

**RESOLUTION OF THE ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY APPROVING: (A) THE TENDER OF AN OFFER TO PURCHASE PURSUANT TO §303 OF THE EMINENT DOMAIN PROCEDURES LAW OF THE STATE OF NEW YORK ("EDPL"); AND (B) THE COMMENCEMENT OF A PROCEEDING UNDER EDPL ARTICLE 4 TO ACQUIRE THE CERTAIN PROPERTY KNOWN AS 411 COLUMBIA STREET, CITY OF UTICA, ONEIDA COUNTY, NEW YORK (THE "PROPERTY") BY EMINENT DOMAIN; AND (C) THE CLOSING OF A LEASE-LEASEBACK TRANSACTION**

**WHEREAS**, Central Utica Building, LLC (the "CUB") presented an application (the "Application") to the Oneida County Industrial Development Agency (the "Agency") requesting that the Agency consider the provision of financial assistance supporting 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 described in the Application to the Agency 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 (ii) to provide certain financial assistance in support of the Project, consisting of exemptions from sales and use taxes and exemptions from mortgage recording taxes, pursuant to Article 18-A of the General Municipal Law of the State of New York and Chapter 372 of the Laws of the State of New York, as may be amended from time to time (collectively, the "Act"); and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the "Regulations"), the City of Utica Planning Board (the "Planning Board") served as Lead Agency (as defined in the SEQR Act and Regulations) for purposes of conducting a coordinated review of the environmental impacts of a certain project undertaken by the Mohawk Valley Health System ("MVHS") consisting of construction of a 670,000± square foot hospital, central utility plant, parking facilities (one municipal parking garage and multiple surface lots), medical office building (by private developer), campus grounds, utility/pedestrian bridge (over Columbia Street) and helipad (the "MVHS Project"), all in accordance with the SEQR Act and the Regulations; and

**WHEREAS**, by resolution adopted April 18, 2019 (the "Planning Board SEQRA Resolution"), the Planning Board determined to issue a written findings statement regarding the relevant environmental impacts, facts and conclusions disclosed in the Planning Board's Final Environmental Impact Statement dated February 2019 and accepted by the Planning Board on March 21, 2019 (the "FEIS") in accordance with the requirements of Section 617.11 of the Regulations; and

**WHEREAS**, the Planning Board issued a Findings Statements under SEQRA (the "Findings Statement") wherein the Planning Board concluded with respect to the MVHS Project that: (1) the requirements of 6 NYCRR Part 617 have been met; and (2) consistent with social,

economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable; and

**WHEREAS**, the Agency adopted a Statement of Findings on January 21, 2022 for the Facility pursuant to which the Agency found: (1) the Facility is located in a "highly distressed area" as such term is defined in Section 854(18) of the Act; and (2) the Facility will preserve, private sector jobs in the State of New York and thereby serve the public purposes of the Act and to undertake the Project as requested by CUB; and

**WHEREAS**, on January 21, 2022, the Agency adopted a certain resolution pursuant to SEQRA finding that there was no material change in the scope of the Project under SEQRA that would affect the Findings Statement adopted by the Planning Board and that no additional review under SEQRA was required for the Project; and

**WHEREAS**, MVHS owns three of the parcels comprising the Land and has ground leased those parcels to CUB pursuant to a Ground Lease with a term of 99 years (the "Ground Lease"); and

**WHEREAS**, to accommodate the parking requirements for the Facility, CUB represented that it must acquire the property located at 411 Columbia Street, City of Utica, Oneida County, New York a/k/a SBL No.: 318.41-2-38 (the "O'Brien Property") for the Project; and

**WHEREAS**, on January 14, 2022, CUB represented that it was unable to obtain ownership or control of the O'Brien Property and requested that the Agency initiate proceedings under the EDPL to acquire the O'Brien Property from J.P. O'Brien Plumbing and Heating Supply, Inc. now known as Rome Plumbing & Heating Supply Co., Inc. ("O'Brien") and its purported contract vendee being Bowers Development, LLC ("Bowers");

**WHEREAS**, pursuant to Article 2 of the EDPL, the Agency conducted a Public Hearing on February 23, 2022 at 9.00 AM at the Oneida County Legislative Chambers, Oneida County Office Building, 10<sup>th</sup> Floor, 800 Park Avenue, City of Utica, Oneida County, New York;

**WHEREAS**, on March 3, 2022 the Agency adopted a resolution authorizing the financial assistance in support of the Project subject to the satisfaction of certain conditions, which conditions have been addressed to the satisfaction of the Agency; and

**WHEREAS**, on April 7, 2022 and pursuant to Section 204 of the EDPL, the Agency adopted a resolution approving its Determinations and Findings on the acquisition of the O'Brien Property pursuant to eminent domain (the "EDPL Findings").

