

City of Albany Industrial Development Agency

21 Lodge Street
Albany, New York 12207
Telephone: (518) 434-2532
Fax: (518) 434-9846

Tracy Metzger, *Chair*
Susan Pedo, *Vice Chair*
Darius Shahinfar, *Treasurer*
Lee Eck, *Secretary*
Dominick Calsolaro
Robert Schofield
Jahkeen Hoke

Sarah Reginelli, *Chief Executive Officer*
Mark Opalka, *Chief Financial Officer*
William Kelly, *Agency Counsel*

To: Tracy Metzger
Darius Shahinfar
Susan Pedo
Robert Schofield
Lee Eck
Dominick Calsolaro
Jahkeen Hoke

Sarah Reginelli
William Kelly
Joe Scott
Mark Opalka
Joe Landy
Andy Corcione
Genevieve Zurowski

Date: September 26, 2018

IDA REGULAR MEETING AGENDA

A Special Meeting of the City of Albany Industrial Development Agency Board of Directors will be held on **Thursday, September 27th at 12:00 PM** at 21 Lodge Street, Albany, NY 12207 (Large Conf. Room)

Roll Call

Reading of Minutes of the Board Meeting of September 20, 2018

Approval of Minutes of the Board Meeting of September 20, 2018

Report of Chief Financial Officer

A. None

Unfinished Business

A. None

New Business

- A. 99 Pine Street of Albany, LLC
- Resolution Authorizing Refinancing 99 Pine Street of Albany, LLC Project

Other Business

A. Other Business

Adjournment

The next regularly scheduled Board Meeting will be held **Thursday, October 18, 2018** at 21 Lodge Street, Albany, NY.
Please check the website www.albanyida.com for updated meeting information.

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IDA MINUTES OF REGULAR MEETING Thursday, September 20, 2018

Attending: Tracy Metzger, Dominick Calsolaro, Robert Schofield, Susan Pedo, Lee Eck, and Darius Shahinfar

Absent: Jahkeen Hoke

Also Present: Sarah Reginelli, Marisa Franchini, Mark Opalka, Joe Landy, Andy Corcione, Joseph Scott, Mike Bohne, Ashley Mohl and Genevieve Zurowski

Chair Tracy Metzger called the Regular Meeting of the IDA to order at 1:10 p.m.

Roll Call

Chair Tracy Metzger reported that all Board members, with the exception of Jahkeen Hoke, were present.

Reading of Minutes of the August 16, 2018 Board Meeting

Since the minutes of the August 16, 2018 meeting had been distributed to Board members in advance for review, Chair Tracy Metzger made a proposal to dispense with the reading of the minutes.

Approval of Minutes of the August 16, 2018 Board Meeting

Chair Tracy Metzger made a proposal to approve the minutes of the Board Meeting of August 16, 2018. A motion to accept the minutes, as presented, was made by Darius Shahinfar, seconded by Susan Pedo. A vote being taken, the minutes were accepted unanimously.

Reports of the Chief Financial Officer

Staff reviewed the monthly financial report that was provided in advance for review.

Unfinished Business

One Columbia Place Realty, LLC

Staff gave a brief overview of the project and discussed the project's current request involving the administrative matter as the project transitions from construction financing to permanent financing. Staff noted the cost of the project had increased by \$300,000 and that the Agency would adjust the fee due for assistance to appropriately reflect this change.

Staff presented the Resolution Authorizing Additional Financing to the Board. A motion to adopt the resolution was made by Lee Eck and seconded by Darius Shahinfar. Before the vote on the offered motion, Chair Metzger disclosed to the board and for entry into the IDA minutes that her firm has a business relationship with the project applicant as her firm has provided professional services to the project applicant. The Chair noted that her firm does not have an ownership interest in the proposed Project or the project applicant. After consultation with Agency special counsel and local counsel, counsel determined that there was no formal "conflict" under NYS law. Further, counsel noted that the typical certificates that are delivered at the time of the closing on any IDA project, including certificates specifically addressing any conflicts, would be delivered on this matter. The Chair then stated that even though there is no conflict on this matter that she would abstain on the resolution. . A vote being taken, the resolution was passed unanimously.

