

# 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*  
Marisa Franchini, *Agency Counsel*

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

CC: Sarah Reginelli  
Marisa Franchini  
Joe Scott  
Mark Opalka  
Andy Corcione  
Virginia Rawlins  
Tammie Fanfa

Date: February 14, 2020

## IDA REGULAR MEETING AGENDA

A Regular Meeting of the City of Albany Industrial Development Agency Board of Directors will be held on **Thursday, February 20<sup>th</sup>, 2020 at 12:15 pm** at 21 Lodge Street, Albany, NY 12207 (Large Conf. Room)

### **Roll Call, Reading & Approval of the Minutes of the Board Meeting of January 16, 2020**

#### **Report of Chief Financial Officer**

- Financial Report

#### **Unfinished Business**

#### **New Business**

- A. FC 705 Broadway, LLC/705 Broadway Hotel, LLC
  - Resolution Extending Agent Appointment Term & Authorizing Amendment to Interim Documents Second Extension
- B. 363 Ontario St., LLC
  - Resolution Authorizing Amendment to PILOT Agreement
- C. 45 Columbia Street Assoc., LLC
  - Resolution Consenting to Collateral Mortgages

#### **Other Business**

- A. Agency Update
- B. Compliance Update

#### **Adjournment**

The next regularly scheduled Board Meeting will be held **Thursday, March 19, 2020** at 21 Lodge Street, Albany, NY. Please check the website [www.albanyida.com](http://www.albanyida.com) for updated meeting information.

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## IDA MINUTES OF THE REGULAR BOARD MEETING January 16, 2020 at 12:15 p.m.

Attending: Lee Eck, Darius Shahinfar, Susan Pedo, Robert Schofield, Dominick Calsolaro, and Jahkeen Hoke

Absent: Tracy Metzger

Public Present: Phil Stenglein, Matthew Riordan, Deb Lambek, Meredith Malark, Bill Walsh, David Phaff, Mike Hipp, Garry Ero, and Mark Aronowitz

Also Present: Sarah Reginelli, Amy Lavine, Joe Scott, Andy Corcione, Mark Opalka, Virginia Rawlins, Nora Culhane, Christopher Medve, Mike Bohne, Ashley Mohl, and Tammie Fanfa

Acting Chair Susan Pedo called the Regular Meeting of the IDA to order at 12:23 p.m.

### **Roll Call, Reading and Approval of Minutes of the December 19, 2019 Board Meeting**

Acting Chair Pedo conducted a roll call of Board members establishing that all members were present with the exception of Tracy Metzger. Since the minutes of the previous meeting had been distributed to Board members in advance for review, Acting Chair Pedo made a proposal to dispense with the reading of the minutes. Acting Chair Pedo made a proposal to approve the minutes of the regular Board meeting of December 19, 2019 as presented. A motion to accept the minutes, as presented, was made by Darius Shahinfar and seconded by Lee Eck. A vote being taken, the motion passed with all members voting aye, minutes were accepted.

### **Unfinished Business**

#### 563 New Scotland Ave, LLC (New Scotland Village)

Acting Chair Susan Pedo introduced the *563 New Scotland Ave, LLC* project to the Board for Approving Resolutions. Staff gave a brief synopsis of the project mentioning that the discussion and analysis of this project was first presented to the finance committee in September 2019. The project involves acquisition of approximately 3 acre parcel of land, construction on the land of approximately 188 residential apartment units and approximately 15,000 square feet of retail space. The Project will be constructed in three (3) phases and will create approximately 8 permanent FTE jobs and approximately 85 construction jobs. The Applicant is seeking real property, sales, and mortgage recording tax exemptions. The Applicant was present to answer any questions that the Board members may have. The Board discussed the merits and costs/benefits of the project. The Board discussed the outcome of the public hearing and subsequent written public comments related to the project.

The Board reviewed the Finance Committee's discussions related to an existing restrictive covenant made by the current property owner, and that after being extensively briefed by Counsel, the Finance Committee

felt comfortable moving forward with a positive recommendation of the project to the full board. Staff summarized the Board's determination on this matter citing that all CAIDA agreements included clauses that bind project sponsors to abide by all laws, codes and legal requirements of the jurisdiction in which it is located. As such, any assistance approved by the Board would be dependent upon compliance with said regulations and therefore not stand in the way of the City of Albany Common Council or City of Albany's process – essentially supporting any outcome of the matter.

Acting Chair Susan Pedo presented to the Board the *SEQR Resolution 563 New Scotland Ave, LLC Project, Commercial/Retail Finding Resolution 563 New Scotland Ave, LLC, PILOT Deviation Approval Resolution 563 New Scotland Ave, LLC Project*, and *Approving Resolution 427 Washington Ave, LLC*. A motion to approve the *SEQR Resolution 563 New Scotland Ave, LLC Project* was made by Darius Shahinfar and seconded by Dominick Calsolaro. A vote being taken, the resolution passed unanimously with all members voting aye. A motion to approve *Commercial/Retail Finding Resolution 563 New Scotland Ave, LLC Project* was made by Darius Shahinfar and seconded by Lee Eck. A vote being taken, the resolution passed unanimously with all members voting aye. A motion to approve *PILOT Deviation Approval Resolution 563 New Scotland Ave, LLC Project* was made by Darius Shahinfar and seconded by Lee Eck. The Board discussed the projected benefits and financial needs of the project compared to the estimated abatement being sought, which resulted in the need for a deviation from the Agency's UTEP policy. A vote being taken, the resolution passed unanimously with all members voting aye. A motion to adopt the *Approving Resolution 563 New Scotland Ave, LLC Project* was made by Darius Shahinfar and seconded by Lee Eck. A vote being taken, the resolution passed unanimously with all members voting aye.

#### **New Business**

##### 915 Broadway, LLC (745 Broadway)

Acting Chair Susan Pedo introduced the *915 Broadway, LLC (745 Broadway)* project to the Board for a Public Hearing Resolution. The Project proposes to construct a 5-story mixed-use residential commercial retail structure containing approximately 80 residential market rate apartment units and 6,600 SF of commercial retail space on the ground floor. The 1.38 acre project site, which is currently a parking lot, will also include approx. 75 off-street parking spaces.

A motion to approve the Public Hearing Resolution for the *915 Broadway, LLC (745 Broadway)* project was made by Robert Schofield, and seconded by Lee Eck. A vote being taken, the resolution passed unanimously with all members voting aye.

##### Annual Housekeeping Resolution 2020

Acting Chair Susan Pedo presented the *Annual Housekeeping Resolution 2020* to the Board. Counsel reviewed the contents of the Resolution with the Board. Staff reminded the Board of their previous disclosure that Sarah Reginelli and Mark Opalka, as well as the rest of the staff are employees of Capitalize Albany Corporation. A motion to adopt the resolution was made by Darius Shahinfar and seconded by Lee Eck. A vote being taken, the motion passed unanimously with all members voting aye.

