

**Inducement Resolution  
Central Utica Building, LLC Facility**

RESOLUTION OF THE ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION TOWARD APPOINTING CENTRAL UTICA BUILDING, LLC, THE PRINCIPALS OF CENTRAL UTICA BUILDING, LLC, AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING AS AGENT OF THE AGENCY IN CONNECTION WITH A LEASE-LEASEBACK TRANSACTION, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT.

WHEREAS, Central Utica Building, LLC, on behalf of itself and/or the principals of Central Utica Building, LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Oneida County Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in the construction of an 80,000± square foot state-of-the-art medical office building and appurtenant facilities including parking areas and all infrastructure, utilities and amenities to support the same (collectively, the "Improvements") situated on parcels of land measuring 2.90± acres in the aggregate adjacent to the new Wynn Hospital (the "Wynn Hospital") located at the Corner of State and Columbia Streets, City of Utica, Oneida County, New York (the "Land") and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing a seamless and integrated health care delivery system together with the Wynn Hospital, and to enhance and expand the delivery of health care services to the community (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"); and

WHEREAS, Mohawk Valley Health System ("MVHS") owns three of the parcels comprising the Land and will ground lease the same to the Company pursuant to a Ground Lease (the "Ground Lease") with a term of 99 years; and

WHEREAS, to accommodate the parking requirements for the Facility, the Company must acquire an interest in the property located at 411 Columbia Street (the "O'Brien Parcel") in order for the Project to proceed; and

WHEREAS, the Company will undertake the Project on the Land, and will lease the Facility to the Agency, 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 Agency will lease the Facility back to the Company pursuant to a Leaseback Agreement (the "Leaseback Agreement"); and

WHEREAS, the Company will sublease a 20,000± square foot portion of the Facility (the "CNYC Facility") to Central New York Cardiology, P.C. (the "CNYC Sublessee") for its operation pursuant to a sublease agreement (the "CNYC Sublease Agreement"); and

WHEREAS, the CNYC Sublessee intends to occupy and build out the CNYC Facility for the purpose of performing interventional cardiology services at the Wynn Hospital and to take cardiology call and provide cardiology services to patients admitted to the Wynn Hospital; and

WHEREAS, the Company will sublease an 18,000± square foot portion of the Facility (the "MVASC Facility") to Mohawk Valley ASC, LLC (the "MVASC Sublessee") for its operation pursuant to a sublease agreement (the "MVASC Sublease Agreement"); and

WHEREAS, the MVASC Sublessee intends to occupy and build out the MVASC Facility for the purpose of operating an Article 28 licensed, Medicare certified multi-specialty ambulatory surgery center with six operating rooms; and

WHEREAS, the Company will sublease other portions of the Facility to MVHS and other medical practices whose physicians practice in, and need access to, the Wynn Hospital, and to other commercial and/or retail tenants to provide complementary services (such sublessees, together with the CNYC Sublessee and the MVASC Sublessee, are referred to collectively as the "Sublessees"); 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 and exemptions from mortgage recording taxes (the "Financial Assistance"); and

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

- Sales and use tax exemption estimated at \$1,820,000 not to exceed \$2,002,000
- Mortgage tax exemption estimated at \$128,138 not to exceed \$140,951,

which Financial Assistance is consistent with the Agency's Uniform Tax Exemption Policy; and

WHEREAS, the Agency proposes to amend the value of the Financial Assistance as follows:

- Sales and use tax exemption not to exceed \$500,000
- Mortgage tax exemption estimated at \$128,138 not to exceed \$140,951,

which financial assistance is a deviation from the Agency's Uniform Tax Exemption Policy, and which will be more particularly set forth in a final authorizing resolution; and

WHEREAS, the Company has committed to create (or cause the Sublessees to create) 14 FTEs at the Facility by the end of the third lease year as a result of the Project and to retain (or cause the Sublessees to retain) the existing 146.5 FTEs at the Facility as a result of the Project, and the Agency will condition the proposed financial assistance on the Company achieving the same and maintaining all FTEs for the full lease term, or be subject to termination or recapture of financial assistance; and

WHEREAS, prior to the closing of a lease-leaseback transaction, and the granting of any Financial Assistance, a public hearing (the "Hearing") will be held so that all persons with views in favor of or opposed to either the financial assistance contemplated by the Agency, or the location or nature of the Facility, can be heard; and

WHEREAS, notice of the Hearing will be given prior to the closing of a lease-leaseback transaction, and the granting of any tax benefits, and such notice (together with proof of publication) will be substantially in the form annexed hereto as **Exhibit A-1**; and

WHEREAS, the minutes of the Hearing are or will be annexed hereto as **Exhibit B-1**; and

WHEREAS, prior to the closing of a lease-leaseback transaction and the granting of any Financial Assistance and following the Hearing, the Agency will adopt a

Statement of Findings pursuant to the provisions of Section 862(2) of the Act (the "Retail Findings") and will request the County Executive of Oneida County to confirm in writing his approval of the Financial Assistance (the "County Executive Approval"); and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed lease-leaseback transaction is either an inducement to the Company to maintain and expand the Facility in the County or is necessary to maintain the competitive position of the Company in its industry; 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, 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, prior to the granting of any Financial Assistance and following the determination of the lead agency, the Agency will complete its environmental review and make determinations for purposes of SEQRA.

NOW, THEREFORE, BE IT RESOLVED by the Oneida County Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

- Section 1.
- (a) The construction and equipping of the Facility and the Agency's Financial Assistance therefor, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the County 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 construction and equipping of the Facility, 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") is 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 assist the Company in the construction and equipping of the Facility and will provide financial assistance with respect thereto subject to (i) obtaining all necessary governmental approvals, (ii) approval of the members of the Company, (iii) approval of the members of the Agency, (iv) the Agency adopting the Retail Findings and obtaining the County Executive Approval; (v) satisfactory completion of the environmental review of the Facility by the Agency in compliance with the State Environmental Quality Review Act, (vi) agreement by the Agency and the Company upon mutually acceptable terms and conditions for the Leaseback Agreement and other documentation usual and customary to transactions of this nature, (vii) 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 lease-leaseback transaction and (viii) payment by the Company of the Agency's transaction fee and the fees and disbursements of transaction counsel and agency counsel, more particularly described in the Inducement Agreement.

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 the agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to construct, 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 upon satisfaction of the conditions described in Section 3 hereof. The Agency hereby appoints the Company, 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 Company, the Sublessees, the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Agency.

Section 5. The Agency is hereby authorized and directed to schedule the Hearing, so that the Agency may receive comments from all interested parties on the financial assistance contemplated by the Agency and the financial assistance requested by the Company.

Section 6. The law firm of Bond, Schoeneck & King, PLLC is appointed Transaction Counsel in connection with the lease-leaseback transaction.

Section 7. 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 8. 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 9. This resolution shall take effect immediately.

The above resolution was AMENDED on December 17, 2021 as follows:

WHEREAS, on November 19, 2021 the Oneida County Industrial Development Agency (the "Agency") adopted a resolution granting preliminary approval for financial assistance to Central Utica Building, LLC (the "Company") consisting of exemptions from sales and use tax not to exceed \$500,000 and exemptions from mortgage recording tax estimated at \$128,138 not to exceed \$140,951 (collectively, the "Financial Assistance"); and

WHEREAS, on December 10, 2021 the Agency conducted a public hearing regarding the proposed Financial Assistance and the nature and location of the Facility; and

WHEREAS, the Agency members were provided with the minutes of the Public Hearing and all written and verbal comments for and against the Project; and

WHEREAS, the Company submitted a letter dated December 10, 2021 requesting the Agency reconsider its limitation on the sales tax exemption contained in the resolution adopted on November 19, 2021, and requesting the opportunity to make a presentation to the Agency to support its request; and

WHEREAS, as a supplement to its Application for Financial Assistance (the "Application"), the Company presented new information to the Agency regarding the Project including (a) new renderings of the Facility that were not available at the time the Application was submitted, which renderings show that the proposed building has grown from 80,000 square feet to 94,000 square feet and the added cost has not been incorporated into the requested sales tax exemption; (b) the importance of the Facility being operational prior to the completion of the Wynn Hospital so that sufficient surgical capacity is in place; (c) the unprecedented size of the private sector investment; (d) the significant number of new patients the CNYC Sublessee will attract to the Facility; (e) the American College of Cardiology has recognized MVHS as the first Heart Center in New York State, which demonstrates the quality of heart care locally; (f) the Facility will provide critical modern technology and services, while providing care in a lower cost setting; (g) the Facility will be used as a recruiting tool to help attract high-quality doctors to the region; (h) the impact of price increases and supply chain disruptions on the feasibility of the Project; and (i) the fact that the CNYC Sublessee has outgrown its current facility, and the possibility that the CNYC Sublessee will relocate outside of the region if the Project does not proceed; and

WHEREAS, the Agency has given due consideration to the supplemental information and to the comments received at the December 10, 2021 public hearing.

NOW, THEREFORE, BE IT RESOLVED by the Oneida County Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

**RESOLVED:** the Agency accepts the information presented by the Company as an amendment and supplement to its Application; and

**RESOLVED:** that the Agency proposes to amend the value of the Financial Assistance as follows:

- Sales and use tax exemption estimated at \$1,820,000 not to exceed \$2,002,000
- Mortgage tax exemption estimated at \$128,138 not to exceed \$140,951,

which amended Financial Assistance is consistent with the Agency's Uniform Tax Exemption Policy; and

**RESOLVED:** prior to the closing of a lease-leaseback transaction, and the granting of any amended Financial Assistance, a new public hearing (the "Hearing") will be held so that all persons with views in favor of or opposed to either the amended Financial Assistance contemplated by the Agency, or the location or nature of the Facility, can be heard; and

**RESOLVED:** notice of the Hearing will be given prior to the closing of a lease-leaseback transaction, and the granting of any amended Financial Assistance, and such notice (together with proof of publication) will be substantially in the form annexed hereto as Exhibit A-2; and

**RESOLVED:** the minutes of the Hearing are or will be annexed hereto as Exhibit B-2; and

**RESOLVED:** the form of agency appointment letter attached as Exhibit C shall be revised to reflect the amended Financial Assistance; and

**RESOLVED:** prior to the closing of a lease-leaseback transaction and the granting of any Financial Assistance and following the Hearing, the Agency will adopt a Statement of Findings pursuant to the provisions of Section 862(2) of the Act (the "Retail Findings") and will request the County Executive of Oneida County to confirm in writing his approval of the Financial Assistance (the "County Executive Approval"); and

**RESOLVED:** this resolution shall take effect immediately.



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

I, the undersigned Secretary of the Oneida County Industrial Development Agency DO HEREBY CERTIFY THAT:

I have compared the foregoing copy of a resolution of the Oneida County 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 November 19, 2021 at eight a.m., local time, at Rome, New York which the following members were:

Members Present: David Grow, Michael Fitzgerald, Kirk Hinman, Eugene Quadraro, Steven Zogby