**WHEREAS**, pursuant to Section 207 of the EDPL, Bowers and O'Brien commenced a proceeding on May 9, 2022 against the Agency and CUB in the Appellate Division, Fourth Department (the "Appellate Division"); and

**WHEREAS**, on September 15, 2022, the Planning Board granted final site plan approval and a special use permit for the Facility; and

**WHEREAS**, on December 23, 2022, the majority of the Appellate Division issued a Memorandum and Order granting the petition of Bowers and O'Brien and annulling the EDPL Findings determining that the Agency lacked the requisite authority to acquire the O'Brien Property with a single judge dissenting (the "2022 AD Determination"); and

**WHEREAS**, on March 17, 2023, the Appellate Division granted the application of the Agency and CUB for leave to appeal from the 2022 AD Determination to the New York State Court of Appeals ("COA"); and

**WHEREAS**, on or about April 7, 2023, Bowers and O'Brien represented that the O'Brien Property had been acquired by Utica Med Building, LLC, a New York limited liability company, having the same address as Bowers being 6308 Fly Road, East Syracuse, New York 13058 (the "Utica Med") (NYSCEF Index No.: EFCA2023-000906, Document No.1, p.2, Footnote 2); and

**WHEREAS**, on December 14, 2023, the COA issued a Memorandum reversing the determination of the majority in the 2022 AD Determination finding that the Agency had the requisite authority to acquire the O'Brien Property and remanding the proceeding to the Appellate Division to address the arguments made by O'Brien and Bowers that were not addressed by the majority in the 2022 AD Determination; and

**WHEREAS**, on February 2, 2024, upon the remittitur from the COA, the Appellate Division issued a certain Memorandum and Order dismissing the petition; and

**WHEREAS**, as of February 6, 2024, a deed conveying the O'Brien Property from O'Brien to Utica Med had not been filed in the Office of the Oneida County Clerk.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:**

**Section 1.** Pursuant to Section 303 of the EDPL, the Agency hereby approves an offer to acquire the O'Brien Property for the sum of \$1,200,000 (the "Offer Price"), and authorizes the Chairman of the Agency to execute and deliver an offer letter under Section 303 of the EDPL to O'Brien, Bowers and its purported acquiring affiliate, Utica Med, to acquire the O'Brien Property by eminent domain.

**Section 2.** Pursuant to Section 402(B) of the EDPL, the Agency authorizes: (1) Goldman Attorneys PLLC, its Special Counsel, to initiate all proceedings necessary to acquire the O'Brien Property, including prevesting discovery, and (2) the Chairman and/or Vice Chairman of the Agency to execute any and all required pleadings, certificates and notices, and (3) the closing of the lease-leaseback transaction and all actions authorized in the Final Authorizing Resolution.

**Section 3.** The Agency authorizes the staff of the Agency and Special Counsel, Goldman Attorneys PLLC to undertake any and other work, notices, filings and/or submissions required to effectuate the determinations set forth in this resolution.

**Section 4.** The Agency hereby ratifies, confirms and approves all prior actions taken by the Agency, its directors, officers, employees and agents, with respect to the Project.

**Section 5.** This resolution shall take effect immediately.

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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 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 Board of Directors of the Agency duly convened in public session on February 9, 2024 at 8:00 a.m. local time, at 584 Phoenix Drive, Rome, New York 13440 at which the following members were:

- Members Present: Stephen R. Zogby  
David C. Grow  
James J. Genovese II  
Aricca R. Lewis  
Tim Reed  
Kristen Martin
- Staff Present: Franca Armstrong  
Shawna Papale  
Tim Fitzgerald  
Laura Cohen  
Steven J. DiMeo  
Mark Kaucher  
William VanShufflin
- Others Present: Anthony Picente  
Andrew Dean  
Shaun Kaleta  
Jenna Peppenelli  
Linda Romano (by video)  
Mark Levitt (by video)  
Laura Ruberto (by video)

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

Voting Aye

Voting Nay

- Stephen R. Zogby
- David C. Grow
- James J. Genovese II
- Tim Reed
- Kristen Martin
- Franca Armstrong
- Abstained: Aricca R. Lewis

and, therefore, the resolution was declared duly adopted.

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

**IN WITNESS WHEREOF**, I have hereunto set my hand as of the 9th day of February, 2024.



Secretary