##### Presentation of Annual Investment Report

Staff advised the Board that the Agency must prepare an annual report of the Agency's investments, in order to be compliant with Public Authority Law. Staff reviewed the annual investment report with the Board. Teal, Becker & Chiarmonite has been engaged to perform an audit of the 2019 financial activity of the Agency and is expected to be completed in March 2020.

##### Property Acquisition and Disposition Report

Staff advised the Board that the Agency must prepare an annual report of the Agency's real property, in order to be compliant with Public Authority Law. Staff reviewed the annual report with the Board, which states that the Agency does not own any real property as of December 31, 2019.

**Report of Chief Financial Officer**Monthly Financial Report

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

**Other Business**Agency Update

Staff reminded the Board of the 2020 Economic Development Conference being held on January 29 and 30<sup>th</sup>. If any members would like to attend they are encouraged to contact staff. Staff also discussed pending legislation before New York State that could impact the Agency.

Compliance Update

Staff informed the Committee that each member needs to fill out the Conflict of Interest form and the Confidential Board Evaluation on an annual basis. The forms were provided to the members.

Staff informed the Board that the 2019 annual compliance is underway. Staff will review the responses submitted and provided a detailed update to the Board in the coming months.

There being no further business, Acting Chair adjourned the meeting at 12:49 p.m.

Respectfully submitted,

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Lee Eck, Secretary

**City of Albany IDA**  
2019 Monthly Cash Position  
January 2020

	<b>Actual</b>	<b>Projected</b>											
	<b>January</b>	<b>February</b>	<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>	<b>July</b>	<b>August</b>	<b>September</b>	<b>October</b>	<b>November</b>	<b>December</b>	<b>YTD Total</b>
<b>Beginning Balance</b>	\$ 3,361,084	\$ 3,386,228	\$ 3,501,816	\$ 3,508,993	\$ 3,617,389	\$ 4,000,153	\$ 3,862,999	\$ 3,822,125	\$ 3,783,181	\$ 3,662,958	\$ 3,623,894	\$ 3,584,801	\$ 3,361,084
<b>Revenue</b>													
<b>Fee Revenue</b>													
Application Fee	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Agency Fee	68,474	95,044	122,611	152,075	426,062	-	-	-	-	-	-	-	\$ 864,266
Administrative Fee	-	-	-	-	-	-	-	-	-	-	-	-	-
Modification Fee	500	1,000	-	-	-	-	-	-	-	-	-	-	1,500
<b>Subtotal - Fee Revenue</b>	<u>\$ 68,974</u>	<u>\$ 96,044</u>	<u>\$ 122,611</u>	<u>\$ 152,075</u>	<u>\$ 426,062</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 865,766</u>
<b>Other Revenue</b>													
Project Benefit Agreement	\$ -	\$ 100,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100,000
9% LIHTC Fee	10,000	-	10,000	-	-	-	-	-	-	-	-	-	20,000
Interest Income	2,529	2,465	2,551	2,557	2,638	2,925	2,822	2,792	2,762	2,672	2,643	2,614	31,970
CRC	-	-	-	-	-	-	-	-	-	-	-	-	-
NYS BIC	-	-	-	-	-	-	-	-	-	-	-	-	-
Misc	-	-	-	-	-	946	-	-	-	-	-	-	946
<b>Subtotal - Other Revenue</b>	<u>\$ 12,529</u>	<u>\$ 102,465</u>	<u>\$ 12,551</u>	<u>\$ 2,557</u>	<u>\$ 2,638</u>	<u>\$ 3,871</u>	<u>\$ 2,822</u>	<u>\$ 2,792</u>	<u>\$ 2,762</u>	<u>\$ 2,672</u>	<u>\$ 2,643</u>	<u>\$ 2,614</u>	<u>\$ 152,916</u>
<b>Total - Revenue</b>	<u>\$ 81,503</u>	<u>\$ 198,509</u>	<u>\$ 135,162</u>	<u>\$ 154,632</u>	<u>\$ 428,700</u>	<u>\$ 3,871</u>	<u>\$ 2,822</u>	<u>\$ 2,792</u>	<u>\$ 2,762</u>	<u>\$ 2,672</u>	<u>\$ 2,643</u>	<u>\$ 2,614</u>	<u>\$ 1,018,682</u>
<b>Expenditures</b>													
Management Contract	\$ -	\$ 82,371	\$ 41,185	\$ 41,186	\$ 41,186	\$ 41,185	\$ 41,186	\$ 41,186	\$ 41,185	\$ 41,186	\$ 41,186	\$ 41,186	\$ 494,228
Consulting Fees	13,999	-	-	-	-	18,040	1,960	-	-	-	-	-	\$ 33,999
Strategic Activities	-	-	-	-	-	-	-	-	-	-	-	200,000	200,000
Website Maintance	-	-	5,000	-	-	-	-	-	-	-	-	5,000	10,000
Audits	-	-	-	4,500	2,500	-	-	-	-	-	-	-	7,000
Agency Counsel	42,000	-	-	-	-	-	-	-	-	-	-	-	42,000
ED Support	-	-	62,500	-	-	62,500	-	-	62,500	-	-	62,500	250,000
Sub-lease AHCC	-	-	18,750	-	-	18,750	-	-	18,750	-	-	18,750	75,000
NYS BIC	-	-	-	-	-	-	-	-	-	-	-	-	-
D & O Insurance	-	-	-	-	1,700	-	-	-	-	-	-	-	1,700
Misc.	360	550	550	550	550	550	550	550	550	550	550	550	6,410
Legal Expenses	-	-	-	-	-	-	-	-	-	-	-	20,000	20,000
Other Expenses	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total - Expenditures</b>	<u>\$ 56,359</u>	<u>\$ 82,921</u>	<u>\$ 127,985</u>	<u>\$ 46,236</u>	<u>\$ 45,936</u>	<u>\$ 141,025</u>	<u>\$ 43,696</u>	<u>\$ 41,736</u>	<u>\$ 122,985</u>	<u>\$ 41,736</u>	<u>\$ 41,736</u>	<u>\$ 347,986</u>	<u>\$ 1,140,337</u>
<b>Ending Balance</b>	<u>\$ 3,386,228</u>	<u>\$ 3,501,816</u>	<u>\$ 3,508,993</u>	<u>\$ 3,617,389</u>	<u>\$ 4,000,153</u>	<u>\$ 3,862,999</u>	<u>\$ 3,822,125</u>	<u>\$ 3,783,181</u>	<u>\$ 3,662,958</u>	<u>\$ 3,623,894</u>	<u>\$ 3,584,801</u>	<u>\$ 3,239,429</u>	<u>\$ 3,239,429</u>