Members Webex/Teleconference: Ferris Betrus

Members Excused: Mary Faith Messenger

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

	Aye	Nay	Abstain
Ferris Betrus	<u>  X  </u>	<u>      </u>	<u>      </u>
Michael Fitzgerald	<u>  X  </u>	<u>      </u>	<u>      </u>
David Grow	<u>  X  </u>	<u>      </u>	<u>      </u>
Kirk Hinman	<u>  X  </u>	<u>      </u>	<u>      </u>
Eugene Quadraro	<u>  X  </u>	<u>      </u>	<u>      </u>
Steve Zogby	<u>  X  </u>	<u>      </u>	<u>      </u>

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 have also compared the foregoing copy of an amended resolution of the Oneida County 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 amended resolution was passed at a meeting of the Agency duly convened in public session on December 17, 2021 at eight a.m., local time, at Rome, New York which the following members were:

Members Present: David Grow, Kirk Hinman, Steven Zogby

Members Webex/Teleconference: Ferris Betrus, Mary Faith Messenger, Eugene Quadraro

Members Excused: Michael Fitzgerald

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

	Aye	Nay	Abstain
Ferris Betrus	<u>  X  </u>	<u>      </u>	<u>      </u>
David Grow	<u>  X  </u>	<u>      </u>	<u>      </u>
Kirk Hinman	<u>  X  </u>	<u>      </u>	<u>      </u>
Mary Faith Messenger	<u>  X  </u>	<u>      </u>	<u>      </u>
Eugene Quadraro	<u>  X  </u>	<u>      </u>	<u>      </u>
Steve Zogby	<u>  X  </u>	<u>      </u>	<u>      </u>

and, therefore, the amended 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 meetings, (ii) said meetings were open for the public to attend and public notice of the time, place of, and instructions to access, said meetings was duly given, (iii) the meetings in all respects were duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

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Shawna Papale, Secretary

## **EXHIBIT A-1**

### **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 Oneida County Industrial Development Agency (the "Agency") on the 10th day of December 2021 at 10:00 a.m., local time, at Oneida County Legislative Chambers, 8<sup>th</sup> Floor, Oneida County Office Building, 800 Park Avenue, City of Utica, New York in connection with the following matters:

Central Utica Building, LLC, on behalf of itself and/or the principals of Central Utica Building, LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Oneida County Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in the construction of an 80,000± square foot state-of-the-art medical office building and appurtenant facilities including parking areas and all infrastructure, utilities and amenities to support the same (collectively, the "Improvements") situated on parcels of land measuring 2.90± acres in the aggregate adjacent to the new Wynn Hospital (the "Wynn Hospital") located at the Corner of State and Columbia Streets, City of Utica, Oneida County, New York (the "Land") and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing a seamless and integrated health care delivery system together with the Wynn Hospital, and to enhance and expand the delivery of health care services to the community (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"). The Facility will be initially operated and/or managed by the Company.

The Company will lease the Facility to the Agency, and the Agency will lease the Facility back to the Company pursuant to a leaseback agreement. At the end of the lease term, the Agency will terminate its leasehold interest in the Facility. The Company will sublease a 20,000± square foot portion of the Facility to Central New York Cardiology, P.C. (the "CNYC Sublessee") for its operation for the purpose of performing interventional cardiology services at the Wynn Hospital and to take cardiology call and provide cardiology services to patients admitted to the Wynn Hospital. The Company will sublease an 18,000± square foot portion of the Facility to Mohawk Valley ASC, LLC (the "MVASC Sublessee") for its operation for the purpose of operating an Article 28 licensed, Medicare certified multi-specialty ambulatory surgery center with six operating rooms. The Company will sublease other portions of the Facility to MVHS and other medical practices whose physicians practice in, and need access to, the Wynn Hospital, and to other commercial and/or retail tenants to provide complementary services (such sublessees, together with the CNYC Sublessee and the MVASC Sublessee, are referred to collectively as the "Sublessees").

The Agency is contemplating providing financial assistance in the form of exemptions from mortgage recording taxes and exemptions from sales tax on materials and equipment acquired and installed in connection with the Project, such sales tax exemptions to be limited to \$500,000, 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. Such financial assistance will be conditioned upon the Company creating, retaining and maintaining (or causing the Sublessees to create, retain and maintain) certain employment at the Facility as a result of undertaking the Project.

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 and comment on the Project and the benefits to be granted to the Applicant by the Agency during 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, 584 Phoenix Drive, Rome, New York.

ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

Dated: November 19, 2021

By: /s/ Shawna M. Papale, Executive Director

# LOCALiQ

Observer-Dispatch  
Times Telegram

PO Box 631202 Cincinnati, OH 45263-1202

## PROOF OF PUBLICATION

Laura Ruberto  
Bond, Schoeneck & King, PLLc  
501 MAIN ST  
UTICA NY 13501

STATE OF NEW YORK, COUNTY OF ONEIDA

The Observer Dispatch, a newspaper published in the City of Utica, New York.  
The text of the notice as published in said newspaper is as set forth below, or in the annexed exhibit, was published in the issue dated:

11/26/2021

and that the fees charged are legal.  
Sworn to and subscribed before on 11/26/2021

*Dickie Jacobs*  
\_\_\_\_\_  
Legal Clerk

*Vicky Felty*  
\_\_\_\_\_  
Notary, State of WI, County of Brown  
9-19-25

My commission expires

Publication Cost: \$98.88  
Order No: 6567845 # of Copies:  
Customer No: 638850 1  
PO #:

**THIS IS NOT AN INVOICE!**

*Please do not use this form for payment remittance.*

VICKY FELTY  
Notary Public  
State of Wisconsin

**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 Oneida County Industrial Development Agency (the "Agency") on the 10th day of December 2021 at 10:00 a.m., local time, at Oneida County Legislative Chambers, 10th Floor, Oneida County Office Building, 800 Park Avenue, Utica, New York in connection with the following matters:  
Central Utica Building, LLC, on behalf of itself and/or the principals of Central Utica Building, LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Oneida County Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in the construction of an 80,000± square foot state-of-the-art medical office building and appurtenant facilities including parking areas and all infrastructure, utilities and amenities to support the same (collectively, the "Improvements") situated on parcels of land measuring 2.90± acres in the aggregate adjacent to the new Wynn Hospital (the "Wynn Hospital") located at the Corner of State and Columbia Streets, City of Utica, Oneida County, New York (the "Land") and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing a seamless and integrated health care delivery system together with the Wynn Hospital, and to enhance and expand the delivery of health care services to the community (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"). The Facility will be initially operated and/or managed by the Company.  
The Company will lease the Facility to the Agency, and the Agency will lease the Facility back to the Company pursuant to a leaseback agreement. At the end of the lease term, the Agency will terminate its leasehold interest in the Facility. The Company will sublease a 20,000± square foot portion of the Facility to Central New York Cardiology, P.C. (the "CNYC Sublessee") for its operation for the purpose of performing interventional cardiology services at the Wynn Hospital, to take cardiology call and provide cardiology services to patients admitted to the Wynn Hospital. The Company will sublease an 18,000± square foot portion of the Facility to Mohawk Valley ASC, LLC (the "MVASC Sublessee") for its operation for the purpose of operating an Article 28 licensed, Medicare certified multi-specialty ambulatory surgery center with six operating rooms. The Company will sublease other portions of the Facility to MVHS and other medical practices whose physicians practice in, and need access to, the Wynn Hospital, and to other commercial and/or retail tenants to provide complementary services (such sublessees, together with the CNYC Sublessee and the MVASC Sublessee, are referred to collectively as the "Sublessees").  
The Agency is contemplating providing financial assistance in the form of exemptions from mortgage recording taxes and exemptions from sales tax on materials and equipment acquired and installed in connection with the Project, such sales tax exemptions to be limited to \$500,000.00, 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. Such financial assistance will be conditioned upon the Company creating, retaining and maintaining (or causing the Sublessees to create, retain and maintain) certain employment at the Facility as a result of undertaking the Project.  
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 and comment on the Project and the benefits to be granted to the Applicant by the Agency during the Public Hearing by calling 1-408-418-9388 (Access code: 263 377 7943). 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, 584 Phoenix Drive, Rome, New York.  
ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
Dated: November 22, 2021  
By: /s/ Shawna M. Papale, Executive Director  
Nov 26, 2021 #6567845

## **EXHIBIT A-2**

### **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 Oneida County Industrial Development Agency (the "Agency") on the 18th day of January 2022 at 10:00 a.m., local time, at Oneida County Legislative Chambers, 10<sup>th</sup> Floor, Oneida County Office Building, 800 Park Avenue, Utica, New York in connection with the following matters:

Central Utica Building, LLC, on behalf of itself and/or the principals of Central Utica Building, LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Oneida County Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in the construction of a 94,000± square foot state-of-the-art medical office building and appurtenant facilities including parking areas and all infrastructure, utilities and amenities to support the same (collectively, the "Improvements") situated on parcels of land measuring 2.90± acres in the aggregate adjacent to the new Wynn Hospital (the "Wynn Hospital") located at the Corner of State and Columbia Streets, City of Utica, Oneida County, New York (the "Land") and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing a seamless and integrated health care delivery system together with the Wynn Hospital, and to enhance and expand the delivery of health care services to the community (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"). The Facility will be initially operated and/or managed by the Company.

The Company will lease the Facility to the Agency, and the Agency will lease the Facility back to the Company pursuant to a leaseback agreement. At the end of the lease term, the Agency will terminate its leasehold interest in the Facility. The Company will sublease a 20,000± square foot portion of the Facility to Central New York Cardiology, P.C. (the "CNYC Sublessee") for its operation for the purpose of performing interventional cardiology services at the Wynn Hospital, to take cardiology call and provide cardiology services to patients admitted to the Wynn Hospital. The Company will sublease an 18,000± square foot portion of the Facility to Mohawk Valley ASC, LLC (the "MVASC Sublessee") for its operation for the purpose of operating an Article 28 licensed, Medicare certified multi-specialty ambulatory surgery center with six operating rooms. The Company will sublease other portions of the Facility to MVHS and other medical practices whose physicians practice in, and need access to, the Wynn Hospital, and to other commercial and/or retail tenants to provide complementary services (such sublessees, together with the CNYC Sublessee and the MVASC Sublessee, are referred to collectively as the "Sublessees").

The Agency was contemplating providing financial assistance in the form of exemptions from mortgage recording taxes and exemptions from sales tax on materials and equipment acquired and installed in connection with the Project, such sales tax exemption limited to \$500,000, which financial assistance was a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"). The Agency conducted a public hearing on December 10, 2021 to hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance or the location or nature of the Facility. The Agency is now contemplating providing financial assistance in the form of exemptions from mortgage recording taxes and exemptions from sales tax on all taxable materials and equipment acquired and installed in connection with the Project, which financial assistance is consistent with 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. Such financial assistance will be conditioned upon the Company creating, retaining and maintaining (or causing the Sublessees to create, retain and maintain) certain employment at the Facility as a result of undertaking the Project.

