

Transcript Document No. []

**Final Authorizing Resolution
1400 Broad, LLC
BGM Supply Facility**

Date: September 7, 2022

At a meeting of the City of Utica Industrial Development Agency, Utica, New York (the "Agency"), held at One Kennedy Plaza, Utica, New York at 9:00 a.m. on the 7th day of September 2022, the following members of the Agency were:

Members Present:

Member Excused:

Also Present:

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 authorizing acquisition of a leasehold interest in and financial assistance for a certain industrial development facility more particularly described below (1400 Broad, LLC/The Shepherd Group, LLC Facility) and the leasing of the facility to 1400 Broad, LLC.

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

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE THE LEASE AGREEMENT, THE LEASEBACK AGREEMENT, THE PILOT AGREEMENT, THE ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT, THE LOAN DOCUMENTS, AND RELATED DOCUMENTS WITH RESPECT TO THE 1400 BROAD, LLC FACILITY LOCATED AT 305, 307, 311 AND 313 ST. ANTHONY STREET, AND 1400 BROAD STREET (A/K/A 318 ST. ANTHONY STREET IN THE CITY OF UTICA, ONEIDA COUNTY AND MAKING CERTAIN FINDINGS RELATING TO THE FACILITY.

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, 1400 Broad, LLC (the "Company") has requested the Agency assist in a certain industrial development facility consisting of acquisition, renovation and equipping of a 40,000± square foot industrial building, a 4,000± square foot fleet maintenance building and parking lots (collectively, the "Improvements"), all situated on four parcels of land measuring 1.997± acres in the aggregate located at 305, 307, 311 and 313 St. Anthony Street, and 1400 Broad Street (a/k/a 318 St. Anthony 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 expanding the operations of BGM Supply and its plumbing, HVAC and water system supply business (the Land, Improvements and Equipment is referred to collectively as the "Facility" and the acquisition, renovation and equipping of the Facility is referred to as the "Project"); and

WHEREAS, the Company has agreed to lease the Facility to the Agency pursuant to a Lease Agreement (the "Lease Agreement") between the Agency and the Company; and

WHEREAS, the Agency has agreed to lease the Facility back to the Company pursuant to a Leaseback Agreement between the Agency and the Company (the "Leaseback Agreement") for its operation; and

WHEREAS, the Company will sublease the Facility to The Shepherd Group LLC d/b/a BGM Supply (the "Sublessee") for its operation pursuant to a Sublease Agreement (the "Sublease Agreement"); and

WHEREAS, Pathfinder Bank (the “Bank”) has agreed to finance a portion of the costs of the Facility by extending a loan to the Company in a principal amount not to exceed \$638,000.00 to be secured by a Mortgage and Security Agreement (the “Mortgage”) from the Agency and the Company to the Bank, together with any other documents the Bank may require to secure its loan (collectively, the “Loan Documents”); and

WHEREAS, the Agency contemplates granting financial assistance to the company in the form of exemptions from sales tax, exemptions from mortgage recording tax and reduced real property taxes for a period of ten years (the “Financial Assistance”), which Financial Assistance is consistent with the Agency’s Uniform Tax Exemption Policy (the “Policy”); 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 \$72,188.00

Mortgage tax exemptions valued at \$4,785.00

Real property tax reduction estimated at \$155,918.00

WHEREAS, the Agency, by resolution duly adopted on August 17, 2022 (the “Resolution”), decided to proceed under the provisions of the Act to lease the Facility and directed that a public hearing 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, could be heard; and

WHEREAS, on August 21, 2022 a notice of the public hearing was published in the *Observer-Dispatch* and on August 18, 2022 written notice of the public hearing was mailed to the chief executive officer of the affected taxing jurisdictions in which the Facility is located; and

WHEREAS, because the Project will result in the removal or abandonment of a facility in the Town of Westmoreland, written notice of the public hearing was mailed on August 23, 2022 to the chief executive officer of the affected taxing jurisdictions in which such facility is located pursuant to Section 859-a(5)(d) of the General Municipal Law; and

WHEREAS, the Agency conducted a public hearing on September 2, 2022 and has reviewed the minutes of said public hearing; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities which may arise in connection with the transaction contemplated by the lease of the land and the transfer of a leasehold interest in the Facility.