# City of Albany IDA

Fee Detail by Month

January 2020

	Name	Application Fee	Agency Fee	Administration Fee	Modification Fee	TOTAL FEE
<i>January</i>	363 Ontario Street		\$ -	\$ -	\$ 500	\$ 500
	New Scotland Avenue	-	13,500	-	-	13,500
	1385 Washington Avenue		54,974			-
	<b>TOTAL</b>	\$ -	\$ 68,474	\$ -	\$ 500	\$ 68,974
<i>February</i>	The REP	\$ -	\$ 95,044	\$ -	\$ -	\$ 95,044
	705 Broadway Hotel				500	500
	Capital District Apartments				500	500
	<b>TOTAL</b>	\$ -	\$ 95,044	\$ -	\$ 1,000	\$ 96,044
<i>March</i>	427 Washington Avenue	\$ -	\$ 26,000	\$ -	\$ -	\$ 26,000
	45 Columbia Street LLC		70,000			70,000
	39 Columbia Street		26,611			26,611
	<b>TOTAL</b>	\$ -	\$ 122,611	\$ -	\$ -	\$ 122,611
<i>April</i>	705 Broadway Hotel	\$ -	\$ 152,075	\$ -		\$ 152,075
						-
	<b>TOTAL</b>	\$ -	\$ 152,075	\$ -	\$ -	\$ 152,075
<i>May</i>	New Scotland Village	\$ -	\$ 397,800	\$ -	\$ -	\$ 397,800
	191 North Pearl, LLC		28,262			28,262
	<b>TOTAL</b>	\$ -	\$ 426,062	\$ -	\$ -	\$ 426,062
<i>June</i>		\$ -	\$ -	\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -	\$ -	\$ -

# City of Albany IDA

Fee Detail by Month

January 2020

	Name	Application Fee	Agency Fee	Administration Fee	Modification Fee	TOTAL FEE
<i>July</i>		\$ -	\$ -	\$ -	\$ -	\$ -
	TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -
<i>August</i>		\$ -	\$ -	\$ -	\$ -	\$ -
	TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -
<i>September</i>		\$ -	\$ -	\$ -	\$ -	\$ -
	TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -
<i>October</i>		\$ -	\$ -	\$ -	\$ -	\$ -
	TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -
<i>November</i>		\$ -	\$ -	\$ -	\$ -	\$ -
	TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -
<i>December</i>		\$ -	\$ -	\$ -	\$ -	\$ -
	TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -
	2020 TOTAL	\$ -	\$ 864,266	\$ -	\$ 1,500	\$ 865,766

**RESOLUTION EXTENDING AGENT APPOINTMENT TERM AND AUTHORIZING  
AMENDMENT TO INTERIM DOCUMENTS-SECOND EXTENSION  
FC 705 BROADWAY LLC/705 BROADWAY HOTEL, LLC PROJECT**

A regular 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 February 20, 2020 at 12:15 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
Hon. Darius Shahinfar	Treasurer
Dominick Calsolaro	Member
Jahkeen Hoke	Member
Robert T. Schofield, Esq.	Member

**ABSENT:**

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Sarah Reginelli	Chief Executive Officer
Mark Opalka	Chief Financial Officer
Ashley Mohl	Director of Development, Capitalize Albany Corporation
Andrew Corcione	Senior Economic Developer II, Capitalize Albany Corporation
Christopher Medve	Senior Economic Developer II, Capitalize Albany Corporation
Michael Bohne	Communications & Marketing, Capitalize Albany Corporation
Virginia Rawlins	Program Assistant, Capitalize Albany Corporation
Tammie Fanfa	Executive Assistant, Capitalize Albany Corporation
Amy Lavine, Esq.	Assistant Corporation Counsel
A. Joseph Scott, III, Esq.	Special Agency Counsel

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_,  
to wit:

Resolution No. \_\_\_\_\_

RESOLUTION EXTENDING TERM OF APPOINTMENT OF FC 705 BROADWAY LLC AND 705 BROADWAY HOTEL, LLC (COLLECTIVELY, THE “COMPANY”), AS AGENT AND THE PIKE COMPANY, INC., AS SUBAGENT OF CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY AND THE EXECUTION OF CERTAIN DOCUMENTS FOR THE PURPOSE OF UNDERTAKING AND COMPLETING THE FC 705 BROADWAY LLC/705 BROADWAY HOTEL, LLC PROJECT.



WHEREAS, City of Albany Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 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 manufacturing, warehousing, research, commercial and industrial 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, in April, 2019, FC 705 Broadway LLC and 705 Broadway Hotel, LLC, each a New York State limited liability company (collectively, the “Company”), submitted an application (the “Application”) to the Agency, a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 1.67 acre parcel of land located at 705 Broadway in the City of Albany, Albany County, New York (tax map number 76.27-1-18) (the “Land”), (2) the construction on the Land of an approximately 84,534 square foot building (the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the “Equipment”) (the Land, the Facility, and the Equipment being collectively referred to as the “Project Facility”), all of the foregoing to constitute a 132 room eight (8) story hotel and any 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 certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on May 16, 2019 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on May 22, 2019 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Public Hearing to be posted on May 23, 2019 on a bulletin board located at Albany City Hall located at 24 Eagle Street in the City of Albany, Albany County, New York, as well as the Agency’s website, (C) caused notice of the Public Hearing to be published on May 24, 2019 in the Albany Times Union, a newspaper of general circulation available to the residents of the City of Albany, New York, (D) conducted the Public Hearing on June 12, 2019 at 12:00 o’clock p.m., local time at the offices of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York, and (E) prepared a report of the Public Hearing (the “Hearing

Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Hearing Report to be made available to the members of the Agency; 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 (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on June 20, 2019 (the “SEQR Resolution”), the Agency (A) concurred in the determination that the City of Albany Planning Board (the “Planning Board”) is the “lead agency” with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Planning Board issued on January 18, 2018 (the “Negative Declaration”), in which the Planning Board determined that the Project would not have a significant adverse environmental impact on the environment, and therefore, that an environmental statement need not be prepared with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on June 20, 2019 (the “Commercial/Retail Finding Resolution”), the Agency (A) determined that the Project constituted a “commercial project” within the meaning of the Act, (B) found that although the Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act because the Project Facility is located in a highly distressed area, (C) determined, following a review of the Public Hearing Report, that the Project would serve the public purposes of the Act by preserving permanent private sector jobs in the State of New York and (D) determined that the Agency would proceed with the Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Project by the Agency unless and until the Mayor of City of Albany, as chief executive officer of City of Albany, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Project; and

WHEREAS, by resolution adopted by the members of the Agency on June 20, 2019 (the “Pilot Deviation Approval Resolution”), the members of the Agency determined to deviate from the Agency’s uniform tax exemption policy with respect to the Project; and