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 amended financial assistance 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 listen to the Public Hearing by calling 1-408-418-9388 (Access code: 263 489 89116). 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, 584 Phoenix Drive, Rome, New York.

ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

Dated: January 4, 2022

By: /s/ Shawna M. Papale, Executive Director



# LOCALiQ

Observer-Dispatch  
Times Telegram

PO Box 631202 Cincinnati, OH 45263-1202

## PROOF OF PUBLICATION

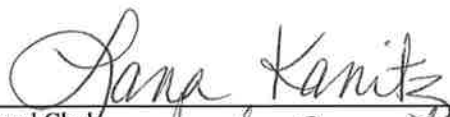
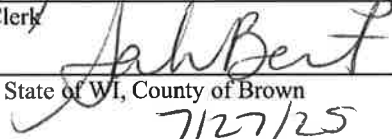
Laura Ruberto  
Bond, Schoeneck & King, PLLC  
501 MAIN ST  
UTICA NY 13501

STATE OF NEW YORK, COUNTY OF ONEIDA

The Observer Dispatch, a newspaper published in the City of Utica, New York.  
The text of the notice as published in said newspaper is as set forth below, or in the annexed exhibit, was published in the issue dated:

01/07/2022

and that the fees charged are legal.  
Sworn to and subscribed before on 01/07/2022

  
\_\_\_\_\_  
Legal Clerk  
  
\_\_\_\_\_  
Notary, State of WI, County of Brown  
7/27/25

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**THIS IS NOT AN INVOICE!**

*Please do not use this form for payment remittance.*

SARAH BERTELSEN  
Notary Public  
State of Wisconsin

**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 Oneida County Industrial Development Agency (the "Agency") on the 18th day of January 2022 at 10:00 a.m., local time, at Oneida County Legislative Chambers, 10th Floor, Oneida County Office Building, 800 Park Avenue, Utica, New York in connection with the following matters:  
Central Utica Building, LLC, on behalf of itself and/or the principals Central Utica Building, LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Oneida County Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in the construction of a 94,000± square foot state-of-the-art medical office building and outpatient facilities including parking areas and all infrastructure, utilities and amenities to support the same (collectively, the "Improvements") situated on parcels of land measuring 2.90± acres in the aggregate adjacent to the new Wynn Hospital (the "Wynn Hospital") located at the Corner of State and Columbia Streets, City of Utica, Oneida County, New York (the "Land") and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing a seamless and integrated health care delivery system together with the Wynn Hospital, and to enhance and expand the delivery of health care services to the community (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"). The Facility will be initially operated and/or managed by the Company.  
The Company will lease the Facility to the Agency, and the Agency will lease the Facility back to the Company pursuant to a leaseback agreement. At the end of the lease term, the Agency will terminate its leasehold interest in the Facility. The Company will sublease a 20,000± square foot portion of the Facility to Central New York Cardiology, P.C. (the "CNYC Sublessee") for its operation for the purpose of performing interventional cardiology services at the Wynn Hospital, to take cardiology call and provide cardiology services to patients admitted to the Wynn Hospital. The Company will sublease an 18,000± square foot portion of the Facility to Mohawk Valley ASC, LLC (the "MVASC Sublessee") for its operation for the purpose of operating an Article 28 licensed, Medicare certified multi-specialty ambulatory surgery center with six operating rooms. The Company will sublease other portions of the Facility to MVHS and other medical practices whose physicians practice in, and need access to, the Wynn Hospital, and to other commercial and/or retail tenants to provide complementary services (such sublessees, together with the CNYC Sublessee and the MVASC Sublessee, are referred to collectively as the "Sublessees").  
The Agency was contemplating providing financial assistance in the form of exemptions from mortgage recording taxes and exemptions from sales tax on materials and equipment acquired and installed in connection with the Project, such sales tax exemption limited to \$500,000, which financial assistance was a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"). The Agency conducted a public hearing on December 10, 2021 to hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance or the location or nature of the Facility. The Agency is now contemplating providing financial assistance in the form of exemptions from mortgage recording taxes and exemptions from sales tax on all taxable materials and equipment acquired and installed in connection with the Project, which financial assistance is consistent with 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. Such financial assistance will be conditioned upon the Company creating, retaining and maintaining (or causing the Sublessees to create, retain and maintain) certain employment at the Facility as a result of undertaking the Project.  
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ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
By: /s/ Shawna M. Papale, Executive Director  
Jan 7, 2022 #6738825



EXHIBIT B-1

**MINUTES OF DECEMBER 10, 2021 PUBLIC HEARING**

Oneida County Industrial Development Agency  
Lease-Leaseback Transaction  
Central Utica Building, LLC Facility

1. Jennifer Waters, Assistant Secretary of the Oneida County Industrial Development Agency (the "Agency"), called the hearing to order at 10:00 a.m.
2. Mark Kaucher, a representative of the Agency, recorded the minutes of the hearing.
3. The Assistant Secretary then described the proposed project and related financial assistance as follows:

Central Utica Building, LLC, on behalf of itself and/or the principals of Central Utica Building, LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Oneida County Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in the construction of an 80,000± square foot state-of-the-art medical office building and appurtenant facilities including parking areas and all infrastructure, utilities and amenities to support the same (collectively, the "Improvements") situated on parcels of land measuring 2.90± acres in the aggregate adjacent to the new Wynn Hospital (the "Wynn Hospital") located at the corner of State and Columbia Streets, City of Utica, Oneida County, New York (the "Land") and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing a seamless and integrated health care delivery system together with the Wynn Hospital, and to enhance and expand the delivery of health care services to the community (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"). The Facility will be initially operated and/or managed by the Company.

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purpose of performing interventional cardiology services at the Wynn Hospital and to take cardiology call and provide cardiology services to patients admitted to the Wynn Hospital. The Company will sublease an 18,000± square foot portion of the Facility (the "MVASC Facility") to Mohawk Valley ASC, LLC (the "MVASC Sublessee") for its operation for the purpose of operating an Article 28 licensed, Medicare certified multi-specialty ambulatory surgery center with six operating rooms. The Company will sublease other portions of the Facility to MVHS and other medical practices whose physicians practice in, and need access to, the Wynn Hospital, and to other commercial and/or retail tenants to provide complementary services (such sublessees, together with the CNYC Sublessee and the MVASC Sublessee, are referred to collectively as the "Sublessees").

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4. The Assistant Secretary 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. Attached is a listing of the persons heard and a summary of their views as well as all written comments submitted for consideration.
5. The Assistant Secretary then asked if there were any further comments, and, there being none, the hearing was closed at 10:24 a.m.

---

Mark Kaucher

Anthony J. Picente Jr.,  
County Executive

Shawna M. Papale  
Secretary/Executive Director

Jennifer Waters  
Assistant Secretary

ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY



584 Phoenix Drive,  
Rome, New York 13441-4105  
(315) 338-0393, fax (315) 338-5694  
[info@mvedge.org](mailto:info@mvedge.org) [www.mvedge.org](http://www.mvedge.org)

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Ferris Betrus, Jr.  
Kirk Hinman  
Eugene Quadraro  
Stephen Zogby

TO: OCIDA Board of Directors  
FROM: Mark Kaucher  
DATE: December 11, 2021

RE: **Central Utica Building, LLC Public Hearing**, Dec. 10, 2021 Public Hearing Minutes  
WebEx teleconference and at Oneida County Legislative Chambers, 10<sup>th</sup> Floor, Oneida County  
Office Building, 800 Park Avenue, Utica.

**Attendance:** Gerald Fiorini, Chair Oneida County Board of Legislators(OCBOL); Evon Ervin (OCBOL); Tim Julian (OCBOL); Mike Billard (OCBOL); Maya Miller(OCBOL); Anthony Picente, Oneida County Executive, Dr. Michael Kelberman, CNY Cardiology; Bruce Smith, CCB Law; Robert Scholefield, MVHS; Lou Aiello, MVHS; David Quirillo, CNY Cardiology (Webex); Michael Fogel, Brown, Duke & Fogel (Webex teleconference); Patrick Donnelly, unidentified teleconference call in user.

**Representing the Agency:** Shawna Papale, Jennifer Waters, Mark Kaucher, Tim Fitzgerald

Jennifer Waters opened the public hearing opened at 10:00 AM.

Consensus of the attendees was to waive public recitation the public hearing notice. She noted that MVHS has also provided a PowerPoint presentation that will be entered into the record.

Ms. Waters invited the first speaker to the podium.

**Speaker #1, Robert Scholefield:**

Mr. Scholefield thanked the Agency for allowing him the opportunity to speak, and introduced himself as Executive Vice-President with Mohawk Valley Health System (MVHS), and explained that he is overseeing construction of the new Wynn Hospital (WH). He first noted years ago, before there was any construction beginning, the administrative staff and Board of Trustees of MVHS had to create vision statement: what is it that they were they looking to accomplish as a result of building this state of the art facility in downtown Utica. He read the statement: To create an advanced health care campus for MVHS through design that promotes the health of patients, optimizes the work environment for our care givers and serves as a catalyst for revitalization of downtown Utica. He believes this will be accomplished with this project. MVHS is making a \$611 million investment in this 672, 000 square foot building in downtown Utica. This will be a comprehensive clinical campus

that's designed for accessibilities of their providers and their patients. It is intended to be an inpatient and outpatient campus. The WH will be the inpatient facility and medical office building (MOB) associated with the WH will be the outpatient facility, with the WH being the flagship building on that campus. The MOB and ambulatory surgery center (ASC) is in adjacent proximity to the WH which is a crucial component of the clinical campus because it will provide services that will not be provided within the WH itself. The ASC is necessary to accomplish the planned outpatient services. A loss of this cohesive partnership would have a significant negative impact on the social good of this community as the comprehensive campus for all of the customers, patients, providers and staff would be lost. The MOB and the ASC is included in the clinical campus and is referenced in the certificate of need application which was approved by the State of New York in 2019. It was also included in the Downtown Revitalization Grant Application, which resulted in the \$300 million grant that was awarded to MVHS to build the WH. The MOB was also a part of the SEQR findings and environmental impact statement prepared by O'Brien and Gere, now referred to as Rambol, and this can be found in the March 19<sup>th</sup> statement on Page 8. It was always intended that this building (MOB) be developed by a third party. MVHS never intended to build the MOB building on its own and it was not part of the financing for the project, nor is it part of the grant from the state of New York. Right from the beginning they worked with local physicians to make this building a desirable location for those who are hospital-based physicians who themselves will utilize both locations to take care of their patients and the outpatients will have close proximity to the hospital itself. They were required by the New York State Department of Health, as part of their grant application, to put together a number of quality metrics, to be able to ascertain for them, what types of benefits the \$300 million grant in the downtown will bring to health care in this community. They created what they call their "Ten Aims" which are actual measurable indicators that MVHS will measure for five years after the campus project is completed to ensure that the care given within this facility improves significantly over the care that they are able to deliver today. Included in those Aims are specific items such as reduction of the amount of traffic, sound, noise and throughput within the WH/ inpatient facility, which will be accomplished by removing a lot of the outpatient services from the WH and locating them into the MOB that will be immediately adjacent to the WH but on the clinical campus. He noted on the site plan dated March 19, 2019 and submitted to the City of Utica Planning Board, the MOB at that location across from the Wynn Campus on Columbia Street was identified as a future location of a MOB, and made it clear at that meeting that it would be a third party development, but that MVHS would utilize numerous services within inside that building.