New Business

The Swinburne Building, LLC

Chair Tracy Metzger presented the Public Hearing Resolution The Swinburne Building, LLC Project to the Board. A motion to approve the resolution was made by Darius Shahinfar and seconded by Susan Pedo. Staff reminded the Board of staff recusal at the September 12, 2018 Finance Committee meeting due to Capitalize Albany Corporation owning the property that comprises the project site A vote being taken, the resolution passed unanimously.

Loughlin Dawn, LLC

Staff briefly reviewed the project and the previously distributed engagement letter regarding the analysis of the appropriateness of the requested level of Agency assistance.

Staff presented the Resolution Approving Consultant for Loughlin Dawn, LLC Project to the Board. A motion to approve the resolution was made by Darius Shahinfar and seconded by Susan Pedo. Before the vote on the offered motion, Chair Metzger disclosed to the board and for entry into the IDA minutes that her firm has a business relationship with the project applicant as her firm has provided professional services to the project applicant. The Chair noted that her firm does not have an ownership interest in the proposed Project or the project applicant. After consultation with Agency special counsel and local counsel, counsel determined that there was no formal "conflict" under NYS law. Further, counsel noted that the typical certificates that are delivered at the time of the closing on any IDA project, including certificates specifically addressing any conflicts, would be delivered on this matter. The Chair then stated that even though there is no conflict on this matter that she would abstain on the resolution. A vote being taken, the resolution passed unanimously.

Policy Enhancements

Chair Tracy Metzger presented the Resolution Approving Revised Policy Provisions to the Board. The Chair reminded the Board of the discussion and positive recommendation from the previous Governance Committee. The Board discussed how the provisions address the corrective action plan filed with the Office of the State Comptroller. A motion to approve the resolution was made by Robert Schofield and seconded by Lee Eck. A vote being taken, the resolution passed unanimously. Additionally, the CFO reviewed actions to be taken to address the corrective action plan related to discrepancies in the Agency's PARIS report.

Chair Tracy Metzger presented the Resolution Approving New Policy – Policy Respecting Change in Control for Project Applicants to the Board. Staff discussed the preparation of the resolution as requested during previous discussions of the Board, and Governance and Finance Committees. The Board discussed various scenarios regarding percentages of ownership and potential windows of applicability. The Board came to consensus on 25 percent ownership change and applicability for all project applications received after the date of the resolution’s passage. A motion to approve the resolution as amended was made by Susan Pedo and seconded by Robert Schofield. A vote being taken, the resolution passed unanimously.

Chair Tracy Metzger presented the Resolution Approving Revised Application – 2018 to the Board. A motion to approve the resolution was made by Susan Pedo and seconded by Lee Eck. A vote being taken, the resolution passed unanimously.

Other Business

Agency Update

None.

Project Update

Staff provided the Board with progress updates on nine (9) Agency-assisted projects which were approved but have not yet closed. The Board discussed each of the projects. Relevant information including financing, construction and leasing progress (where applicable) was discussed.

Liberty Park Update

Staff updated the Board on Capitalize Albany’s continued due diligence process for the Liberty Park project. Staff indicated that there is no change on property acquisition discussions. The Board discussed the authority of the Agency to acquire property by eminent domain. Mr. Scott reviewed with the Board the general powers of the Agency, including the power of eminent domain. Staff indicated that they would prepare the documentation necessary to begin the condemnation process for presentation at an upcoming Board meeting.

Other Business

None.

There being no further business, Chair Tracy Metzger adjourned the meeting at 1:30 p.m.