WHEREAS, pursuant to a resolution adopted by the members of the Agency on June 20, 2019 (the “Approving Resolution”), the Agency, in order to provide the sales tax exemption which forms a major portion of the Financial Assistance, appointed (A) the Company as agent of the Agency and (B) The Pike Company, Inc., as subagent (the “Contractor”) to undertake and complete the Project; and

WHEREAS, by certificate dated June 25, 2019 (the “Public Approval”), the Mayor, as chief executive officer of the City of Albany, New York, approved the proposed action to be taken by the Agency with respect to the Project for purposes of Section 862(2)(c) of the Act; and

WHEREAS, subsequent to the adoption of the Approving Resolution, (A) the Agency and the Company entered into (1) an interim agency and indemnification agreement pursuant to which the Agency appointed the Company as agent of the Agency to undertake and complete the Project and (2) an interim Section 875 GML recapture agreement, (B) the Agency issued an interim sales tax exemption letter to the Company in connection therewith, and (C) the Agency filed with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report, collectively with the above enumerated documents, the “Interim Agreements”); and

WHEREAS, by resolution adopted by the members of Agency on December 19, 2019 (the “Resolution Extending Agent Appointment Term and Authorizing Amendment to Interim Documents”), the Agency agreed to extend the appointment of (A) the Company as agent of the Agency and (B) the Contractor, as sub-agent of the Agency from December 31, 2019 to March 1, 2020 (the “Subsequent Interim Term Date”); and

WHEREAS, in January, 2020, the Agency and the Company entered into an interim modification agreement dated as of January 1, 2020 (the “Interim Modification Agreement”) which Interim Modification Agreement implemented the Subsequent Interim Term Date; and

WHEREAS, pursuant to correspondence dated February 13, 2020 (the “Request”) attached hereto as Exhibit A, the Agency has again been requested by the Company and the Contractor to extend the appointment of (A) the Company as agent of the Agency and (B) the Contractor, as sub-agent of the Agency from March 1, 2020 to July 1, 2020 and to again modify the terms of Interim Agreements, as modified pursuant to the Interim Modification Agreement, in order to extend the Subsequent Interim Term Date (the “Second Interim Modification”); and

WHEREAS, in connection with the Second Interim Modification, the Company and the Contractor have requested that the Agency enter into a certain modification agreement (the “Second Interim Modification Agreement”), by and among the Company, the Contractor and the Agency, a copy of which is attached hereto as Exhibit B;

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

Section 1. The Subsequent Interim Term Date, also known as the termination date of the interim agent appointments of the Company and the Contractor, is hereby extended to July 1, 2020.

Section 2. Subject to compliance with the terms and conditions in the Interim Agreements, as modified pursuant to the Interim Modification Agreement, the Agency hereby (A) consents to the Second Interim Modification and (b) determines to enter into the Second Interim Modification Agreement.

Section 3. The form and substance of the Second Interim Modification Agreement (in substantially the form presented to this meeting) are hereby approved.

Section 4. 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 Second Interim Modification Agreement 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 5. 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 Second Interim Modification Agreement, 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 Second Interim Modification Agreement binding upon the Agency.

Section 6. 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	_____
Hon. Darius Shahinfar	VOTING	_____
Lee E. Eck, Jr.	VOTING	_____
Dominick Calsolaro	VOTING	_____
Jahkeen Hoke	VOTING	_____
Robert T. Schofield, Esq.	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 annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on February 20, 2020 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 contained 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 20<sup>th</sup> day of February, 2020.

(SEAL)

\_\_\_\_\_  
(Assistant) Secretary

EXHIBIT A

REQUEST

- SEE ATTACHED -

February 13, 2020

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

RE: FC 705 Broadway, LL Quackenbush Hotel Project

Dear Ms. Metzger:

I am writing to request an extension of the Sales Tax Exemption for the above named property to July 1, 2020. The current exemption terminates March 1, 2020.

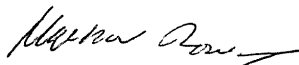
We had planned to close on the lease, and related enhancements, along with the bank financing for this project by the end of February, however we have not concluded the process of acquiring an easement on Montgomery Street from Capitalize Albany. As you know we require an easement on Montgomery Street, which is owned by Capitalize Albany, for both utility connections and a small encroachment for the hotel drop off area. This has proven to be a longer process than any of the parties realized at the outset.

Our attorneys and engineers continue to work through the process with Capitalize Albany's team and we hope to come to a resolution by the end of March. This item is a contingency for our financing and the bank (M&T) will not finalize their due diligence until it is resolved. After the easement is recorded, we will not be able to close on financing and with the IDA for another 30-45 days to accommodate legal counsels to prepare closing documents.

Based on this timing I think an extension to July 1, 2020 should give us adequate time to resolve this issue and close on the financing and with the IDA.

Thank you for your consideration.

Sincerely,



Mark W. Roney  
Chief Financial Officer

Cc: Joe Scott HR; Melissa Bennett BD; Melissa Zell PMG

PIONEER COMPANIES, A CP REALTY COMPANY 333 West Washington Street | Suite 600 | Syracuse, New York 13202-5254 | P 315.471.2181 | F 315.471.1154



EXHIBIT B

SECOND INTERIM MODIFICATION AGREEMENT



DRAFT FOR DISCUSSION PURPOSES ONLY  
DATED: FEBRUARY 20, 2020

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CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

AND

FC 705 BROADWAY LLC

AND

705 BROADWAY HOTEL, LLC

AND

THE PIKE COMPANY, INC.

---

SECOND INTERIM MODIFICATION AGREEMENT

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DATED AS OF FEBRUARY 1, 2020

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only and is not part of the Second Interim Modification Agreement)

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## SECOND INTERIM MODIFICATION AGREEMENT

THIS SECOND INTERIM MODIFICATION AGREEMENT dated as of February 1, 2020 (the “Second Interim Modification Agreement”) by and between CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 21 Lodge Street, Albany, New York (“Agency”), FC 705 BROADWAY LLC and 705 BROADWAY HOTEL, LLC, each a New York State limited liability company (collectively, the “Company”) having an office for the transaction of business located at 333 West Washington Street, Suite 600, Syracuse, New York, and THE PIKE COMPANY, INC., a business corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at One Circle Street, Rochester, New York (the “Contractor”);

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the “Enabling Act”) was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the “State”) and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities, for the purpose of carrying out any of its corporate purposes and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 325 of the Laws of 1974 of the State (collectively, with the Enabling Act, the “Act”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in April, 2019, FC 705 Broadway LLC and 705 Broadway Hotel, LLC, each a New York State limited liability company (collectively, the “Company”), submitted an application (the “Application”) to the Agency, a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 1.67 acre parcel of land located at 705 Broadway in the City of Albany, Albany County, New York (tax map number 76.27-1-18) (the “Land”), (2) the construction on the Land of an approximately 84,534 square foot building (the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the “Equipment”) (the Land, the Facility, and the Equipment being collectively referred to as the “Project