**Speaker #2, Lou Aiello:**

Mr. Aiello identified himself as the Chief Financial Officer for MVHS and talked about the future state of the campus and the MOB and the ASC that would be developed by CUB. The CUB is a group of local physicians who have stepped up to develop the MOB, which MVHS appreciates, as MVHS is focused on the financing and capital needs of the WH itself. The MOB will provide space for those physicians, particularly those that support the major product lines of the MVHS; which are identified community needs of advanced endoscopy, stroke, neurovascular, surgery and cardiac services. Those physicians also provide that advanced care and complementing services in the WH. In planning for the WH many other communities and facilities were visited to ensure that a successful

campus with programming and services was planned and developed. When planning took place years ago, MVHS and its partners did site visits around the country and repetitively saw these MOB and ASCs as part of the campuses and how successful they are, not only in complementing the care they deliver, but in the economic development of the region. Having office space adjacent to and on the campus is an integral part of the plan. The ASC itself is part of that transformation process as MHVS applied for the Certificate of Need and grant from the State of New York, to not just take the care deliver today and move it to a shiny new building, but to transform that care based upon those 10 Aims that Mr. Scholefield represented earlier. The ASC is an integral part of the plan to transform care from an inpatient setting to a more appropriate and more cost appropriate setting in the outpatient setting. In addition to the ASC, the building will also provide diagnostic services and radiology services, ultrasound, PET scan, general radiology and some lab services in a patient service center, to compliment what is going on the overall campus. An effort is to not flood the hospital with patients who don't need to be in the WH for services, but in a convenient location adjacent to it – the MOB. The ASC itself will be built with six operating rooms and the WH will have 14 operating rooms. Currently there are 22 operating rooms between the two hospital campuses as inpatient facilities. When building the new WH for the future they looked at the data and the types of cases that were being done in the hospital setting that could be done in an outpatient setting. This was how they determined the need for 14 operating rooms for the new WH, thus recognizing the ASC would handle six operating rooms, complementing the 14 in a more appropriate setting. The ASC is expected to have over 5,000 cases done annually to start. Those are cases that are now being done in the two acute care hospital campuses. The project helps the community by being in close proximity to the WH so that cohesive integrative care can be delivered on the campus. Patients know where to go for their care. Know where to go for their diagnostic care. For their outpatient treatment. Then, obviously, to the WH for their inpatient and emergency treatment. MVHS didn't just stumble across the main focus on cardiac care; the statistics show a concerning prevalence in our area which commands significant care in this area. MVHS is now the only hospital in NYS to be a cardiac hospital with their newly earned distinction. They expect growth of cardiac disease in our region to be 11% between 2022 and 2025. The other financial benefit to the community, as they shift the 5,000 surgery cases over from the hospital to the ASC, is a significant cost benefit to the patient and to the payors. This is due to a difference in reimbursement. The difference in reimbursement is because it is more cost efficient to deliver care at a lower cost in the ACS. Surgery in the hospital costs the hospital, the patient and the payor more. With this transformation in care, there will be a significant reduction in costs. Part of the plan and reason they are able to do this now is because of this transformation with the new campus as they build the new efficient hospital and system thus affording the loss of cases to the ASC because they now have a cohesive, complimentary service for our community with the MOB. He stressed that the MOB/ASC by CUB will be a property tax paying entity. A significant amount of property tax revenue will be generated. There is no payment in lieu of tax agreement being requested. In his opinion, it could end up being one of the highest assessments in the City. He explained why the requested IDA financial assistance was needed: As everyone knows, whether you are undertaking a project at one's home or ones business, material costs have increased significantly. The pandemic has had a major impact on this. In addition to the increased cost of materials, the delays in construction time have also lead to

increased costs. This applies to projects of all sizes. Without the financial assistance that is being requested, there are certain areas of the building that may not be built out or delayed, and it could affect recruitment of providers. The assistance is really needed because of the increase in costs not anticipated five years earlier when the facility was being considered and how it is going to be paid for it long term. In conclusion, he thanked the Agency.

**Speaker #3, Dr. Michael Kelberman:**

Dr. Kelberman thanked the Agency for allowing him the opportunity and introduced himself as a Senior Partner with CNY Cardiology and Director of Cardiology at MVHS. It stated that he would like to take a 10,000 foot view of health care in general and why this project is so important. Healthcare is a rapidly changing, hotly competitive environment. There are a lot of things changing and they are in competition for physicians, staff, equipment, and all of these things have escalated to heights hereto really not seen. This is an opportunity in our community to create a health system and improve a health system that would be productive going forward. Some of this requires us to change. This is synergism. This is partnerships. The health system has reached out to CNY Cardiology and asked us to partner to create the state of the art health system we need. Some examples of this are: the promise of a new hospital, the promise of an ASC and offices that are conveniently and helpfully located has already enabled them to bring on three new doctors this year. They are top doctors from the absolute best programs in the country. They are top of the line and he can supply that information to anyone interested. They are replacing retiring and older physicians and thus gearing them up for the growth anticipate in cardiac care. An important concept to consider is that the health system provides obvious care to Oneida County, but to surround counties, probably around 200,000 people or so, where they have tremendous opportunity to experience flow. Internally at CNY Cardiology, with some of the things they're doing, they expect 20 to 30% growth over the next three to five years. If you have a \$1 billion health system and everybody replicates what they're doing, which admittedly, is a very high tech competitive field, but if you have a \$1 billion health system that grows 20 to 30%, that's \$200 to \$300 million additional revenue. He noted these are high tech jobs. Its internal growth for something that is extremely important to an area and is as high-tech and productive as any entity you could attract. So with this new synergism, this competitive new health care environment, they are positioned really well. The American College of Cardiology, the doctors that practice cardiology in this country and lead the way, have created a certification system that's rigorous. They spent two years undergoing scrutiny and they are now the first health system to receive the designation of a heart center by the American College of Cardiology. There will be others eventually, but the fact that they were able to do that and being able to create an impression to a very critical group of people in an organization, speaks to their capability to do this. In terms of technology and equipment, he said cardiology and high tech medicine is moving very quickly. There is new diagnostic equipment they plan to acquire; Cardiac PET scanning is now the new frontier in diagnosing heart disease. This is crucial because the diagnosis has improved. The ability to predict how a patient will do is improved and the ability to decide what they need is improved. They are big and expensive and they currently have no room for it either. They hope to bring this new \$10 million piece of equipment into the new MOB. As for

procedures, heart valves can now be fixed without surgery, but requires highly-specialized people, and it is extremely competitive to get them. With the new hospital with a synergistic ASC working together, they will get them. They are attracting the best and the brightest and the three doctors they have gotten this year speaks to this capability. Its already having an impact. The people want to see what's there. When you show them the plans and you show them the building, that's what really impacts them to decide to come. They see this as an absolute win-win for the community. It's a very, very expensive proposition for them with an investment north of \$40 million. A lot of people involved who had to be convinced this is where the future is and they have done that. Everybody is all in and anything that can be done to help them create this absolute state of the art MOB and ASC would be greatly appreciated. He thanked the Agency.

**Speaker #4, Anthony Picente:**

County Executive Anthony Picente thanked the Agency for the opportunity to speak. He stated that the MVHS project, in total, has been a great focus for the County of Oneida, and certainly the City of Utica, and the entire region. The proposal before the Agency for the MOB along with the ASC has been a key piece from the very beginning of this process and was a key part of securing the state aid, while as Mr. Scholefield said, it is not a part of the WH, the project itself, and the entire campus footprint, had always included the MOB and the ASC , and possibly more in the future, but this one was in the first piece of it. The funding for the MOB however is not in the dollars secured from NYS but is part of the campus project itself including the surgical center as being part of the MOB, and possibly more in the future. As we look at what is taking place around, certainly the pandemic and our health care needs in this community, you are seeing these types of centers popping up around hospitals, and as Dr. Kelberman, Mr. Aiello, and Mr. Scholefield explained, and surely other professionals would do the same. They explained why it is so important to have the MOB as part of the campus and so close to the hospital. As the professionals and the medical systems will tell you, and as NYS Health and other health departments will point to, in terms of medical offices and hospital systems, the importance of having an ASC in close proximity so that the overall capacity numbers, costs, structure, and flow, can be better managed. County Executive noted he has been very involved in the hospital project as this county government has in regards to the parking facility, but in looking at the total structure of this system and what had been anticipated and what had always been there from the beginning, he supports the need for the MOB. He referenced Mr. Aiello's earlier statement regarding real property taxes, and he thinks it's important to know this group is not requesting a PILOT, and that it will be paying property taxes. He noted that the taxes paid by the MOB will probably be equal to, or as close, to what were in the parcels that were in the campus footprint before the demolition and before the construction of the hospital system. He is very supportive of this project and as he spoke to the IDA previously, he encourages them to take up this application favorably. He thanked the Agency.

Ms. Waters asked if there were any others who wished to make a public comment. On the recording Call-in user, Michael Fogel stated that he tried to answer earlier on, but his attempts were not audible at the public hearing. Ms. Waters stated that if anyone was experiencing technical



difficulties and wishes to make a statement, written comments will be accepted as outlined in the public hearing notice.

There being no further request to make statements, Ms. Waters closed the public hearing at 10:24 AM.

Subsequent to the Public Hearing, the Agency received both an e-mail and a letter from individuals who were unable to make audible contact at the public hearing, but who wished to make public statements. An email/ letter from Patrick Donnelly/ Michael Fogel, Brown Duke & Fogel, is attached to this memo and the text from the email from David Quirillo, CNY Cardiology, can be found below:

**December 10, 2021 e-mail From David Quirillo, CMPE, Chief Financial Officer, CNY Cardiology:**

"I joined the public hearing via Web Ex. When I went speak no one could hear. I wanted to comment on the cost benefit analysis. "Previous speakers spoke to the benefit of both the enhanced integrated health services and positive financial impact on the community. But more specifically factoring the retained and created jobs, the multipliers or both the indirect jobs and construction jobs this project provides just under \$100MM in earnings in the first three years alone. Those earnings generate \$4,000,000 in revenues from income. It just doesn't stop there as these individuals will buy new cars, gas, stay in hotels, eat-in restaurants and purchase other taxable goods and services. Sales tax generated by this is estimated at almost \$3,500,000. Additionally, the same individuals will buy or build homes generating another \$700,000 plus in revenues related to property taxes. A total of between \$8-8.5MM in benefit to the community." Please let me know if you have any questions."