Respectfully submitted,

Lee Eck, Secretary

MEMO

TO: City of Albany Industrial Development Board

FROM: City of Albany Industrial Development Agency Staff

RE: Special Meeting of the IDA Board

DATE: September 27, 2018

A Special Meeting of the IDA Board will be held on September 27th for the purpose of discussing 99 Pine Street of Albany, LLC. The project is refinancing their current mortgage and requires IDA permission to do so. The matter is time sensitive as there are numerous factors that require the loan to close in September. There is no additional benefit being requested or granted.

ROSENSTEIN ORAPELLO, PLLC

440 New Karner Road | Albany, New York 12205



PH: (518) 452-6979 | FX: (518) 452-6873

September 25, 2018

VIA EMAIL ONLY - nzeigler@hodgsonruss.com

Tracie Metzger, Chairwoman
c/o Nadene Zeigler, Esq., Hodgson Russ, LLP
City of Albany Industrial Development Agency
21 Lodge Street
Albany, New York 12207

Re: Berkshire Bank (the "Lender") \$5,750,000.00 Loan to 99 Pine Street of Albany LLC and City of Albany IDA (Collectively, the "Borrower(s)")

Dear Chairwoman Metzger:

We have been retained and represent 99 Pine Street of Albany LLC, ("99 Pine"), a New York limited liability company with an office for the transaction of business located at 525 Union Street, Suite 101, Schenectady, New York 12305.

As you may be aware, on or about August, 2016, 99 Pine entered into various agreements (Lease Agreement, etc.) with the City of Albany IDA ("IDA") which resulted in 99 Pine receiving a Mortgage Tax Exemption. 99 Pine remains in good standing with its agreements with the IDA.

Presently, 99 Pine is seeking to refinance their existing mortgage with SEFCU. They have obtained a commitment from the new lender, Berkshire Bank, for a loan in the amount of \$5,750,000.00. With this new loan, 99 Pine will satisfy the second mortgage held by Capitalize Albany, in the amount of \$401,583.73. Additionally, 99 Pine proposes to **add** six (6) new apartments to the property. They will use a combination of funds from the new loan, Mortgage Tax savings (if granted) and Historic Tax Credits to facilitate the construction of these new apartments. For full disclosure, Berkshire Bank will hold back \$600,000.00 from the new loan until the completion of the six (6) apartments are complete at which point the \$600,000.00 will be released to 99 Pine. This holdback makes the savings anticipated in the mortgage tax exemption critical to the project.

As a part of the above transaction, Berkshire Bank has proposed, and SEFCU has consented to an assignment of the remaining balance. As of September 28, 2018, the remaining balance owed to SEFCU stands at \$4,661,185.30, with interest at a per diem rate of \$769.40.

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This puts the "new money" of the transaction, and therefore subject to NYS Mortgage Tax, at approximately \$1,088,814.70. Without the assignment of the SEFCU loan the exposure to NYS Mortgage tax would be at the full \$5,750,000.00, a considerably larger sum.

99 Pine respectfully requests the IDA to consider the following actions so that they can cause to be complete their refinance of the SEFCU loan and improve the real property with the addition of the six (6) new apartments, for the benefit of the immediate community:

1. Co-Operate in the execution of the following bank documents: *
 - a. A Mortgage in the amount of \$5,750,000.00;
 - b. An Assignment of Leases and Rents;
 - c. A Loan Consolidation Agreement;
 - d. Any other miscellaneous, ministerial documents that Berkshire Bank may require to effectuate the closing of the loan transaction.

2. A NYS Mortgage Tax exemption for the "new money" portion of this transaction.

*With the delivery of this letter via email, we will attach draft documents that have been provided to us by counsel for Berkshire Bank.

99 Pine seeks no other relief from the IDA. They do however respectfully request that the IDA acts with all available expediency, as it is imperative that this transaction is closed by the end of this month so that the Lender's commitment is not at risk. 99 Pine appreciates the emergency meeting of the Board and is available, through counsel to assist in any questions, comments or concerns that the Board may have.

Thank you for your anticipated cooperation with this matter.

Very truly yours,

ROSENSTEIN ORAPELLO, PLLC

By: 

Louis W. Chicatelli, Jr., Esq.