Facility”), all of the foregoing to constitute a 132 room eight (8) story hotel and any 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 certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on May 16, 2019 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on May 22, 2019 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Public Hearing to be posted on May 23, 2019 on a bulletin board located at Albany City Hall located at 24 Eagle Street in the City of Albany, Albany County, New York, as well as the Agency’s website, (C) caused notice of the Public Hearing to be published on May 24, 2019 in the Albany Times Union, a newspaper of general circulation available to the residents of the City of Albany, New York, (D) conducted the Public Hearing on June 12, 2019 at 12:00 o’clock p.m., local time at the offices of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York, and (E) prepared a report of the Public Hearing (the “Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Hearing Report to be made available to the members of the Agency; 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 (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on June 20, 2019 (the “SEQR Resolution”), the Agency (A) concurred in the determination that the City of Albany Planning Board (the “Planning Board”) is the “lead agency” with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Planning Board issued on January 18, 2018 (the “Negative Declaration”), in which the Planning Board determined that the Project would not have a significant adverse environmental impact on the environment, and therefore, that an environmental statement need not be prepared with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on June 20, 2019 (the “Commercial/Retail Finding Resolution”), the Agency (A) determined that the Project constituted a “commercial project” within the meaning of the Act, (B) found that although the Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act because the Project Facility is located in a highly distressed area, (C) determined, following a review of the Public Hearing Report, that the Project would serve the public purposes of the Act by preserving permanent private sector jobs in the State of New York and (D) determined that the Agency would proceed with the Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Project by the Agency unless and until the Mayor of City of Albany, as chief executive officer of City of Albany, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Project; and

WHEREAS, by resolution adopted by the members of the Agency on June 20, 2019 (the “Pilot Deviation Approval Resolution”), the members of the Agency determined to deviate from the Agency’s uniform tax exemption policy with respect to the Project; and

WHEREAS, pursuant to a resolution adopted by the members of the Agency on June 20, 2019 (the “Approving Resolution”), the Agency, in order to provide the sales tax exemption which forms a major portion of the Financial Assistance, appointed (A) the Company as agent of the Agency and (B) The Pike Company, Inc., as subagent (the “Contractor”) to undertake and complete the Project; and

WHEREAS, by certificate dated June 25, 2019 (the “Public Approval”), the Mayor, as chief executive officer of the City of Albany, New York, approved the proposed action to be taken by the Agency with respect to the Project for purposes of Section 862(2)(c) of the Act; and

WHEREAS, subsequent to the adoption of the Approving Resolution, (A) the Agency and the Company entered into (1) an interim agency and indemnification agreement pursuant to which the Agency appointed the Company as agent of the Agency to undertake and complete the Project and (2) an interim Section 875 GML recapture agreement, (B) the Agency issued an interim sales tax exemption letter to the Company in connection therewith, and (C) the Agency filed with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report, collectively with the above enumerated documents, the “Interim Agreements”); and

WHEREAS, by resolution adopted by the members of Agency on December 19, 2019 (the “Resolution Extending Agent Appointment Term and Authorizing Amendment to Interim Documents”), the Agency agreed to extend the appointment of (A) the Company as agent of the Agency and (B) the Contractor, as sub-agent of the Agency from December 31, 2019 to March 1, 2020 (the “Subsequent Interim Term Date”); and

WHEREAS, in January, 2020, the Agency and the Company entered into an interim modification agreement dated as of January 1, 2020 (the “Interim Modification Agreement”) which Interim Modification Agreement implemented the Subsequent Interim Term Date; and

WHEREAS, the Company and the Contractor have requested that the Agency again modify the terms of the Interim Agreements, as modified pursuant to the Interim Modification Agreement, in order to extend the Subsequent Interim Term Date (the “Second Interim Modification”); and

WHEREAS, by resolution adopted by the members of the Agency on February 20, 2020 (the “Resolution Extending Agent Appointment Term and Authorizing Amendment to Interim Documents – Second Extension”), the members of the Agency (A) determined to extend the appointment of the Company and the Contractor as agents of the Agency; (B) determined to amend the Interim Agreements, as modified by the Interim Modification Agreement, to extend the Subsequent Interim Term Date; and (C) authorized the execution and delivery of this Second Interim Modification Agreement with respect to the Second Interim Modification;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS, TO WIT:

SECTION 1. DEFINITIONS. Except as otherwise provided herein, all words and terms used herein shall have the respective meanings ascribed thereto in Article I of the Interim Agreements.

SECTION 2. MODIFICATION OF INTERIM AGREEMENTS. (A) In each of the Interim Agreements, as modified pursuant to the Interim Modification Agreement, where the date March 1, 2020 appears it shall be replaced by the date of July 1, 2020.

SECTION 3. PROVISIONS OF SECOND INTERIM MODIFICATION AGREEMENT CONSTRUED WITH THE INTERIM AGREEMENTS. All of the covenants, agreements and provisions of this Second Interim Modification Agreement shall be deemed to be and shall be construed as part of the Interim Agreements, as modified pursuant to the Interim Modification Agreement, and vice versa to the same extent as if fully set forth verbatim therein and herein. In the event of any variation or inconsistency between any covenant, agreement or provision contained in any Interim Agreements, as modified pursuant to the Interim Modification Agreement, and any covenant, agreement or provision contained in this Second Interim Modification Agreement, such covenant, agreement or provision contained herein shall govern.

SECTION 4. INTERIM AGREEMENTS AS AMENDED TO REMAIN IN EFFECT. Except as amended by this Second Interim Modification Agreement, the Interim Agreements, as modified pursuant to the Interim Modification Agreement, shall remain unmodified and in full force and effect and the terms and conditions thereof are hereby confirmed.

SECTION 5. EXECUTION OF COUNTERPARTS. This Second Interim Modification Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Agency, the Company and the Contractor have caused this Second Interim Modification Agreement to be executed by their duly authorized officer and to date this Second Interim Modification Agreement as of the day and year first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chair

FC 705 BROADWAY LLC

BY: \_\_\_\_\_  
Authorized Officer

705 BROADWAY HOTEL, LLC

BY: \_\_\_\_\_  
Authorized Officer

THE PIKE COMPANY, INC.

BY: \_\_\_\_\_  
Authorized Officer

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

On the \_\_\_\_ day of February, in the year 2020, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

---

Notary Public

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

On the \_\_\_\_ day of February, in the year 2020, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

---

Notary Public

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

On the \_\_\_\_ day of February, in the year 2020, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

---

Notary Public



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

On the \_\_\_\_\_ day of February, in the year 2020, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

**RESOLUTION AUTHORIZING AMENDMENT TO PILOT AGREEMENT  
363 ONTARIO ST LLC PROJECT**

A regular 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 February 20, 2020 at 12:15 o’clock p.m., local time.