Respectfully submitted,

Mark Kaucher

Attached: Brown Duke & Fogel, P.C. December 10, 2021 Letter  
MVHS PowerPoint Presentation

# BROWN DUKE & FOGEL, P.C.

ATTORNEYS AND COUNSELORS AT LAW

WWW.BDFLEGAL.COM

Michael A. Fogel, Esq.  
Brown Duke & Fogel, P.C.  
120 Madison Street, Suite 1620  
Syracuse, New York 13202  
[mfogel@bdflegal.com](mailto:mfogel@bdflegal.com)  
Tel: 315-399-4343

December 10, 2021

Executive Director Shawna Papale  
Oneida County Industrial Development Agency  
584 Phoenix Drive  
Rome, New York 13441-4105  
[info@mvedge.org](mailto:info@mvedge.org)  
[spapale@mvedge.org](mailto:spapale@mvedge.org)

**Re: Central Utica Building, LLC Application for Financial Assistance  
Public Hearing on December 10, 2021 at 10 a.m.**

Dear Executive Director Papale and Oneida County Industrial Development Agency:

This office represents Bowers Development, LLC (“Bowers Development”).

Please accept this letter as Bowers Development’s comments on the Central Utica Building, LLC Application for Financial Assistance (the “Application”) to the Oneida County Industrial Development Agency (“OCIDA”). Pursuant to the instructions contained in the Notice of Hearing, we dialed in to the call-in number provided promptly at 10 a.m. Unfortunately, when I attempted to identify myself you could not hear me. I even attempted to dial in from a different phone and announced myself but was still unable to be heard. It appears it was a technical problem on your end. My office was able to reach Executive Director Shawna Papale by phone after the hearing, and Executive Director Papale directed my office to submit our comments by email today and stated that our comments will be included with the public hearing transcript.

Bowers Development is one of the most active developers in the City of Utica. Bowers Development is the contract-vendee of the property located at 411 Columbia Street (Tax Map 218.-41-2-38) (the “O’Brien Parcel”) and will be constructing a brand-new medical office building (“MOB”) on the O’Brien Parcel. Both Central Utica Building, LLC and Mohawk Valley Health System are fully aware of Bowers Development’s contract-vendee status and intent to construct its own MOB on the O’Brien Parcel. Yet, without Bowers Development’s consent or permission, the O’Brien Parcel has been included in the Application as part of the Central Utica Building, LLC MOB project. In fact, the Application acknowledges that Central Utica Building, LLC does not own or control the O’Brien Parcel, but yet admits that “[w]ithout this property it will be impractical if not impossible to construct the MOB as proposed.” It is disturbing and shocking that Central Utica Building, LLC would submit an Application for a project which includes property that it admits that it does not even own or control and which by its own admission it needs to construct the project. This should not be tolerated by OCIDA.

Therefore, we submit that OCIDA should not, and in fact, cannot as a matter of law, proceed to process, let alone approve, the Application because Central Utica Building does not even own all of the property which is part of the Application.

Furthermore, it would be improper for OCIDA to proceed to condemn the O'Brien Parcel by eminent domain, as requested by Central Utica Building, LLC. As a threshold matter, OCIDA should not be taking property from one private property owner and developer who intends to develop an MOB and give it to another developer to develop an MOB. This is not consistent with the purpose and authority of OCIDA, and we believe it would also be in violation of Eminent Domain Procedure Law.

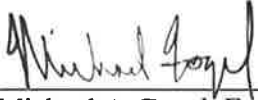
Nonetheless, if OCIDA does proceed with eminent domain, Bowers Development fully intends to oppose the taking and will pursue any-and-all legal remedies available to it to prevent such taking, and to seek just compensation, if such taking does occur. In addition, any taking of the O'Brien Parcel will result in significant direct, indirect and consequential financial damages to Bowers Development for which it fully intends to seek compensation for from all responsible parties.

Further, based on the Application that has been made available to the public, the Application appears to be incomplete. It appears to be missing the required completed SEQRA forms, and a completed Cost Benefit Analysis. Therefore, these documents need to be completed by the Applicant, and provided to the public for comment before OCIDA moves forward with processing and potentially approving the Application.

Thank you for your attention to this matter. Please include this letter in the record of your consideration of the Application.

Very truly yours,

**BROWN DUKE & FOGEL, P.C.**

By:   
Michael A. Fogel, Esq.

# THE WYNN HOSPITAL

Medical Office Building/  
MVHS Ambulatory Surgery  
Center



## Vision Statement

To create an advanced healthcare campus for MVHS through design that promotes the health of patients, optimizes the work environment for caregivers and serves as a catalyst for the revitalization of downtown Utica.



[www.mvhealthsystem.org](http://www.mvhealthsystem.org)

12/14/2021

## Medical Office Building (MOB)/ Ambulatory Surgery Center (ASC)

- MVHS is making a \$611 million investment in The Wynn Hospital Clinical Campus – a comprehensive medical campus designed for accessibility for providers and patients, both in and outpatient services as well as the ability to develop a robust teaching program. The Wynn Hospital is the flagship piece of the campus.
- The MOB/ASU and its adjacent proximity to The Wynn Hospital is a crucial piece of the project because the services housed in this building complement the work being done in the hospital and work collaboratively to support each other. The loss of this cohesive partnership would have a significantly negative impact on the social good of the community as the cohesive campus for all customers, patients, providers and staff, would be lost.



www.mvhealthsystem.org

12/14/2021

## Medical Office Building (MOB)/ Ambulatory Surgery Center (ASC)

- The MOB/ASU was included in MVHS's new clinical campus plans from the early planning stages.
  - It was included in the NYS Certificate of Need, the Downtown Revitalization Grant application which resulted in a \$300 million award, and in the SEQRA Final Environmental Impact Statement Prepared by O'Brien & Gere Engineers (Ramboll) March 2019 (page 8).
- This building was always intended to be developed by a third party with MVHS as a tenant. MVHS worked with local hospital-based physician groups to determine a desire to develop this building.



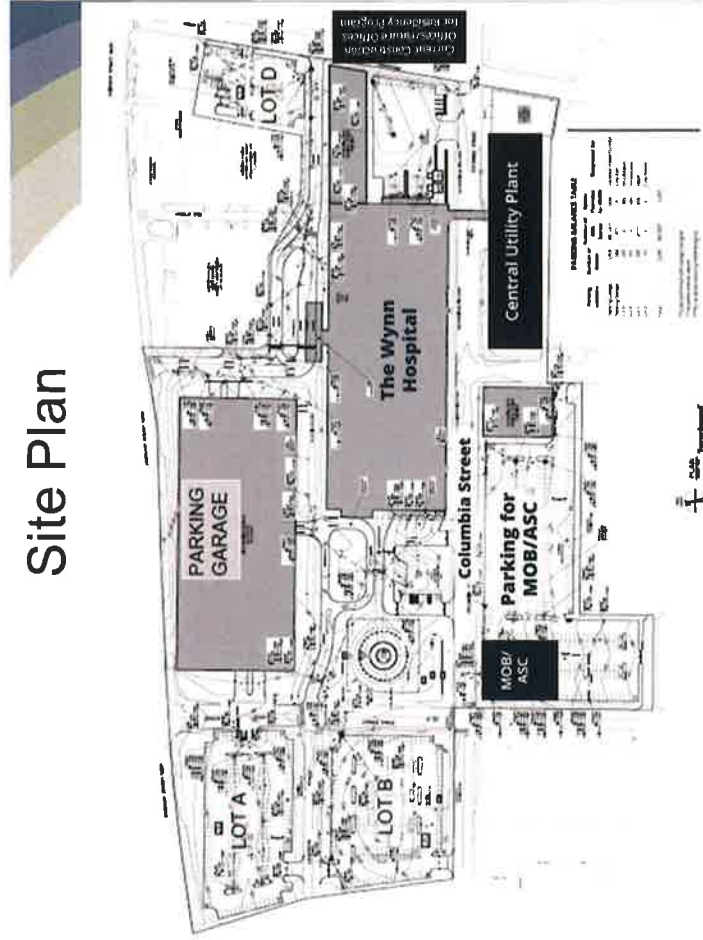
www.mvhealthsystem.org

12/14/2021

# Ten Aims – Guiding Principles

<p><b>1</b></p> <p>Reduction of patient transfers</p>	<p><b>2</b></p> <p>Reduction in length of stay due to improved discharge planning</p>	<p><b>3</b></p> <p>Elimination of unnecessary laboratory, imaging, and other tests</p>	<p><b>4</b></p> <p>Minimization of error</p>	<p><b>5</b></p> <p>Improved patient satisfaction</p>
<p><b>6</b></p> <p>Improve direct patient care time with clinical staff</p>	<p><b>7</b></p> <p>Improve patient safety and reduction of hospital-acquired infection rate</p>	<p><b>8</b></p> <p>Reduction in patient falls</p>	<p><b>9</b></p> <p>Reduction in unnecessary emergency room and inpatient admission</p>	<p><b>10</b></p> <p>Reduction in readmissions</p>

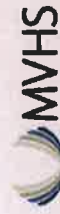
# Site Plan



Current Construction Office and Program

## What will services will be housed in the MOB/ASC?

- Central Utica Building (CUB), a group of local physicians, has stepped up to develop the building and will rent to other physician practices as well as MVHS who will lease a significant amount of space. We are grateful to the CUB group for taking on this project.
- The MOB will provide office space to physician practices, particularly those that support major product lines of MVHS, based on community need: Endoscopy, Stroke and Neurovascular, Surgery, Cardiac, etc.
- The ASU is a new service for MVHS and will provide a space for same-day surgical care, including diagnostic and preventive procedures. ASCs have transformed the outpatient experience by providing a convenient alternative to hospital-based outpatient procedures.
- In addition to the MOB and ASC, the building will contain Radiology (CT Scan, Fluoroscopy, Ultrasound, Pet Scan and General Radiology) and a Lab Service Center.



[www.mvhealthsystem.org](http://www.mvhealthsystem.org)

12/14/2021

## MOB/ASC Details

- Space for multiple physician practices including CNYC, MVHS, etc.
- A six Operating Room (OR) ASC
- The Wynn Hospital will have 14 ORs which brings the total number of ORs to 20; a decrease of two from the two current inpatient hospitals.
- Expected volume shift to outpatient surgery – 5,300 cases



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12/14/2021

## How does this help the community?

- **Medical Campus:** The proximity of the building to The Wynn Hospital provides a convenient, medical campus for patients, providers and staff along with almost immediate access for providers to see and/or treat one of their patients in the hospital.
- **Heart Disease:** The developers of the building and one of its main physician offices is CNYC.
- The prevalence of coronary heart disease among adults is high in Mohawk Valley with MVHS as the only cardiac hospital in the eight-county region.
- Outpatient cardiac demand in the Mohawk Valley is expected to grow by nearly 11% between 2022 and 2025. This is versus an anticipated decline in inpatient growth of 10%.