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) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) The Facility constitutes a “project”, as such term is defined in the Act; and

(c) The acquisition, renovation and equipping of the Facility, the leasing of the Facility to the Company, and the financing of the Facility through the Bank will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the City of Utica and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The acquisition, renovation, equipping and financing of the Facility is reasonably necessary to induce the Company to maintain and expand its business operation in the State of New York; and

(e) Based upon representations of the Company and the Company's Counsel, the Facility conforms with the local zoning laws and planning regulations of the City of Utica and all regional and local land use plans for the area in which the Facility is located; and

(f) It is desirable and in the public interest for the Agency to acquire a leasehold interest in the Facility and lease the Facility to the Company; and

(g) Based upon representations of the Company in its Application for Financial Assistance, the Project is reasonably necessary to discourage the Company from removing the Facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Company in its industry; and

(h) The SEQRA findings adopted by the Agency on August 17, 2022, encompassed the actions to be undertaken by this resolution and no changes have been made since that time to the proposed action that would create new or increased adverse environmental impacts; and

(i) The Lease Agreement will be an effective instrument whereby the Company conveys to the Agency a leasehold interest in the Facility; and

(j) the Leaseback Agreement will be an effective instrument whereby the Agency leases the Facility back to the Company; and

(k) The Environmental Compliance and Indemnification Agreement (the "Environmental Compliance and Indemnification Agreement") by and among the Agency, the Company and the Sublessee will be an effective instrument whereby the Company and the Sublessee agree to comply with all Environmental Laws (as defined therein) applicable to the Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws; and

(l) The Payment-In-Lieu-of-Tax Agreement (the "PILOT Agreement") between the Agency and the Company will be an effective instrument whereby the Company agrees to make payments in lieu of taxes for the term of the Leaseback Agreement; and

(m) The Loan Documents will be effective instruments whereby the Agency and the Company grant the Bank a security interest in their respective interests in the Facility.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) acquire a leasehold interest in the Facility from the Company pursuant to the Lease Agreement; (ii) execute, deliver and perform the Lease Agreement; (iii) lease the Facility back to the Company pursuant to the Leaseback Agreement, (iv) execute, deliver and perform the Leaseback Agreement, (v) execute, deliver and perform the Environmental Compliance and Indemnification Agreement, (vi) execute, deliver and perform the PILOT Agreement; (vii) grant the Bank a security interest in the Facility; (viii) execute, deliver and perform the Loan Documents; and (ix) authorize the Financial Assistance.

Section 3. The Agency is hereby authorized to accept a leasehold interest in the real property described in Exhibit A to the Lease Agreement and the personal property described in Exhibit B to the Lease Agreement and 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 Lease Agreement, the Leaseback Agreement, the PILOT Agreement and the Environmental Compliance and Indemnification Agreement (each in substantially the forms customary to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved. The form and substance of the Loan Documents are hereby approved, conditioned upon inclusion of the Agency's standard exculpatory language and upon approval by Agency counsel.

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 Lease Agreement, the Leaseback Agreement, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and the Loan Documents, each in substantially the forms customary to the Agency 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 (hereinafter collectively called the "Closing Documents"). The execution thereof by the Chairman, Vice Chairman, or any member of the Agency shall constitute conclusive evidence of such approval.

(b) 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 Closing 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 Closing Documents binding upon the Agency.

Section 7. 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 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 7th day of September 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 Lease Agreement, the Leaseback Agreement, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and the Loan Documents contained in this transcript of proceedings are each in substantially the form 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 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 as of September 7, 2022.

CITY OF UTICA INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Jack Spaeth, Assistant Secretary