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

**PRESENT:**

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

**ABSENT:**

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Sarah Reginelli	Chief Executive Officer
Mark Opalka	Chief Financial Officer
Ashley Mohl	Director of Development, Capitalize Albany Corporation
Andrew Corcione	Senior Economic Developer II, Capitalize Albany Corporation
Christopher Medve	Senior Economic Developer II, Capitalize Albany Corporation
Michael Bohne	Communications & Marketing, Capitalize Albany Corporation
Virginia Rawlins	Program Assistant, Capitalize Albany Corporation
Tammie Fanfa	Executive Assistant, Capitalize Albany Corporation
Amy Lavine, Esq.	Assistant Corporation Counsel
A. Joseph Scott, III, Esq.	Special Agency Counsel

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_,  
to wit:

Resolution No. \_\_\_\_\_

**RESOLUTION AUTHORIZING THE EXECUTION BY CITY OF ALBANY  
INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN FIRST AMENDMENT  
TO PAYMENT IN LIEU OF TAX AGREEMENT AND RELATED DOCUMENTS IN  
CONNECTION WITH THE 363 ONTARIO ST LLC PROJECT.**

WHEREAS, City of Albany Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 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 commercial 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 August 23, 2018 (the "Closing"), the Agency entered into a lease agreement dated as of August 1, 2017 (the "Lease Agreement") by and between the Agency and 363 Ontario St LLC (the "Company") for the purpose of undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 1.8 acre parcel of land with an address of 363 Ontario Street (tax map no.: 64.76-4-47) in the City of Albany, Albany County, New York (the "Land"), together with the existing improvements containing in the aggregate approximately 140,000 square feet of space located thereon (the "Existing Facility"), (2) the demolition of the Existing Facility, (3) the construction on the Land of three (3) buildings to contain in the aggregate approximately 175,500 square feet of space (collectively, the "Facility") and (4) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the "Equipment") (the Land, the Existing Facility, the Facility, and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to constitute a residential apartment building containing approximately 109 units, with approximately 99 underground and approximately 44 surface parking spaces and first floor retail space to be owned and operated by the Company, and any 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 the Lease Agreement; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of August 1, 2018 (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"); (2) a certain license agreement dated as of August 1, 2018 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company granted to the Agency (a) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a certain bill of sale dated as of August 1, 2018 (the "Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency executed and delivered (1) a certain payment in lieu of tax agreement dated as of August 1, 2018 (the "Original Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain

sales and use taxes and (3) a certain uniform agency project agreement dated as of August 1, 2018 (the “Uniform Agency Project Agreement”) relating to the granting of the Financial Assistance by the Agency to the Company, (C) the Agency filed with the assessor and mailed to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency executed and delivered to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance, (E) the Agency filed with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”) and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the “Additional Thirty-Day Project Report”); (F) the Agency and J. Luke Construction Co., LLC (the “Contractor”) entered into (1) a certain agency indemnification agreement dated as of August 1, 2018 (the “Contractor Agency and Indemnification Agreement”) by and between the Agency and the Contractor and (2) a certain recapture agreement dated as of August 1, 2018 (the “Contractor Section 875 GML Recapture Agreement”) by and between the Agency and the Contractor, (G) the Agency executed and delivered to the Contractor a sales tax exemption letter (the “Contractor Sales Tax Exemption Letter”) and (H) the Agency filed a Thirty-Day Sales Tax Report (the “Contractor Thirty-Day Sales Tax Report”), and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the “Additional Thirty-Day Project Report”) (together with the Lease Agreement, the above enumerated documents being collectively referred to as the “Basic Documents”); and

WHEREAS, the Company has made a request to the Agency (the “Request”), which Request is attached hereto as Exhibit A, that the Agency amend the Original Payment in Lieu of Tax Agreement pursuant to an amendment to payment in lieu of tax agreement (the “First Amendment to Payment in Lieu of Tax Agreement”) by and between the Agency and the Company to allow a one year extension of the construction period, as the Project is still under construction; and

WHEREAS, the First Amendment to Payment in Lieu of Tax Agreement would extend the term of the Payment in Lieu of Tax Agreement, so the Company has also requested the Agency to modify the terms of the Basic Documents in order to provide for the requested changes to the remaining Basic Documents (the “Modification”); and

WHEREAS, in connection with the Modification, the Company has requested that the Agency enter into a certain modification agreement (the “Modification Agreement”), by and between the Company and the Agency, which Modification Agreement, among other items, will extend the term of the Basic Documents from December 31, 2040 to December 31, 2041; 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 approval of the Request and Modification (collectively, the “Amendment”); and

WHEREAS, pursuant to SEQRA, the Agency has examined the Amendment in order to make a determination as to whether the Amendment is subject to SEQRA, and it appears that the Amendment 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 Amendment, the Agency hereby determines that the Amendment constitute a “Type II action” pursuant to 6 NYCRR 617.5(26), and therefor that, pursuant to 6 NYCRR 617.6(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Amendment.

Section 2. The Agency hereby finds and determines that:

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

(B) The Project constituted a “project,” as such term is defined in the Act, and the consideration and approval by the Agency of the Amendment constitutes a “project” under the Act;

(C) The Project site is located entirely within the boundaries of the City of Albany, New York;

(D) The approval of the Amendment by the Agency will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Albany County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;

(E) As the Request will not result in the Agency providing benefits in excess of \$100,000, there is no requirement for the Agency to hold a public hearing pursuant to Section 859-a of the Act with respect to the Request; and

(F) It is desirable and in the public interest for the Agency to enter into the First Amendment to Payment in Lieu of Tax Agreement and the Modification Agreement (collectively, the “Amended Documents”).

Section 3. The Agency hereby approves the Request.

Section 4. Subject to (A) execution and delivery of the Amended Documents by the Company and the Agency, (B) compliance with the terms and conditions in the Closing Documents and (C) payment by the Company of all fees and expenses of the Agency in connection with the delivery of the Amended Documents, including the fees of the Agency, Agency Counsel and Special Counsel, the Agency hereby (a) consents to the Amended Documents and (b) determines to enter into the Amended Documents.

Section 5. The form and substance of the Amended Documents (in substantially the forms presented to this meeting) are hereby approved.

Section 6. Subject to the satisfaction of the conditions described in Section 4 hereof, the Chair (or Vice Chair) of the Agency is hereby authorized to execute and deliver the Amended 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 7. 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 Amended 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 Amended Documents binding upon the Agency.

Section 8. 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 Peto	VOTING	_____
Lee E. Eck, Jr.	VOTING	_____
Hon. Darius Shahinfar	VOTING	_____
Dominick Calsolaro	VOTING	_____
Jahkeen Hoke	VOTING	_____
Robert T. Schofield, Esq.	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 annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on February 20, 2020 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 contained 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 20<sup>th</sup> day of February, 2020.

