

Transcript Document No. 6

**Inducement Resolution
Utica Harbor Lodging Group LLC Facility**

RESOLUTION OF THE CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION IN CONNECTION WITH A LEASE-LEASEBACK TRANSACTION WITH UTICA HARBOR LODGING GROUP LLC, THE PRINCIPALS OF UTICA HARBOR LODGING GROUP LLC, AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT, AUTHORIZING A PUBLIC HEARING AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT.

WHEREAS, Utica Harbor Lodging Group LLC, on behalf of itself and/or the principals of Utica Harbor Lodging Group 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 lease-leaseback transaction in which the Agency will assist in the acquisition of four (4) parcels of land measuring ____± acres in the aggregate located at Wells Avenue, Utica Harbor Point, City of Utica, Oneida County, New York (collectively, the "Land") to undertake the following:

(A) (i) construction of six residential apartment buildings containing a total of 240 units and one 8,000± square foot Community Center, together with all parking and infrastructure to support the same (collectively, the "Residential Improvements"); (ii) acquisition and installation of furniture, fixtures and equipment in the Residential Improvements (the "Residential Equipment"); all to be used for the purpose of filling a demonstrated need for market rate housing (the Land, the Residential Improvements and the Residential Equipment are referred to collectively as the "Residential Facility" and the acquisition, construction and equipping of the Residential Facility is referred to collectively as the "Residential Project"); and

(B) (i) construction of a 100-room limited service hotel together with all parking and infrastructure to support the same (collectively, the "Hotel Improvements" and together with the Residential Improvements, the "Improvements"); (ii) acquisition and installation of furniture, fixtures and equipment in the Hotel Improvements (the "Hotel Equipment" and together with the Residential Equipment, the "Equipment"); all in

furtherance of enhancing economic development in downtown Utica and specifically within the Harbor Point area (the Land, the Hotel Improvements and the Hotel Equipment are referred to collectively as the “Hotel Facility” and the acquisition, construction and equipping of the Hotel Facility is referred to collectively as the “Hotel Project”); and

WHEREAS, the Company will lease the Residential Facility and the Hotel Facility (collectively, the “Facility”) to the Agency pursuant to a Lease Agreement; and

WHEREAS, the Facility will be leased back to the Company for its operation pursuant to a Leaseback Agreement by and between the Agency and the Company (the “Leaseback Agreement”) and pursuant to Article 18-A of the General Municipal Law of the State of New York and Chapter 372 of the Laws of 1970 of the State of New York, as may be amended from time to time (collectively, the “Act”); and

WHEREAS, the Company intends to further sublease individual units comprising the Residential Facility to residential tenants to be identified from time to time (each a “Residential Sublessee” and collectively the “Residential Sublessees”); and

WHEREAS, the Company intends to finance a portion of the costs of the Facility by securing from one or more lenders to be identified a loan in the estimated principal sum of \$41,356,348.00, to be secured by a mortgage and other instruments said lender or lenders may require (the “Loan Documents”); and

WHEREAS, the City of Utica commissioned a housing study dated July 2022 (the “Utica Housing Study”) that identifies a need for market-rate housing; and

WHEREAS, the Utica Harbor Point Development Corporation (the “Development Corp.”) is a partnership dedicated to the long term improvements and enhancements of Harbor Point in the City of Utica, and prepared a redevelopment plan that outlines a vision to revitalize the harbor area to create an economically sustainable mixed-used development project that will become a major new destination within the Mohawk Valley (the “Harbor Point Redevelopment Plan”); 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 sales and use taxes on materials incorporated into the Facility, exemptions from mortgage recording taxes and

abatement of real property tax for a period of thirty (30) years during which time the Company will pay as PILOT Payments an annual fixed amount of \$70,000.00 to be allocated among the taxing jurisdictions (collectively, the “Financial Assistance”);

WHEREAS, the value of the proposed Financial Assistance is as follows:

Sales and use tax exemption	\$ 1,312,500.00
Mortgage recording tax exemption	\$ 311,000.00
Real property tax abatement	\$28,868,978.00 (approximately)