Enclosures (via email only)

**RESOLUTION AUTHORIZING REFINANCING
99 PINE STREET OF ALBANY LLC PROJECT**

A special meeting of City of Albany Industrial Development Agency (the “Agency”) was convened in public session at the office of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York on September 27, 2018 at 12:00 o’clock p.m., local time.

The meeting was called to order by the (Vice) Chair of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Tracy L. Metzger	Chair
Susan Pedo	Vice Chair
Lee E. Eck, Jr.	Secretary
Darius Shahinfar	Treasurer
Dominick Calsolaro	Member
Jahkeen Hoke	Member
Robert T. Schofield	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Sarah Reginelli	Chief Executive Officer
Mark Opalka	Chief Financial Officer
Ashley Mohl	Senior Economic Developer II, Capitalize Albany Corporation
Joseph Landy	Senior Economic Developer II, Capitalize Albany Corporation
Andrew Corcione	Economic Developer, Capitalize Albany Corporation
Michael Bohne	Communications & Marketing, Capitalize Albany Corporation
Genevieve Zurowski	Executive Assistant, Capitalize Albany Corporation
William G. Kelly, Jr., Esq.	Agency Counsel
Nadene E. Zeigler, Esq.	Special Counsel

The following resolution was offered by _____, seconded by _____, to wit:

Resolution No. 0918-__

**RESOLUTION AUTHORIZING THE EXECUTION BY CITY OF ALBANY
INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN MORTGAGE AND
RELATED DOCUMENTS IN CONNECTION WITH THE 99 PINE STREET OF
ALBANY LLC PROJECT.**

WHEREAS, City of Albany Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the

“Enabling Act”) and Chapter 325 of the 1974 Laws of New York, as amended, constituting Section 903-a of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on or about August 3, 2016, the Agency granted certain “financial assistance” within the meaning of the Act (the “Closing”) to 99 Pine Street of Albany LLC (the “Company”) in connection with a project (the “Project”) to be undertaken by the Agency consisting of the following: (A)(1) the acquisition of an interest in an approximately .53 acre parcel of land located at 55 North Pearl Street (Tax Map # 76.34-3-34) in the City of Albany, Albany County, New York (the “Land”), together with an existing approximately 100,000 square foot building located thereon (the “Facility”), (2) the renovation of a portion of the Facility and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property, including without limitation, tenant improvement and finish (collectively, the “Equipment”) (the Land, the Facility, and the Equipment being collectively referred to as the “Project Facility”), all of the foregoing to be owned by the Company and to constitute a residential facility containing approximately 38 residential apartments and other directly and indirectly related activities; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales and use taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the “Financial Assistance”); and (C) the lease of the Project Facility to the Company pursuant to the terms of a lease agreement dated as of August 1, 2016 (the “Lease Agreement”) by and between the Company and the Agency; and

WHEREAS, the Agency has a leasehold and license interest in the Land pursuant to (A) a certain lease to agency dated as of August 1, 2016 (the “Lease to Agency”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company leased to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”) and (B) a certain license agreement dated as of August 1, 2016 (the “License to Agency”) by and between the Company, as licensor, and the Agency, as licensee; and

WHEREAS, in order to finance a portion of the costs of the Project, the Company obtained (A) a loan in the principal sum of up to \$5,227,500 (the “First Loan”) from State Employees Federal Credit Union (the “First Lender”), which First Loan was secured by a Mortgage Assignment of Rents, Security Agreement and Fixture Filing dated as of August 1, 2016 (the “SEFCU Mortgage”) from the Agency and the Company to the First Lender and (B) a loan in the principal sum of up to \$400,000 (the “Second Loan”) from Capitalize Albany Corporation (the “Second Lender”), which Second Loan was secured by (1) a Mortgage dated as of August 1, 2016 (the “CAC Mortgage”) from the Agency and the Company to the Second Lender and (2) an assignment of rents and leases dated as of August 1, 2016 (the “Assignment of Rents”) from the Agency and the Company to the Second Lender; and