**MVHS**

[www.mvhealthsystem.org](http://www.mvhealthsystem.org)

12/14/2021

## How does this help the community?

- **Growth:** Having a physician practice such as CNYC in a MOB/ASC next to The Wynn Hospital will bring 30-40,000 patients/year from both local and surrounding counties down to the new medical campus which helps reinforce that important referral pattern and expectation that "this is where they go for medical care."
- With the new MOB/ASC and enhanced cardiac services, CNYC is expecting a 20-30 percent growth
- We are already working in the right direction as the first program in NYS to be designated a "Heart Center" by the American College of Cardiology. The MOB/ASC will provide the opportunity to build on this along with the ability to grow and recruit more highly skilled, well-trained physicians.



**MVHS**

[www.mvhealthsystem.org](http://www.mvhealthsystem.org)

12/14/2021



## How does this help the community?

- **Physician Recruitment:** The Wynn Hospital and adjacent MOB/ASC is key to physician recruiting. CNYC has successfully recruited three new, well-trained cardiac specialists this year alone. Access to a larger, modern office building with state-of-the-art diagnostic technologies, closely located to the new hospital, is a major draw.
- The training and skills of these newly recruited physicians provides the ability to offer new procedures not currently available in this region, enhancing healthcare and expansion of services to benefit the community.
- **Technology:** CNYC will implement the use of myocardial perfusion positron emission tomography (PET), a noninvasive cardiac imaging option for patients with coronary artery disease. Myocardial perfusion PET has high diagnostic accuracy, high-quality images, low radiation exposure, short acquisition protocols, quantification of myocardial blood flow and strong prognostic power.
- **New Procedures:** CNYC will also implement MitraClip/Transcatheter Mitral Valve Repair. MitraClip is a medical device used to treat mitral valve regurgitation for individuals who should not have open-heart surgery. It is implanted via a tri-axial transcatheter technique and involves suturing together the anterior and posterior mitral valve leaflets.



[www.mvhealthsystem.org](http://www.mvhealthsystem.org)

12/14/2021

## Financial Benefit to Community

- ASCs provide care in a space that is more efficient and at a lower cost. The move of 5,300 surgery cases to an outpatient setting will pass these savings on to patients as copays for ASCs are much lower than for a hospital-based surgery.
- Payers will also benefit due to the lower reimbursement paid to ASCs vs Hospitals.
- The MOB/ASC will be a tax-paying entity without a requested Pilot. A significant amount of tax revenue will be generated from this building.



[www.mvhealthsystem.org](http://www.mvhealthsystem.org)

12/14/2021

## Why is Financial Assistance Needed?

- The cost of construction materials have significantly increased in cost. The pandemic had a major impact on this.
- Delays in construction have also led to increased costs.
- Without the requested financial assistance, the ability to finalize or enhance certain areas may not be possible: purchasing equipment, bringing in additional doctors, or finishing certain spaces in the building.



www.mvhealthsystem.org

12/14/2021

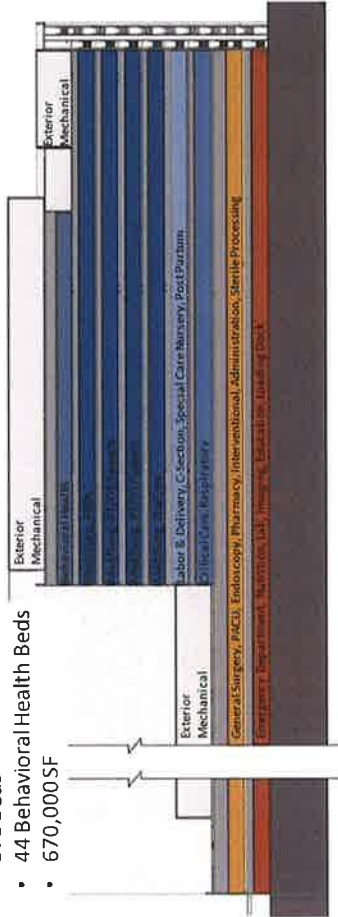
CENTRAL UTICA BUILDING



www.mvhealthsystem.org

# Layout of The Wynn Hospital

- 373 Beds
- 44 Behavioral Health Beds
- 670,000 SF



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

I, the undersigned Secretary of the Oneida County Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the foregoing copy of the minutes of a public hearing held by the Oneida County Industrial Development Agency (the "Agency") on December 10, 2021 at 10:00 a.m. local time, at Oneida County Legislative Chambers, 8<sup>th</sup> Floor, Oneida County Office Building, 800 Park Avenue, City of 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) the public hearing was open for the public to attend and public notice 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 \_\_\_\_\_, 2022.

\_\_\_\_\_  
Secretary

EXHIBIT B-2

**MINUTES OF JANUARY 18, 2022 PUBLIC HEARING**

Oneida County Industrial Development Agency  
Lease-Leaseback Transaction  
Central Utica Building, LLC Facility

1. Jennifer Waters, Assistant Secretary of the Oneida County Industrial Development Agency (the "Agency"), called the hearing to order at 10:00 a.m.
2. Mark Kaucher, a representative of the Agency, recorded the minutes of the hearing.
3. The Assistant Secretary then described the proposed project and related financial assistance as follows:

Central Utica Building, LLC, on behalf of itself and/or the principals of Central Utica Building, LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Oneida County Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in the construction of a 94,000± square foot state-of-the-art medical office building and appurtenant facilities including parking areas and all infrastructure, utilities and amenities to support the same (collectively, the "Improvements") situated on parcels of land measuring 2.90± acres in the aggregate adjacent to the new Wynn Hospital (the "Wynn Hospital") located at the Corner of State and Columbia Streets, City of Utica, Oneida County, New York (the "Land") and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing a seamless and integrated health care delivery system together with the Wynn Hospital, and to enhance and expand the delivery of health care services to the community (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"). The Facility will be initially operated and/or managed by the Company.

The Company will lease the Facility to the Agency, and the Agency will lease the Facility back to the Company pursuant to a leaseback agreement. At the end of the lease term, the Agency will terminate its leasehold interest in the Facility. The Company will sublease a 20,000± square foot portion of the Facility to Central New York Cardiology, P.C. (the "CNYC Sublessee") for its operation for the purpose of performing interventional cardiology services at the Wynn Hospital, to take cardiology call and provide cardiology services to patients admitted to

the Wynn Hospital. The Company will sublease an 18,000± square foot portion of the Facility to Mohawk Valley ASC, LLC (the "MVASC Sublessee") for its operation for the purpose of operating an Article 28 licensed, Medicare certified multi-specialty ambulatory surgery center with six operating rooms. The Company will sublease other portions of the Facility to MVHS and other medical practices whose physicians practice in, and need access to, the Wynn Hospital, and to other commercial and/or retail tenants to provide complementary services (such sublessees, together with the CNYC Sublessee and the MVASC Sublessee, are referred to collectively as the "Sublessees").

The Agency was contemplating providing financial assistance in the form of exemptions from mortgage recording taxes and exemptions from sales tax on materials and equipment acquired and installed in connection with the Project, such sales tax exemption limited to \$500,000, which financial assistance was a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"). The Agency conducted a public hearing on December 10, 2021 to hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance or the location or nature of the Facility. The Agency is now contemplating providing financial assistance in the form of exemptions from mortgage recording taxes and exemptions from sales tax on all taxable materials and equipment acquired and installed in connection with the Project, which financial assistance is consistent with 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. Such financial assistance will be conditioned upon the Company creating, retaining and maintaining (or causing the Sublessees to create, retain and maintain) certain employment at the Facility as a result of undertaking the Project.

4. The Assistant Secretary 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. Attached is a listing of the persons heard and a summary of their views as well as all written comments submitted for consideration.
5. The Assistant Secretary then asked if there were any further comments, and, there being none, the hearing was closed at 10:10 a.m.

---

Mark Kaucher

Anthony J. Picente Jr.  
County Executive

Shawna M. Papale  
Secretary/Executive Director

Jennifer Waters  
Assistant Secretary

ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY



584 Phoenix Drive,  
Rome, New York 13441-4105  
(315) 338-0393, fax (315) 338-5694  
[info@mvedge.org](mailto:info@mvedge.org) [www.mvedge.org](http://www.mvedge.org)

David C. Grow  
Chairman

Michael Fitzgerald  
Vice Chairperson

Mary Faith Messenger  
Treasurer

Ferris Betrus, Jr.  
Kirk Hinman  
Eugene Quadraro  
Stephen Zogby

TO: OCIDA Board of Directors  
FROM: Mark Kaucher  
DATE: January 18, 2022

RE: **Central Utica Building, LLC Public Hearing**, January 18, 2022 Public Hearing Minutes  
WebEx teleconference and at Oneida County Legislative Chambers, 10<sup>th</sup> Floor, Oneida County  
Office Building, 800 Park Avenue, Utica.

**Attendance:** Robert Scholefield, MVHS; Michael Fogel, Brown, Duke & Fogel, P.C.); Patrick Donnelly,  
Brown, Duke & Fogel P.C. (Webex teleconference); L. Michael Fitzgerald, OCIDA Board member.

**Representing the Agency:** Shawna Papale, Jennifer Waters, Mark Kaucher, Tim Fitzgerald

Jennifer Waters opened the public hearing opened at 10:00 AM.

Ms. Waters asked if there was consensus of the attendees was to waive public recitation of the public hearing notice, and there was. She referred to the attendee sign-in sheet and will read the names on the sheet, and she will call on them to speak. She clarified that this is a public hearing and not a question and answer session.

Ms. Waters asked Mr. Robert Scholefield, if he would like to make any comments on the record. He said yes.

**Speaker #1, Robert Scholefield, MVHS**

Mr. Scholefield noted that he would not be doing a full presentation, as one was done at the first public hearing by MVHS and Central New York Cardiology on the planned medical office building (MOB) in Downtown Utica. He did want to remind that the medical office building is part of the Downtown Medical Campus associated with the building of the Wynn Hospital, which is a 672,000 square foot in-patient facility that is being built and is expected to be completed in July of 2023 and occupied in October of 2023. The medical campus is anticipated to have a medical office building associated with the inpatient facility and the medical office building, which will be owned by Central Utica Business (CUB), and the MVHS will be a tenant in approximately 40,000 square feet of the 93,000 square feet building and it is the intention of the MVHS to have an ambulatory surgery center, hospital-based physician offices, outpatient radiology center, and outpatient laboratory. All

services that support what happens on the in-patient side of the facility. MVHS will be a tenant and would anticipate paying its share of the real estate taxes and sales taxes in that building.

Ms. Waters asked Mr. Michael Fogel, P.C. if he would like to make any comments on the record. He said yes.