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 Agency has given due consideration to the Application for Financial Assistance of the Company dated March 29, 2023 and the associated materials submitted therewith (collectively, the “Application”) 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; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “SEQR Act” or “SEQRA”), the Agency constitutes a “State Agency”; and

WHEREAS, the proposed Financial Assistance is a deviation from the Agency’s Uniform Tax Exemption Policy (the “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, the Agency is contemplating deviating from its Policy for the reasons described in **Exhibit C** attached hereto;

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form and related documents (the "Questionnaire") with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, in furtherance of the Harbor Point Redevelopment Plan, the City of Utica adopted a Final Generic Environmental Impact Statement on February 17, 2016 (the "GEIS") relating to proposed development within the Harbor Point; and

WHEREAS, prior to the granting of any Financial Assistance, the Agency will complete its environmental review and make determinations for purposes of SEQRA.

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, construction 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, construction and equipping of the Facility, together with necessary incidental expenses in connection therewith as reflected in the Application.

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.

The Agency shall (i) assist with the acquisition, construction and equipping of the Facility, (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, subject to satisfaction of the following conditions: (i) the Company obtaining all necessary governmental approvals, (ii) approval of the directors of the Company, (iii) approval of the members of the Agency, (iv) satisfactory completion of the environmental review of the Facility by the Agency in compliance with the State Environmental Quality Review Act, (v) agreement by the Agency and the Company upon mutually acceptable terms and conditions for the Lease (or Leaseback) Agreement and other documentation usual and customary to transactions of this nature, (vi) the condition that there are no changes in New York State Law which prohibit or limit the Agency from fulfilling its obligation and commitment as herein set forth to enter into the sale-leaseback or lease-leaseback transaction, (vii) payment by the Company of the Agency's transaction fee and the fees and disbursements of bond counsel or transaction counsel, (viii) the Agency conducting a public hearing, (ix) the Agency's receipt of the final Letter of Intent between the Company and the Development Corp. providing details of the proposed Residential Project and Hotel Project (which must be received before the Agency can conduct a public hearing), (x) the Agency adopting a finding that the Project will promote employment opportunities and prevent economic deterioration in the area served by the Agency, and (xi) the Agency adopting a Statement of Findings qualifying Financial Assistance for a retail facility and confirmation by the Mayor of the City of Utica of the Financial Assistance.

Section 4.

The Company is herewith and hereby appointed the agent of the Agency to construct, 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 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 D** 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, (ii) to distribute copies of this resolution by certified mail, return receipt requested, to the Oneida County Executive, the City of Utica Mayor, the Utica City School District Superintendent and the Utica City School District President of Board of Education and (iii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 8. The Agency is hereby authorized to conduct a public hearing, subject to receipt of the final and signed Letter of Intent referenced in the Application.

Section 9. This resolution shall take effect immediately.

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

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

I have compared the 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 April 5, 2023 at 9:00 a.m., local time, at One Kennedy Plaza, Utica, New York which the following members were:

Members Present:

Member Excused:

Also Present:

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

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 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 this _____ day of _____ 2023.

Jack N. Spaeth, Assistant Secretary

DRAFT

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 _____ 2023, at ____ AM, local time, at Utica City Hall, Urban & Economic Development Corporation conference room, Second Floor, One Kennedy Plaza, Utica, New York, in connection with the following matters:

Utica Harbor Lodging Group LLC, on behalf of itself and/or the principals of Utica Harbor Lodging Group 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 lease-leaseback transaction in which the Agency will assist in acquisition of four (4) parcels of land measuring ____± acres in the aggregate located at Wells Avenue, Utica Harbor Point, City of Utica, Oneida County, New York (collectively, the "Land") to undertake the following: (A) (i) construction of six residential apartment buildings containing a total of 240 units and one 8,000± square foot Community Center, together with all parking and infrastructure to support the same (collectively, the "Residential Improvements"); (ii) acquisition and installation of furniture, fixtures and equipment in the Residential Improvements (the "Residential Equipment"); all to be used for the purpose of filling a demonstrated need for market rate housing (the Land, the Residential Improvements and the Residential Equipment are referred to collectively as the "Residential Facility" and the acquisition, construction and equipping of the Residential Facility is referred to collectively as the "Residential Project"); and (B) (i) construction of a 100-room limited service hotel together with all parking and infrastructure to support the same (collectively, the "Hotel Improvements" and together with the Residential Improvements, the "Improvements"); (ii) acquisition and installation of furniture, fixtures and equipment in the Hotel Improvements (the "Hotel Equipment" and together with the Residential Equipment, the "Equipment"); all in furtherance of enhancing economic development in downtown Utica and specifically within the Harbor Point area (the Land, the Hotel Improvements and the Hotel Equipment are referred to collectively as the "Hotel Facility" and the acquisition, construction and equipping of the Hotel Facility is referred to collectively as the "Hotel Project" and together with the Residential Project, the "Project"). The Facility will be initially operated by the Company.

The Company will lease the Facility to the Agency for a term of approximately thirty (30) years (the "Lease Term"). The Agency will lease the Facility back to the Company for the Lease Term, and the Company will further sub-lease the Residential Facility to residential tenants to be determined from time to time. 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 on materials incorporated into the Facility, exemptions from mortgage recording taxes and

abatement of real property tax for a period of thirty (30) years during which time the Company will pay as PILOT Payments an annual fixed amount of \$70,000.00 to be allocated among the taxing jurisdictions, which financial assistance is a deviation from the Agency's Uniform Tax Exemption Policy, more particularly described in the Inducement Resolution adopted by the Agency on April 5, 2023 and to be confirmed in 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 access the Public Hearing by calling 1-408-418-9388 (Access code: _____). 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 Project, is available for public inspection at the offices of the Agency, One Kennedy Plaza, Utica, New York or on the Agency's website.

CITY OF UTICA INDUSTRIAL
DEVELOPMENT AGENCY

Dated: April ____, 2023

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

EXHIBIT B

MINUTES OF PUBLIC HEARING

City of Utica Industrial Development Agency
2023 Real Estate Lease
Utica Harbor Lodging Group LLC Facility

1. Jack Spaeth, Executive Director of the City of Utica Industrial Development Agency (the "Agency"), called the hearing to order at _____ 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 project and related financial assistance as follows:

Utica Harbor Lodging Group LLC, on behalf of itself and/or the principals of Utica Harbor Lodging Group 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 lease-leaseback transaction in which the Agency will assist in acquisition of four (4) parcels of land measuring _____± acres in the aggregate located at Wells Avenue, Utica Harbor Point, City of Utica, Oneida County, New York (collectively, the "Land") to undertake the following: (A) (i) construction of six residential apartment buildings containing a total of 240 units and one 8,000± square foot Community Center, together with all parking and infrastructure to support the same (collectively, the "Residential Improvements"); (ii) acquisition and installation of furniture, fixtures and equipment in the Residential Improvements (the "Residential Equipment"); all to be used for the purpose of filling a demonstrated need for market rate housing (the Land, the Residential Improvements and the Residential Equipment are referred to collectively as the "Residential Facility" and the acquisition, construction and equipping of the Residential Facility is referred to collectively as the "Residential Project"); and (B) (i) construction of a 100-room limited service hotel together with all parking and infrastructure to support the same (collectively, the "Hotel Improvements" and together with the Residential Improvements, the "Improvements"); (ii) acquisition and installation of furniture, fixtures and equipment in the Hotel Improvements (the "Hotel Equipment" and together with the Residential Equipment, the "Equipment"); all in furtherance of enhancing economic development in downtown Utica and specifically within the Harbor Point area (the Land, the Hotel Improvements and the Hotel Equipment are referred to collectively as

the “Hotel Facility” and the acquisition, construction and equipping of the Hotel Facility is referred to collectively as the “Hotel Project”). The Facility will be initially operated by the Company.