WHEREAS, by letter dated September 26, 2018 (the “Request”), which Request is attached hereto as Exhibit A, the Agency was informed that the Company will be refinancing the First Loan with

Berkshire Bank (“Berkshire”), paying off the Second Loan and obtaining an additional loan from Berkshire (collectively, the “Refinancing”); and

WHEREAS, pursuant to the Request, as the Agency has a leasehold and license interest in the Land, the Agency is being asked to enter into a mortgage and security agreement, a mortgage consolidation and modification agreement, an assignment of leases and rents and any related documents (collectively, the “Refinancing Loan Documents”); and

WHEREAS, with respect to the Request, the Agency will not be providing any benefits to the Company via exemption from the mortgage recording tax; 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” and collectively with the SEQR Act, “SEQRA”), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the Request; and

WHEREAS, pursuant to SEQRA, the Agency has examined the Request in order to make a determination as to whether the Request is subject to SEQRA, and it appears that the Request constitutes a Type II action under SEQRA;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. Based upon an examination of the Request, the Agency hereby makes the following determinations:

(A) The Request constitutes a “Type II action” pursuant to 6 NYCRR 617.5(c)(23), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Request.

(B) The Agency will not be granting any mortgage recording tax exemption relating to the Request.

(C) That since compliance by the Agency with the Request will not result in the Agency providing more than \$100,000 of “financial assistance” (as such quoted term is defined in the Act) to the Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Request.

Section 2. In consequence of the foregoing, the Agency hereby determines to execute and deliver the Refinancing Loan Documents, subject to the following conditions: (A) approval of the form of the Refinancing Loan Documents, by Agency counsel and Special Agency counsel, (B) the payment of the Agency’s administrative fee, (C) evidence satisfactory to the Agency and its staff that the Company is in compliance with the Agency’s policies relating to the Project; (D) the payment of the fees and expenses of the Agency Counsel and Agency Special Counsel, (E) the execution and delivery of documents prepared by Special Agency counsel to provide for the Refinancing, and (F) the following additional conditions: _____.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chair (or Vice Chair) of the Agency is hereby authorized to execute and deliver the Refinancing Loan

Documents to the Company, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chair (or Vice Chair) shall approve, the execution thereof by the Chair (or Vice Chair) to constitute conclusive evidence of such approval.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Refinancing Loan Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Refinancing Loan Documents binding upon the Agency.

Section 5. This Resolution shall take effect immediately.

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

Tracy L. Metzger	VOTING	_____
Susan Pedo	VOTING	_____
Lee E. Eck, Jr.	VOTING	_____
Darius Shahinfar	VOTING	_____
Dominick Calsolaro	VOTING	_____
Jahkeen Hoke	VOTING	_____
Robert T. Schofield	VOTING	_____

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned (Assistant) Secretary of City of Albany Industrial Development Agency (the “Agency”), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on September 27, 2018 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 27th day of September, 2018.

(Assistant) Secretary

(SEAL)

EXHIBIT A
REQUEST



99 Pine Street of Albany, LLC
525 Union Street Suite 101
Schenectady NY 12305

9/26/18

Tracy Metzger
Chair
City of Albany Industrial Development Agency
21 Lodge Street
Albany, New York 12207

RE: Request for IDA approval on refinance, 99 Pine Street project

Dear Ms. Metzger:

We would like to let the IDA know we are working to refinance the 99 Pine Street property however as partners with the IDA naturally we need your permission to execute on this refinance. We are not asking for any additional abatement at this time. Please let me know if you any other information at this time. Our timing happens to be tight on this we just found out we need to close in September so we are respectfully requesting a special meeting to address the request if at all possible.

Thank you for your support!

Sincerely,

A handwritten signature in black ink, appearing to read 'Seth R. Meltzer', is written over a horizontal line.

Seth R. Meltzer
Member, 99 Pine Street of Albany LLC