**Speaker #2, Michael Fogel, Esq., Brown, Duke and Fogel, P.C.**

Mr. Fogel introduced himself as representing Bowers Development, LLC. He explained that they had previously submitted a comment letter at the first public hearing held on December 10, 2021, and have also submitted a letter this morning by e-mail (Ms. Waters, acknowledged receipt of this email and letter). But, he feels it's important in addition to the letter to comment during this public hearing because there is a very important issue, and what they think is a fatal flaw to the Central Utica Building, LLC (CUB) application and the Oneida County Industrial Development Agency's (OCIDA) consideration of that application. As noted in his letter, Bowers Development is the "contract vendee" of the property located at 411 Columbia Street, which is commonly known as the O'Brien parcel, and Bowers Development fully intends to construct its own medical office building on that property. A brand new medical office building which they think will exceed in size and synergy with the one that is being proposed by CUB. This is a fact that both CUB and MVHS are fully aware of. They know of both of Bowers Development status as contract vendee for the O'Brien parcel, as well as its intent to construct its own medical office building on that property. Without Bowers Development's consent or permission, the O'Brien parcel has been included as part of the application submitted by the CUB. In fact, the CUB application acknowledges that the parcel is critical to its project. It acknowledges that it can't construct its project without it. That critical piece they don't have under ownership or control. Bowers Development does. They are very troubled by the fact that the CUB would submit an application to the OCIDA for financial benefits, for a project that even it acknowledges, it doesn't have ownership control of a critical piece of that project. They are equally, if not more disturbed, that the OCIDA apparently sees no issue with that and is considering to process that application, and apparently on Friday is prepared to approve it, based upon the agenda that they've reviewed for Friday's meeting along with the proposed resolutions that are already up on the OCIDA's website. They think that's a fatal flaw. They do not think that as a matter of law, an applicant for financial assistance can include property within its application that it doesn't own or control. And they think it is similarly fundamentally flawed as a matter of law, for the OCIDA to consider, process and approve an application for financial benefits to an applicant when that applicant does not own or control a piece of that property. Mr. Fogel stated "Now the OCIDA is aware of that definition of facility, if you look at the proposed resolutions, and the way the applicant submitted the application, the facility included the O'Brien parcel. Now, the OCIDA is also aware that the intention is to enter into a lease and leaseback arrangement with CUB for the facility, which again, includes property that CUB doesn't own or control. So maybe you could help us, and I know you're probably not going to answer any questions, but I don't understand how an IDA and an entity like CUB can enter into a lease and leaseback transaction for a facility where they don't even own or control a piece of said facility. I'm at a loss, my client's at a loss, and I think the reason we don't understand it is that it doesn't comply with law and it doesn't make sense. You can't enter into a



lease and a leaseback transaction for a facility when that facility includes property that you don't own or control. It seems to be common sense to me." Mr. Fogel continued saying that they obviously object to the OCIDA's continued processing, consideration, and obviously the ultimate approval of the application, and they intend, on behalf of their client, to pursue all legal remedies in the event that the OCIDA transaction is approved because it would include property they own and control, not CUB. And property his client intends to build a superior medical office building on. He noted that it is important to note, and they want to make sure it's clear, is that his client is not trying to stop or interfere with the development of the hospital, but they intend to build a bigger and better medical office building that they think would have more synergies with the hospital project than the one that is part of the application submitted by CUB. He also noted that the applicant did request the OCIDA to consider exercising eminent domain, and from looking at the agenda they saw for this Friday's meeting, that the request is going to be taken up at that meeting, and that a public hearing under Article 2 of the Eminent Domain Procedure Law will be scheduled. He won't belabor the point on the Eminent Domain because they fully intend to develop the public hearing record during the Article 2 proceeding, if the OCIDA does choose to proceed with that. Suffice it to say they are going to oppose, obviously that taking, and pursue any legal remedies available to challenge that taking because they don't think, as a threshold matter, that the proposed taking would comply with eminent domain procedure law, and they would obviously be pursuing and damages that flowed from any such taking including seeking just compensation under the eminent domain procedures law. With that, further, they will just rely on the written submission they submitted as part of this public hearing and said thank you for the OCIDA's attention to this matter and ask that his comments and letter be included as part of the record of today's public hearing.

Ms. Waters asked Mr. Fitzgerald if he wished to make a comments on the record. He declined.

There being no further request to make statements, Ms. Waters closed the public hearing at 10:10 AM.

Respectfully submitted,

Mark Kaucher

Attached: Brown Duke & Fogel, P.C. January 18, 2022 Letter

# BROWN DUKE & FOGEL, P.C.

ATTORNEYS AND COUNSELORS AT LAW

WWW.BDFLEGAL.COM

Michael A. Fogel, Esq.  
Brown Duke & Fogel, P.C.  
120 Madison Street, Suite 1620  
Syracuse, New York 13202  
[mfogel@bdflegal.com](mailto:mfogel@bdflegal.com)  
Tel: 315-399-4343

January 18, 2022

Executive Director Shawna Papale  
Oneida County Industrial Development Agency  
584 Phoenix Drive  
Rome, New York 13441-4105  
[spapale@mvedge.org](mailto:spapale@mvedge.org)

**Re: Central Utica Building, LLC Application for Financial Assistance  
Public Hearing on January 18, 2022 at 10 a.m.**

Dear Executive Director Papale and Oneida County Industrial Development Agency:

As you know, this office represents Bowers Development, LLC (“Bowers Development”). Please accept this letter as Bowers Development’s comments as to the January 18, 2022 Public Hearing as to the Central Utica Building, LLC (“CUB”) Application for Financial Assistance (the “Application”) to the Oneida County Industrial Development Agency (“OCIDA”).

Please see enclosed and incorporated with this letter our prior letter to OCIDA regarding this matter, dated December 10, 2021 (“2021 BDF letter”), and Bowers Development’s letter to OCIDA, dated September 13, 2021 (“2021 Bowers Development letter”).

As previously stated, Bowers Development is one of the most active developers in the City of Utica. Bowers Development is the contract-vendee of the property located at 411 Columbia Street (Tax Map 218.-41-2-38) (the “O’Brien Parcel”) and intends to construct a brand-new medical office building (“MOB”) on the O’Brien Parcel that will be better and have more square footage than the MOB proposed by CUB. Bowers Development is not objecting to, or seeking to interfere with, the hospital development. In fact, Bowers Development intends to build an MOB that compliments the hospital and provides greater space for doctors. Both CUB and MVHS know of Bowers Development’s plans for the O’Brien Parcel. Yet, without Bowers Development’s consent or permission, the O’Brien Parcel has been included in CUB’s Application.

The Application acknowledges that CUB does not own or control the O’Brien Parcel, but the description of the “Facility” for which CUB seeks tax exemption through a lease-leaseback agreement with OCIDA includes the O’Brien Parcel as a “critical” part of the facility. OCIDA should not and cannot approve tax exemption and a lease-leaseback for a facility that is not owned or controlled by the applicant.

The proposed project does not meet the legal requirements for approval, including but not limited to the restrictions as to the purposes of OCIDA and the types of projects that can be approved under General Municipal Law § 858.

It also appears the Application is still incomplete as to requirements, including but not limited to signed SEQRA forms, such as a signed Environmental Assessment Form (“EAF”) Part 1. A complete application should be provided for public review before OCIDA moves forward with processing and potentially approving the Application.

It would be improper for OCIDA to approve the CUB application as proposed, and Bowers Development fully intends to oppose approval by OCIDA and will pursue all legal remedies available.


It would also be improper for OCIDA to proceed to condemn the O’Brien Parcel by eminent domain. OCIDA should not take property from one developer who intends to develop an MOB and give it to another developer to develop an MOB.

Nonetheless, if OCIDA does proceed with eminent domain, Bowers Development fully intends to oppose the taking and will pursue all legal remedies available. Any taking of the O’Brien Parcel and interference with Bowers Development’s MOB plans will result in significant financial damages to Bowers Development for which it fully intends to seek compensation from all responsible parties.

Thank you for your attention to this matter. Please include this letter and the enclosures in the record of your consideration of the Application.

Very truly yours,

BROWN DUKE & FOGEL, P.C.

By:   
Michael A. Fogel, Esq.

Enclosures:

- Letter to OCIDA from Bowers Development, LLC, dated September 13, 2021
- Letter to OCIDA from Brown Duke & Fogel, P.C., dated December 10, 2021



September 13, 2021

Mr. David Grow, Chairman  
Oneida County Industrial Development Agency  
584 Phoenix Drive  
Rome, New York 13441

RE: OCIDA and Oneida County's Proposed Use of Eminent Domain  
411 Columbia Street, City of Utica, New York

Dear Mr. Grow:

This letter is being submitted to you to openly question the Oneida County Industrial Development Agency (OCIDA) and Oneida County's (OC) plan to utilize eminent domain to take possession of a property that Bowers Development, LLC (BD) has under contract and plans to develop into a medical office building.

In late August 2021, OCIDA publicly announced in the Observer Dispatch that they intend to explore the use of eminent domain to take the commercial property, located at 411 Columbia Street, in the City of Utica. Since there is an upcoming OCIDA board meeting on the agenda for this week to discuss and potentially vote on this matter, I want to make sure that OCIDA / OC have a full understanding of our plans. Questions that I would raise at this time include the following:

- 1. Why hasn't anyone from OCIDA / OC taken the time to speak or meet with BD to discuss their plans for the site? Is it a foregone conclusion that OCIDA / OC are just going to take this property for MHVS / CNY Cardiology without any type of responsible due diligence?** In fairness to OCIDA / OC, if MHVS did not provide you with all of the pertinent details we would not be surprised. MHVS has repeatedly and incorrectly stated that our purchase of the site is somehow an attempt to sabotage "their project." Nothing could be further from the truth. In fact, we believe our development would only enhance the MHVS campus. Last week, we heard that one of the MHVS board members didn't know of our plans for the site and was utterly shocked to see our rendering / development plans. The levels to which certain members of the MHVS team will act to suppress the BD plans in order to benefit CNY Cardiology (the real beneficiary) is appalling.
- 2. Do all of the OCIDA / OC members know that the taking of this property is to ultimately benefit CNY Cardiology and not MHVS?** This is an important distinguishing factor for everyone to contemplate, as the proposed OCIDA / OC eminent domain action will potentially involve the taking of property to benefit one private group (CNY Cardiology) over another private group (BD). It is not MHVS as they would like everyone to believe.
- 3. Do all of the OCIDA / OC members know that the CNY Cardiology project involves an 80,000 SF office building with one medical practice in the ownership structure (CNY Cardiology), while the BD project involves a 150,000 SF building with multiple medical practices in the ownership structure?** This is also very important for everyone to understand, as eminent domain case law revolves around the highest-and-best use for the property. Our larger medical office building project will provide more medical services to the local community rather than simply focusing on the revenues of CNY Cardiology alone, which seems to be the intent of MHVS.



4. **Why have several individuals called us to inform us that members of OCIDA / OC been telling people throughout the community that they are moving forward with taking the property, when this matter is supposed to be tabled / discussed (and possibly voted on) during the next OCIDA board meeting on Friday, September 17<sup>th</sup>?** While we do not want to believe these rumors, the frequency and extent to which we have heard such comments are very disturbing, as it suggests that the outcome of the upcoming Friday board meeting has already been determined without any discussion or dialogue with BD.
  