The Company will lease the Facility to the Agency for a term of approximately thirty (30) years (the “Lease Term”). The Agency will lease the Facility back to the Company for the Lease Term, and the Company will further sub-lease the Residential Facility to residential tenants to be determined from time to time. 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 on materials incorporated into the Facility, exemptions from mortgage recording taxes and abatement of real property tax for a period of thirty (30) years during which time the Company will pay as PILOT Payments an annual fixed amount of \$70,000.00 to be allocated among the taxing jurisdictions, which financial assistance is a deviation from the Agency’s Uniform Tax Exemption Policy, more particularly described in the Inducement Resolution adopted by the Agency on April 5, 2023 and to be confirmed in 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. Below 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 _____ a.m.

(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 _____, 2023 at _____ a.m. local time, at Utica City Hall, Urban & Economic Development Corporation conference room, Second 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 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 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 _____, 2023.

(Assistant) Secretary

EXHIBIT C

DEVIATION CRITERIA

- **The nature of the proposed project (e.g., manufacturing, commercial, civic)**

The proposed project consists of residential market rate housing and a limited service hotel.

- **The nature of the property before the project begins (e.g., vacant land, vacant buildings)**

The property is vacant land located in the Utica Harbor Point, which the City of Utica and the Utica Harbor Point Development Corporation have identified as a priority for development.

- **The economic condition of the area at the time of the application**

The City of Utica commissioned a housing study dated July 2022 demonstrating a need for quality market rate housing.

- **The extent to which a project will create or retain permanent, private sector jobs**

N/A

- **The estimated value of tax exemptions to be provided**

The Company submitted a cost/benefit analysis report prepared by an independent firm confirming the benefit of the project to the area will significantly outweigh the cost of the proposed tax exemptions.

- **The impact of the project and the proposed tax exemptions on affected tax jurisdictions**

The cost/benefit analysis report also confirms the project will not result in significant additional costs to local government and it will not have a negative impact on costs to the school district.

- **The impact of the proposed project on existing and proposed businesses and economic development projects in the City**

The residential project will add 240 market rate apartments to the City of Utica housing supply, which will fill a demonstrated demand for housing targeted at young professionals and active adults cited in the City of Utica Housing Study dated July 2022. The tax exemptions are necessary to allow the Company to rent the residential units at an affordable market rate. The Company predicts that introducing 240 quality market rate housing units into the City of Utica will entice households into the City, relieve some of the over-demand on the City's limited supply of quality rental housing stock to the benefit of lower- and middle-income city residents and encourage owners of existing rental properties in the City to better maintain their properties to remain viable rental options.

- **The amount of private sector investment generated or likely to be generated by the proposed project**

The Company has committed to investing \$63,625,000 into improving the property as a condition of the tax exemptions.

- **The likelihood of accomplishing the proposed project in a timely fashion**

N/A

- **The effect of the proposed project upon the environment**

To be determined following completion of SEQR

- **The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located**

Because the project includes a limited service hotel operation, it will generate both sales and room taxes. The report estimates the hotel project will generate roughly \$280,000 in sales tax and \$160,000 in room tax during the base operation year.

- **The extent to which the proposed project will provide a benefit (economic or otherwise) not otherwise available within the City of Utica**

EXHIBIT D

AGENCY APPOINTMENT LETTER

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

_____, 2023

Utica Harbor Lodging Group, LLC
11751 East Corning Road
Corning, New York 14830

Re: *City of Utica Industrial Development Agency 2023 Lease-Leaseback Transaction
Utica Harbor Lodging Group, LLC Facility*

Ladies and Gentlemen:

Pursuant to a resolution duly adopted on April 5, 2023, the City of Utica Industrial Development Agency (the "Agency") appointed Utica Harbor Lodging Group, LLC, on behalf of itself and/or the principals of Utica Harbor Lodging Group, 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 acquisition of four (4) parcels of land measuring ____± acres in the aggregate located at Wells Avenue, Utica Harbor Point, City of Utica, Oneida County, New York (collectively, the "Land") to undertake the following: (A) (i) construction of six residential apartment buildings containing a total of 240 units and one 8,000± square foot Community Center, together with all parking and infrastructure to support the same (collectively, the "Residential Improvements"); (ii) acquisition and installation of furniture, fixtures and equipment in the Residential Improvements (the "Residential Equipment"); all to be used for the purpose of filling a demonstrated need for market rate housing (the Land, the Residential Improvements and the Residential Equipment are referred to collectively as the "Residential Facility" and the acquisition, construction and equipping of the Residential Facility is referred to collectively as the "Residential Project"); and (B) (i) construction of a 100-room limited service hotel together with all parking and infrastructure to support the same (collectively, the "Hotel Improvements" and together with the Residential Improvements, the "Improvements"); (ii) acquisition and installation of furniture, fixtures and equipment in the Hotel Improvements (the "Hotel Equipment" and together with the Residential Equipment, the "Equipment"); all in furtherance of enhancing economic development in downtown Utica and specifically within the Harbor Point area (the Land, the Hotel Improvements and the Hotel Equipment are referred to collectively as the "Hotel Facility" and the acquisition,

construction and equipping of the Hotel Facility is referred to collectively as the “Hotel Project” and together with the Residential Project, 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. “Utica Harbor Lodging Group, LLC as agent for the City of Utica Industrial Development Agency”). The supplier or vendor should identify the Facility as the “**Utica Harbor Lodging Group, 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 \$1,312,500.00 in the aggregate. If the exemptions claimed by the Company exceed (a) \$100,000 between the inducement date and the date of the public hearing or (b) \$1,312,500.00 in the aggregate, it may subject the Company to recapture by New York State of the New York State portion of sales tax.

The aforesaid appointment of the Company as agent of the Agency to construct and equip the Facility shall expire on April 5, 2024. 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

UTICA HARBOR LODGING GROUP, LLC

By: _____
Name:
Title:

TO: All Contractors, Subcontractors,
Suppliers and Vendors, etc. of
Utica Harbor Lodging Group, LLC

Attached please find a "Contract in Lieu of Exemption Certificate" (the "Contract") which will serve as documentation for not charging Utica Harbor Lodging Group, 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 renovating 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,

UTICA HARBOR LODGING GROUP, 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 **UTICA HARBOR LODGING GROUP, 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 construction, 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 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 and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, or (b) April 5, 2024, 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 value of exemptions from sales and use taxes on materials and equipment currently authorized by the Agency is not to exceed \$1,312,500.00 in the aggregate. If the exemptions claimed by the Company exceed (a) \$100,000 between the inducement date and the date of the public hearing or (b) \$1,312,500.00 in the aggregate, it may subject the Company to recapture by New York State 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:

UTICA HARBOR LODGING GROUP, LLC

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

[Insert name of Contractor or
Subcontractor]

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

Acquisition of four (4) parcels of land measuring ____± acres in the aggregate located at Wells Avenue, Utica Harbor Point, City of Utica, Oneida County, New York (collectively, the “Land”) to undertake the following: (A) (i) construction of six residential apartment buildings containing a total of 240 units and one 8,000± square foot Community Center, together with all parking and infrastructure to support the same (collectively, the “Residential Improvements”); (ii) acquisition and installation of furniture, fixtures and equipment in the Residential Improvements (the “Residential Equipment”); all to be used for the purpose of filling a demonstrated need for market rate housing (the Land, the Residential Improvements and the Residential Equipment are referred to collectively as the “Residential Facility” and the acquisition, construction and equipping of the Residential Facility is referred to collectively as the “Residential Project”); and (B) (i) construction of a 100-room limited service hotel together with all parking and infrastructure to support the same (collectively, the “Hotel Improvements” and together with the Residential Improvements, the “Improvements”); (ii) acquisition and installation of furniture, fixtures and equipment in the Hotel Improvements (the “Hotel Equipment” and together with the Residential Equipment, the “Equipment”); all in furtherance of enhancing economic development in downtown Utica and specifically within the Harbor Point area (the Land, the Hotel Improvements and the Hotel Equipment are referred to collectively as the “Hotel Facility” and the acquisition, construction and equipping of the Hotel Facility is referred to collectively as the “Hotel Project” and together with the Residential Project, the “Project”).