\_\_\_\_\_  
(Assistant) Secretary

(SEAL)

EXHIBIT A  
REQUEST



## **363 Ontario Street LLC**

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PO Box 1366  
Guilderland, New York 12084

Ryan Jankow  
631-793-8537  
[ryan.jankow@gmail.com](mailto:ryan.jankow@gmail.com)

February 12, 2020

City of Albany Industrial Development Agency  
24 Lodge Street  
Albany, New York 12207  
Attention: Tracy Metzger, Chairperson

Re: 363 Ontario Street LLC ("Company")  
and City of Albany Industrial Development Agency ("Agency")  
363 Ontario Street Project

Dear Ms. Metzger:

We are requesting an extension of the construction period with respect to the payment in lieu of tax agreement entered into between the Company and the Agency as of August 1, 2018 ("Pilot Agreement"). The first building for the Project is completed. The second building is just about to begin framing, and the 3rd building is to begin in April.

When we provided original estimated timelines for the Project, we anticipated each phase would be completed much sooner. Unfortunately, due to a multitude of factors including the new tariffs and the extreme labor shortage, redesigning portions of the specifications for the project and the construction time for each building is taking approx. 4 months longer than estimated. We remain committed to using regional labor and City of Albany labor but unfortunately there are only so many local trades in our area so availability has been a challenge and slowed us down.

We are still very excited about the Project and the first building is almost 95% leased. We are moving forward as quickly as we can because the longer we remain in construction and not open for business, the more cost is incurred. However, due to the foregoing, we are requesting a one year extension of the construction period with respect to the Pilot Agreement.

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## **363 Ontario Street, LLC**

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Please let me know if you require any additional information in order to entertain this request. Thank you.

363 Ontario Street, LLC

Ryan Jankow  
Member

J:\ADM\Administrative\djl\Jankow, Ryan\363 Ontario Street\letter to caida.doc

**RESOLUTION CONSENTING TO COLLATERAL MORTGAGES  
45 COLUMBIA STREET ASSOC. LLC PROJECT**

A regular 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 February 20, 2020 at 12:15 o’clock p.m., local time.

The meeting was called to order by the (Vice) Chair 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
Hon. Darius Shahinfar	Treasurer
Dominick Calsolaro	Member
Jahkeen Hoke	Member
Robert T. Schofield, Esq.	Member

**ABSENT:**

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Sarah Reginelli	Chief Executive Officer
Mark Opalka	Chief Financial Officer
Ashley Mohl	Director of Development, Capitalize Albany Corporation
Andrew Corcione	Senior Economic Developer II, Capitalize Albany Corporation
Christopher Medve	Senior Economic Developer II, Capitalize Albany Corporation
Michael Bohne	Communications & Marketing, Capitalize Albany Corporation
Virginia Rawlins	Program Assistant, Capitalize Albany Corporation
Tammie Fanfa	Executive Assistant, Capitalize Albany Corporation
Amy Lavine, Esq.	Assistant Corporation Counsel
A. Joseph Scott, III, Esq.	Special Agency Counsel

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

Resolution No. \_\_\_\_\_

**RESOLUTION AUTHORIZING THE EXECUTION/CONSENT BY CITY OF  
ALBANY INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN  
COLLATERAL MORTGAGES AND RELATED DOCUMENTS IN CONNECTION  
WITH THE 45 COLUMBIA STREET ASSOC. 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 September 26, 2019 (the “Steuben Closing”), the Agency entered into a lease agreement dated as of September 1, 2019 (the “Original Lease Agreement”), as amended pursuant to a first amendment to Lease Agreement dated as of November 1, 2019 (the “First Amendment to Lease Agreement” and collectively with the Original Lease Agreement, the “Steuben Lease Agreement”) by and between the Agency and 1 Steuben Place LLC (“Steuben”) for the purpose of undertaking a project (the “Steuben Project”) consisting of the following: (A) (1) the acquisition of an interest in an approximately 0.32 acre parcel of land with an address of 1 Steuben Place (tax map number 76.34-2-17) in the City of Albany, Albany County, New York (the “Steuben Land”), together with an approximately 105,000 square foot building located thereon (the “Steuben Facility”), (2) the renovation of the Steuben Facility and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the “Steuben Equipment”) (the Steuben Land, the Steuben Facility, and the Steuben Equipment being collectively referred to as the “Steuben Project Facility”), all of the foregoing to constitute an approximately 66 unit residential apartment building with ground-level commercial/retail space and any 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 certain sales and use taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease of the Steuben Project Facility to Steuben pursuant to the terms of the Steuben Lease Agreement; and

WHEREAS, simultaneously with the execution and delivery of the Steuben Lease Agreement, (A) Steuben executed and delivered to the Agency (1) a certain lease to agency dated as of September 1, 2019 (the “Steuben Lease to Agency”) by and between Steuben, as landlord, and the Agency, as tenant, pursuant to which Steuben leased to the Agency a portion of the Steuben Land and all improvements now or hereafter located on said portion of the Steuben Land (collectively, the “Leased Premises”) and (2) a certain bill of sale dated as of September 1, 2019 (the “Bill of Sale to Agency”), which conveyed to the Agency all right, title and interest of Steuben in the Steuben Equipment, (B) Steuben and the Agency executed and delivered (1) a certain recapture agreement (the “Steuben Section 875 GML Recapture Agreement”) by and between Steuben and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes and (2) a certain uniform agency project agreement dated as of September 1, 2019 (the “Steuben Uniform Agency Project Agreement”) relating to the granting of the Financial Assistance by the Agency to Steuben, (C) the Agency executed and delivered to Steuben a sales tax exemption letter (the “Steuben Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (D) the Agency filed with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”); and

WHEREAS, in order to finance a portion of the costs of the Steuben Project, Steuben obtained a (1) loan in an amount not to exceed \$11,424,175 (the “Steuben Building Loan”) from Keybank National

Association (the “Lender”), which Steuben Building Loan was secured by a building loan leasehold mortgage, assignment of leases and rents, assignment of contracts, security agreement and fixture filing dated as of the date of closing on the Steuben Building Loan (the “Steuben Building Mortgage”) from the Agency and Steuben to the Lender and (2) loan in an amount not to exceed \$1,486,082 (the “Steuben Project Loan” and collectively with the Steuben Building Loan, the “Steuben Loan”) from the Lender, which Steuben Project Loan was secured by a project loan leasehold mortgage, assignment of leases and rents, assignment of contracts, security agreement and fixture filing (the “Steuben Project Mortgage” and collectively with the Steuben Building Mortgage, the “Steuben Mortgage”) dated as of the closing on the Steuben Project Loan from the Agency and Steuben to the Lender; and