5. **Has anyone from OCIDA / OC researched the legal implications of taking this property, when BD clearly has a larger and better medical office building development project planned for the site?** A recent New York Supreme Court case (*Matter of 730 Equity Corp. vs. New York State Development Corp.*), which was upheld after an appeal, changed the perception of eminent domain and how it is now interpreted. We strongly believe that we have the "highest-and-best use" of the property in our development plans. An uninformed march toward eminent domain would only lead to protracted litigation and legal proceedings (which is not in anyone's best interest). Though we are confident that we would prevail, the outcome would be detrimental to the community, which we would prefer to avoid.

We remain optimistic that OCIDA / OC will investigate this matter further and realize in short order that they have not been provided all of the facts / details by MHVS, rather only provided what certain members have wanted to pass along and put in front of your respective organizations.

If you have any questions related to our proposed development plans and would like to hear more about them, please let us know and we would be happy to meet with OCIDA / OC to discuss them at your earliest convenience.

Sincerely,  
Bowers Development, LLC

A handwritten signature in black ink, appearing to read "Bryan Bowers", written over a white background.

Bryan Bowers  
Managing Member

Cc: Michael Fitzgerald, Vice Chair (OCIDA)  
Mary Faith Messenger, Treasurer (OCIDA)  
Shawna Papale, Secretary / Executive Director (OCIDA)  
Jennifer Waters, Assistant Secretary (OCIDA)  
Ferris Betrus, Jr. (OCIDA)  
Kirk Hinman (OCIDA)  
Eugene F. Quadraro (OCIDA)  
Stephen R. Zogby (OCIDA)  
Anthony J. Picente, Jr., County Executive (OC)

# BROWN DUKE & FOGEL, P.C.

ATTORNEYS AND COUNSELORS AT LAW

WWW.BDFLEGAL.COM

Michael A. Fogel, Esq.  
Brown Duke & Fogel, P.C.  
120 Madison Street, Suite 1620  
Syracuse, New York 13202  
[mfogel@bdflegal.com](mailto:mfogel@bdflegal.com)  
Tel: 315-399-4343

December 10, 2021

Executive Director Shawna Papale  
Oneida County Industrial Development Agency  
584 Phoenix Drive  
Rome, New York 13441-4105  
[info@mvedge.org](mailto:info@mvedge.org)  
[spapale@mvedge.org](mailto:spapale@mvedge.org)

**Re: Central Utica Building, LLC Application for Financial Assistance  
Public Hearing on December 10, 2021 at 10 a.m.**

Dear Executive Director Papale and Oneida County Industrial Development Agency:

This office represents Bowers Development, LLC (“Bowers Development”).

Please accept this letter as Bowers Development’s comments on the Central Utica Building, LLC Application for Financial Assistance (the “Application”) to the Oneida County Industrial Development Agency (“OCIDA”). Pursuant to the instructions contained in the Notice of Hearing, we dialed in to the call-in number provided promptly at 10 a.m. Unfortunately, when I attempted to identify myself you could not hear me. I even attempted to dial in from a different phone and announced myself but was still unable to be heard. It appears it was a technical problem on your end. My office was able to reach Executive Director Shawna Papale by phone after the hearing, and Executive Director Papale directed my office to submit our comments by email today and stated that our comments will be included with the public hearing transcript.

Bowers Development is one of the most active developers in the City of Utica. Bowers Development is the contract-vendee of the property located at 411 Columbia Street (Tax Map 218.-41-2-38) (the “O’Brien Parcel”) and will be constructing a brand-new medical office building (“MOB”) on the O’Brien Parcel. Both Central Utica Building, LLC and Mohawk Valley Health System are fully aware of Bowers Development’s contract-vendee status and intent to construct its own MOB on the O’Brien Parcel. Yet, without Bowers Development’s consent or permission, the O’Brien Parcel has been included in the Application as part of the Central Utica Building, LLC MOB project. In fact, the Application acknowledges that Central Utica Building, LLC does not own or control the O’Brien Parcel, but yet admits that “[w]ithout this property it will be impractical if not impossible to construct the MOB as proposed.” It is disturbing and shocking that Central Utica Building, LLC would submit an Application for a project which includes property that it admits that it does not even own or control and which by its own admission it needs to construct the project. This should not be tolerated by OCIDA.

Therefore, we submit that OCIDA should not, and in fact, cannot as a matter of law, proceed to process, let alone approve, the Application because Central Utica Building does not even own all of the property which is part of the Application.

Furthermore, it would be improper for OCIDA to proceed to condemn the O'Brien Parcel by eminent domain, as requested by Central Utica Building, LLC. As a threshold matter, OCIDA should not be taking property from one private property owner and developer who intends to develop an MOB and give it to another developer to develop an MOB. This is not consistent with the purpose and authority of OCIDA, and we believe it would also be in violation of Eminent Domain Procedure Law.

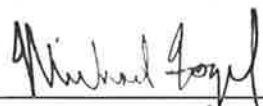
Nonetheless, if OCIDA does proceed with eminent domain, Bowers Development fully intends to oppose the taking and will pursue any-and-all legal remedies available to it to prevent such taking, and to seek just compensation, if such taking does occur. In addition, any taking of the O'Brien Parcel will result in significant direct, indirect and consequential financial damages to Bowers Development for which it fully intends to seek compensation for from all responsible parties.

Further, based on the Application that has been made available to the public, the Application appears to be incomplete. It appears to be missing the required completed SEQRA forms, and a completed Cost Benefit Analysis. Therefore, these documents need to be completed by the Applicant, and provided to the public for comment before OCIDA moves forward with processing and potentially approving the Application.

Thank you for your attention to this matter. Please include this letter in the record of your consideration of the Application.

Very truly yours,

BROWN DUKE & FOGEL, P.C.

By:   
Michael A. Fogel, Esq.

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

I, the undersigned Secretary of the Oneida County Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the foregoing copy of the minutes of a public hearing held by the Oneida County Industrial Development Agency (the "Agency") on January 18, 2022 at 10:00 a.m. local time, at Oneida County Legislative Chambers, 8<sup>th</sup> Floor, Oneida County Office Building, 800 Park Avenue, City of 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) the public hearing was open for the public to attend and public notice 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 \_\_\_\_\_, 2022.

\_\_\_\_\_  
Secretary



EXHIBIT C

[To be printed on IDA letterhead and delivered to the Company when appropriate]

\_\_\_\_\_, 2022

Central Utica Building, LLC  
Attn.: David Quirello  
2211 Genesee Street  
Utica, New York 13501

RE: *Oneida County Industrial Development Agency Lease-Leaseback Transaction  
Central Utica Building, LLC Facility*

Dear Mr. Quirello:

Pursuant to a resolution duly adopted on November 19, 2021 and amended on December 17, 2021, Oneida County Industrial Development Agency (the "Agency") appointed Central Utica Building, LLC (the "Company") its agent in connection with a transaction in which the Agency will assist in the construction of an 94,000± square foot state-of-the-art medical office building and appurtenant facilities including parking areas and all infrastructure, utilities and amenities to support the same (collectively, the "Improvements") situated on parcels of land measuring 2.90± acres in the aggregate adjacent to the new Wynn Hospital (the "Wynn Hospital") located at the corner of State and Columbia Streets, City of Utica, Oneida County, New York (the "Land") and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing a seamless and integrated health care delivery system together with the Wynn Hospital, and to enhance and expand the delivery of health care services to the community (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"). The Company will lease the Facility to the Agency and the Agency will lease the Facility back to the Company pursuant to a Leaseback Agreement. The Company will sublease a 20,000± square foot portion of the Facility (the "CNYC Facility") to Central New York

Cardiology, P.C. (the "CNYC Sublessee") for its operation for the purpose of performing interventional cardiology services at the Wynn Hospital and to take cardiology call and provide cardiology services to patients admitted to the Wynn Hospital. The Company will sublease an 18,000± square foot portion of the Facility (the "MVASC Facility") to Mohawk Valley ASC, LLC (the "MVASC Sublessee") for its operation for the purpose of operating an Article 28 licensed, Medicare certified multi-specialty ambulatory surgery center with six operating rooms. The Company will sublease other portions of the Facility to MVHS and other medical practices whose physicians practice in, and need access to, the Wynn Hospital, and to other commercial and/or retail tenants to provide complementary services (such sublessees, together with the CNYC Sublessee and the MVASC Sublessee, are referred to collectively as the "Sublessees").

This appointment includes authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Facility, and the following activities as they relate to any construction, equipping and completion of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction and equipping (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with construction and equipping 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 will appoint the Company as its only direct agent for the Project. The agency appointment includes the power of the Company 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. Please advise the Executive Director of the Agency if you wish to appoint a contractor or other subagent, and the Agency will issue an ST-60 to that party.

In exercising this agency appointment, you and each of your properly appointed agents and subagents must claim the sales tax exemption for all purchases by giving your vendors New York State Form ST-123. The supplier or vendor should identify the Facility on each bill or invoice as the "**Central Utica Building, LLC Facility**" and indicate thereon that the Company, its agents, subagents, contractors and subcontractors acted as agent for the 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 complete a New York State Department of Taxation and Finance Form ST-60. Original copies of each 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 constructing and equipping the Facility, and shall only then be authorized to use Form ST-123 as described above. Failure to comply with these requirements may result in loss of sales tax exemptions for the Facility.

It is important to note that contractors and subcontractors who have not been appointed subagent cannot use the sales tax exemption for equipment rental, tools, supplies and other items that do not become part of the finished project. Contractors and subcontractors must be appointed as agent or sub-agent of the Agency to use the Agency sales tax exemption for these purchases. Contractors and subcontractors who have not been appointed a subagent and are making purchases that would otherwise be exempt outside of the Agency's interest in the Facility must claim the sales tax exemption for construction materials by giving their vendors a completed "Contractor Exempt Purchase Certificate" (Form ST-120.1) checking box (a).

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) November 19, 2022, 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, the value of the sales tax to be abated relating to the renovation and equipping of the Facility is estimated at estimated at \$1,820,000; the value of sales tax exemptions currently authorized by the Agency is not to exceed \$1,820,000. The Agency is required by law to recapture any New York State sales tax exemptions claimed by the Company that (a) exceed \$100,000 for purchases made between November 19, 2021 and the date of the public hearing; and (b) exceed \$1,820,000 for purchases made relating to the Project in the aggregate.

You should be aware that the New York State General Municipal Law requires you to file an Annual Statement (Form ST-340) with the New York State Department of Taxation and Finance 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 the Project. We are providing a form of a worksheet for you to track all exempt purchases made in completing the Project, using Forms ST-123 or Form ST-120.1. Please provide the Agency with a copy of Form ST-340 along with your annual report to the Agency and this worksheet. The penalty for failure to file such statement, or to provide a copy to the Agency, is the removal of your authority to act as an agent.

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. The Agency will issue and deliver Form ST-60 to you upon receipt of this signed agency appointment letter. The Agency reserves the right to issue a revised agency appointment letter with respect to the process for utilizing and reporting exemptions hereunder.

Very truly yours,

ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Name:  
Title:

ACCEPTED & AGREED:

CENTRAL UTICA BUILDING, LLC

By: \_\_\_\_\_  
Name:  
Title: