

**Resolution
Recapture of Financial Assistance
253 New Century, LLC Facility**

Date: December 14, 2022

At a meeting of the City of Utica Industrial Development Agency, Utica, New York (the "Agency"), held at Fort Schuyler Club, Genesee Street, Utica, New York on the 14th day of December 2022, the following members of the Agency were:

Members Present:

Member Excused:

Also Present:

Others:

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to recapture of financial assistance relating to a certain industrial development facility more particularly described below (253 New Century Facility).

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

RESOLUTION AUTHORIZING THE AGENCY TO RECAPTURE FINANCIAL ASSISTANCE WITH RESPECT TO THE 253 NEW CENTURY, LLC FACILITY LOCATED AT 253 GENESEE STREET IN THE CITY OF UTICA, ONEIDA COUNTY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 710 of the Laws of 1981 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the City of Utica Industrial Development Agency (the "Agency") authorized financial assistance in support of a project undertaken by 253 New Century, LLC (hereinafter referred to as the "Company") consisting of the renovation and rehabilitation of a 15,000± square foot, three-story historic building (the "Improvements") situated on a .16± acre parcel of land located at 253 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 for lease to commercial and/or retail tenants and to enhance economic development and retain employment in downtown Utica (the Land, Improvements and Equipment collectively, the "Facility" and the renovation, rehabilitation and equipping of the Facility is referred to as the "Project"); and

WHEREAS, the Company leases the Facility to the Agency pursuant to a Lease Agreement dated as of July 1, 2017 (the "Lease Agreement") between the Agency and the Company; and

WHEREAS, the Agency leases the Facility back to the Company for its operation pursuant to a Leaseback Agreement dated as of July 1, 2017 (the "Leaseback Agreement") between the Agency and the Company ; and

WHEREAS, the Company makes payments-in-lieu-of-taxes relating to the Facility under the terms of a PILOT Agreement dated as of July 1, 2017 (the "PILOT Agreement") between the Agency and the Company; and

WHEREAS, under the terms of the Leaseback Agreement, the Company is required to create 15 full-time equivalent jobs no later than July 1, 2020 (the "Employment Obligation") and complete the Project substantially as represented in the Company's Application for Financial Assistance; and

WHEREAS, the Company represented that the Project would be completed by April 1, 2018; and

WHEREAS, under the Act, the Agency is required to evaluate whether recipients of its financial assistance are achieving the investment, job retention or creation, or other objectives of the project indicated in the project application and report to New York State that it is taking appropriate action when those objectives are not being met; and

WHEREAS, on May 4, 2022 the Agency performed its annual review of active projects and determined the Company was not achieving the investment, job retention or creation, or other objectives of the project indicated in the project application and requested the Company provide the Agency with the status of the Project and the reasons that the Company is not meeting said objectives; and

WHEREAS, on September 7, 2022 the Company addressed the Agency and provided the information requested; and

WHEREAS, on September 12, 2022 the Agency requested the Company submit additional information before it made its determination of appropriate action, which the Company did not provide; and

WHEREAS, based on the information it had received, on November 2, 2022 the Agency reviewed the information in its possession to make a determination of appropriate action.

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

Section 1. The Agency hereby finds and determines:

(a) A valid exemption does not exist for the Company's failure to meet the Employment Obligation and other objectives of the project; and

(b) The appropriate remedy is to terminate the Lease Agreement, the Leaseback Agreement and the PILOT Agreement and require the Company to repay 100% of the benefits received to date.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) terminate the Lease Agreement, the Leaseback Agreement and the PILOT Agreement effective immediately; (ii) execute, deliver and record appropriate terminations of the Lease Agreement, the Leaseback Agreement and the PILOT Agreement (collectively, the "Termination Documents"); (iii) recapture 100% of the financial assistance claimed by the Company as of the date of this resolution; and (iv) deliver appropriate notice to the Company confirming the action

taken under this resolution and demanding payment of the financial assistance to be recaptured.

Section 3. The Agency is hereby authorized to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 4. The form and substance of the Termination Documents (each in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 5.

(a) The Chairman, Vice Chairman, Secretary or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Termination Documents, in form satisfactory to the Chairman and Agency Counsel, with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Secretary or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution. The execution thereof by the Chairman, Vice Chairman, or any member of the Agency shall constitute conclusive evidence of such approval.

(b) In the Leaseback Agreement, the Company appointed the Agency as its true and lawful agent to execute such instruments and documents as may be necessary and appropriate to terminate the leasehold interest in the Facility and terminate the PILOT Agreement. The Chairman, Vice Chairman, Secretary or any member of the Agency are further hereby authorized to execute and deliver the Termination Documents on behalf of the Company, in form satisfactory to the Chairman and Agency Counsel, with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Secretary or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution. The execution thereof by the Chairman, Vice Chairman, or any member of the Agency shall constitute conclusive evidence of such approval.

(c) The Chairman, Vice Chairman, Secretary or member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Leaseback Agreement).

Section 6. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Termination Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Termination Documents binding upon the Agency.

Section 7. This resolution shall take effect immediately.

DRAFT

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

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

That I have compared the annexed extract of the minutes of the meeting of the City of Utica Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on the 14th day of December 2022 with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Termination Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand as of this 14th day of December 2022.

CITY OF UTICA INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Jack Spaeth, Assistant Secretary