and Equipment is referred to collectively as the "Facility" and the partial demolition, construction, rehabilitation, renovation and equipping of the Facility is referred to as the "Project"). The Facility will be initially leased, operated and/or managed by the Company.

The Company will own the Facility and lease the Facility to the Agency, and the Agency will lease the Facility back to the Company for a term of approximately twelve years. The Company will sublease the first floor of the Improvements (the "Restaurant Facility") to a tenant to be identified at a later date (the "Restaurant Sublessee") for its operation. The Company will sublease the housing units to residential sublessees to be identified from time to time (each a "Residential Sublessee", collectively the "Residential Sublessees" and together with the Restaurant Sublessee, the "Sublessees"). 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 reduction of real property taxes for a period of twelve years, which proposed 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.

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. Comments may also be submitted to the Agency in writing or electronically prior to the

Public Hearing. Members of the public may also listen to the Public Hearing by calling 1-408-418-9388 (Access code: 2630 782 3672). Minutes of the Public Hearing will be transcribed and posted on the Agency's website. 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: April 5, 2022

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

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON APRIL 19, 2022

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY
2022 LEASE-LEASEBACK TRANSACTION
(311 Main Street Holdings LLC FACILITY)

1. Jack N. Spaeth, Executive Director of the City of Utica Industrial Development Agency (the "Agency"), called the hearing to order at 9:30 a.m.
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 as follows:

311 Main Street Holdings LLC, on behalf of itself and/or the principals of 311 Main Street Holdings 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 partial demolition, construction, rehabilitation and renovation of a six-story, 35,000± square foot historic building formerly known as the Utica Children's Museum to provide 11,000± square feet of retail space on the first floor and 24,000± square feet of market rate housing on floors 2 – 5, consisting of twenty loft apartments, together with all infrastructure and amenities to service the same (collectively, the "Improvements"), all situated on a .377± acre parcel of land located at 311 Main Street, City of Utica, Oneida County, New York (the "Land"); and acquisition and installation of machinery, furniture, fixtures, appliances and equipment in the Improvements (the "Equipment"), all for the purpose of filling a demonstrated need for housing identified in the Oneida County Vision 2020 Study and in furtherance of the City of Utica Master Plan (the Land, Improvements and Equipment is referred to collectively as the "Facility" and the partial demolition, construction, rehabilitation, renovation and equipping of the Facility is referred to as the "Project"). The Facility will be initially leased, operated and/or managed by the Company.

The Company will own the Facility and lease the Facility to the Agency, and the Agency will lease the Facility back to the Company for a term of approximately twelve years. The Company will sublease the first floor of the Improvements (the "Restaurant Facility") to a tenant to be identified at a later date (the "Restaurant Sublessee") for its operation. The Company will sublease the housing units to residential sublessees to be identified from time to time (each a "Residential Sublessee", collectively the

“Residential Sublessees” and together with the Restaurant Sublessee, the “Sublessees”). 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 reduction of real property taxes for a period of twelve years, which proposed 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.

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:

Robert Esche appeared on behalf of the Company. No comments were made.

5. The Executive Director then asked if there were any further comments, and, there being none, the hearing was closed at 9:45 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 virtually by the City of Utica Industrial Development Agency (the "Agency") on April 19, 2022 at 9:30 a.m. local time, 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) the hearing was open to the public, and public notice of the date, time and location of said hearing was duly given, (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 November 29, 2022.



Jack N. Spaeth, Assistant Secretary

EXHIBIT C

AGENCY APPOINTMENT LETTER

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

_____, 2022

Robert Esche, CEO
311 Main Street Holdings LLC
400 Oriskany Street West
Utica, New York 13502

Re: *City of Utica Industrial Development Agency 2022 Lease-Leaseback Transaction
(311 Main Street Holdings LLC Facility)*

Dear Mr. Esche:

Pursuant to a resolution duly adopted on December 15, 2021, the City of Utica Industrial Development Agency (the "Agency") appointed 311 Main Street, LLC, on behalf of itself and/or the principals of 311 Main Street, LLC, and/or an entity formed or to be formed on behalf of any of the foregoing, which entity has since been identified as 311 Main Street Holdings LLC (collectively, the "Company") the true and lawful agent of the Agency to enter into a transaction in which the Agency will assist in the partial demolition, construction, rehabilitation and renovation of a six-story, 35,000± square foot historic building formerly known as the Utica Children's Museum to provide 11,000± square feet of retail space on the first floor and 24,000± square feet of market rate housing on floors 2 – 5, consisting of twenty loft apartments, together with all infrastructure and amenities to service the same (collectively, the "Improvements"), all situated on a .377± acre parcel of land located at 311 Main Street, City of Utica, Oneida County, New York (the "Land"); and acquisition and installation of machinery, furniture, fixtures, appliances and equipment in the Improvements (the "Equipment"), all for the purpose of filling a demonstrated need for housing identified in the Oneida County Vision 2020 Study and in furtherance of the City of Utica Master Plan (the Land, Improvements and Equipment is referred to collectively as the "Facility" and the partial demolition, construction, rehabilitation, renovation 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 Project, 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 Project; (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the Project 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. Construction 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. "311 Main Street Holdings LLC as agent for the City of Utica Industrial Development Agency"). The supplier or vendor should identify the Facility as the "**311 Main Street Holdings 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 not to exceed \$350,000.00 in the aggregate. If the exemptions claimed by the Company exceed (a) \$100,000 between the inducement date and the date of the second public hearing or (b) \$350,000.00 in the aggregate, it may subject the Company to recapture of the New York State portion of sales tax.

The aforesaid appointment of the Company as agent of the Agency to partially demolish, construct, renovate, rehabilitate and equip the Facility shall expire on November 29, 2023. 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

311 MAIN STREET HOLDINGS LLC

By: _____
Robert Esche, Chief Executive Officer

TO: All Contractors, Subcontractors,
Suppliers and Vendors, etc. of
311 Main Street Holdings LLC

Attached please find a "Contract in Lieu of Exemption Certificate" (the "Contract") which will serve as documentation for not charging 311 Main Street Holdings LLC (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").

Also attached is a letter signed by the Agency appointing the Company as its agent for the purpose of partially demolishing, renovating, rehabilitating and equipping the Facility. This letter authorizes the Company to delegate its authority as agent of the Agency to its agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company authorizes.

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. **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,

311 MAIN STREET HOLDINGS 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 **311 MAIN STREET HOLDINGS 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 the partial demolition, construction, renovation, rehabilitation, equipping and completion 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 renovate, rehabilitate and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, or (b) _____, 2023, 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.

Based upon representations made by the Company in its Application for Financial Assistance, the value of exemptions from sales and use taxes on materials and equipment currently authorized by the Agency is estimated at \$48,975 but not to exceed \$53,260 in the aggregate. If the exemptions claimed by the Company exceed \$53,260 in the aggregate, it may subject the Company to recapture of the New York State portion of sales tax.

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:

311 MAIN STREET HOLDINGS LLC

[Insert name of Contractor or Subcontractor]

as agent for and on behalf of the City of Utica Industrial Development Agency

By: _____
Name:
Title:

By: _____
Name:
Title:

DATE: _____

DATE: _____

Address of Contractor or Subcontractor:

cc: City of Utica Industrial Development Agency

ADDENDUM A

DESCRIPTION OF THE FACILITY

The partial demolition, construction, rehabilitation and renovation of a six-story, 35,000± square foot historic building formerly known as the Utica Children's Museum to provide 11,000± square feet of retail space on the first floor and 24,000± square feet of market rate housing on floors 2 – 5, consisting of twenty loft apartments, together with all infrastructure and amenities to service the same (collectively, the "Improvements"), all situated on a .377± acre parcel of land located at 311 Main Street, City of Utica, Oneida County, New York (the "Land"); and acquisition and installation of machinery, furniture, fixtures, appliances and equipment in the Improvements (the "Equipment"), all for the purpose of filling a demonstrated need for housing identified in the Oneida County Vision 2020 Study and in furtherance of the City of Utica Master Plan.