WHEREAS, on September 26, 2019 (the “76 North Pearl Closing”), the Agency entered into a lease agreement dated as of September 1, 2019 (the “Original Lease Agreement”), as amended pursuant to a first amendment to lease agreement dated as of November 1, 2019 (the “First Amendment to Lease Agreement and collectively with the Original Lease Agreement, the “76 North Pearl Lease Agreement”) by and between the Agency and the 76 North Pearl LLC (“76 North Pearl”) for the purpose of undertaking a project (the “76 North Pearl Project”) consisting of the following: (A)(1) the acquisition of an interest in an approximately 0.41 acre parcel of land with an address of 76 North Pearl Street (tax map number 76.34-2-16) in the City of Albany, Albany County, New York (the “76 North Pearl Land”), together with an approximately 82,580 square foot building located thereon (the “76 North Pearl Facility”), (2) the renovation of the Facility and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the “76 North Pearl Equipment”) (the 76 North Pearl Land, the 76 North Pearl Facility, and the 76 North Pearl Equipment being collectively referred to as the “76 North Pearl Project Facility”), all of the foregoing to constitute an approximately 59 unit residential apartment building with ground-level commercial/retail space and any 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 and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease of the 76 North Pearl Project Facility to 76 North Pearl pursuant to the terms of the 76 North Pearl Lease Agreement; and

WHEREAS, simultaneously with the execution and delivery of the 76 North Pearl Lease Agreement, (A) 76 North Pearl executed and delivered to the Agency (1) a certain lease to agency dated as of September 1, 2019 (the “76 North Pearl Lease to Agency”) by and between 76 North Pearl, as landlord, and the Agency, as tenant, pursuant to which 76 North Pearl leased to the Agency a portion of the 76 North Pearl Land and all improvements now or hereafter located on said portion of the 76 North Pearl Land (collectively, the “Leased Premises”) and (2) a certain bill of sale dated as of September 1, 2019 (the “76 North Pearl Bill of Sale to Agency”), which conveyed to the Agency all right, title and interest of 76 North Pearl in the 76 North Pearl Equipment, (B) 76 North Pearl and the Agency executed and delivered (1) a certain recapture agreement (the “76 North Pearl Section 875 GML Recapture Agreement”) by and between 76 North Pearl and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes and (2) a certain uniform agency project agreement dated as of September 1, 2019 (the “76 North Pearl Uniform Agency Project Agreement”) relating to the granting of the Financial Assistance by the Agency to 76 North Pearl, (C) the Agency executed and delivered to 76 North Pearl a sales tax exemption letter (the “76 North Pearl Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (D) the Agency filed with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”); and

WHEREAS, in order to finance a portion of the costs of the 76 North Pearl Project, 76 North Pearl obtained a (1) loan in an amount not to exceed \$14,083,779 (the “76 North Pearl Building Loan”)

from the Lender, which 76 North Pearl Building Loan was secured by a building loan mortgage, assignment of leases and rents, assignment of contracts, security agreement and fixture filing dated as of the date of closing on the 76 North Pearl Building Loan (the “76 North Pearl Building Mortgage”) from the Agency and 76 North Pearl to the Lender and (2) loan in an amount not to exceed \$1,632,186 (the “76 North Pearl Project Loan” and collectively with the 76 North Pearl Building Loan, the “76 North Pearl Loan”) from the Lender, which 76 North Pearl Project Loan was secured by a project loan mortgage, assignment of leases and rents, assignment of contracts, security agreement and fixture filing (the “76 North Pearl Project Mortgage” and collectively with the 76 North Pearl Building Mortgage, the “76 North Pearl Mortgage”) dated as of the closing on the 76 North Pearl Project Loan from the Agency and 76 North Pearl to the Lender; and

WHEREAS, in September, 2019, 45 Columbia Street Assoc. LLC (the “Company”), a limited liability company duly organized and validly existing under the laws of the New York State, presented an application (the “Application”) to the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in an approximately 0.39 acre parcel of land with an address of 43 Columbia Street (tax map number 76.34-1-7) in the City of Albany, Albany County, New York (the “Land”), together with a building located thereon containing approximately 78,000 square feet of space (the “Facility”), (2) the renovation of the Facility and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (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 operated as an approximately 27 unit residential apartment building with a parking garage to accommodate approximately 125 parking spaces and any 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 certain sales and use taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by correspondence dated February 10, 2020 (the “Request”), which Request is attached hereto as Exhibit A, the Agency was informed that the Company will be obtaining a loan from the Lender in connection with the Project and the Lender is requiring Steuben and 76 North Pearl to execute cross collateral mortgages covering the Steuben Project Facility and the 76 North Pearl Project Facility as additional security for the loan to the Company; and

WHEREAS, pursuant to the Steuben Lease Agreement and the 76 North Pearl Lease Agreement, prior to encumbering each Project Facility with the lien requested by the Company, Agency consent is needed; 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)(29), 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 New Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Request.

Section 2. Subject to (A) compliance with the terms and conditions in the Steuben Lease Agreement and the 76 North Pearl Lease Agreement with respect to the Request, (B) approval of any consent and related documents with respect to the Request (collectively, the “Consent Documents”) by counsel to the Agency, and (C) payment by the Company of all fees and expenses of the Agency in connection with the Request and the delivery of the Consent Documents, including the fees of Agency Counsel, the Agency hereby (a) consents to the Request and (b) determines to enter into the Consent Documents.

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, on behalf of the Agency, to execute and deliver the Subagent Documents, 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 the forms thereof 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 Consent 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 Consent 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 Peto	VOTING	_____
Hon. Darius Shahinfar	VOTING	_____
Lee E. Eck, Jr.	VOTING	_____
Dominick Calsolaro	VOTING	_____
Jahkeen Hoke	VOTING	_____
Robert T. Schofield, Esq.	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 February 20, 2020 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 20<sup>th</sup> day of February, 2020.

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(Assistant) Secretary

(SEAL)

EXHIBIT A  
REQUEST

## SCIOCCHETTI & ABBOTT, PLLC

800 Troy-Schenectady Rd.  
Suite 102  
Latham, New York 12110

ph (518) 867-3001  
fax (518) 867-3017

Lisa T. Newkirk, Esq.  
lnewkirk@pvs.law.com

February 10, 2020

City of Albany Industrial Development Agency  
21 Lodge Street  
Albany, NY 12207

Re: 45 Columbia Street Assoc. LLC – Request to Execute Subordinate Mortgages as Part of  
IDA Application covering property at 43 Columbia Street, Albany, NY

Dear Sir or Madam:

On behalf of 45 Columbia Street Assoc. LLC ("Borrower"), we write to formally request IDA approval of collateral mortgages in connection with the above referenced IDA closing transaction. KeyBank National Association has required that 1 Steuben Place LLC and 76 North Pearl LLC execute cross-collateral mortgages covering the properties at 1 Steuben Place and 76 North Pearl Street, Albany, New York as additional security for the new loan securing property at 43 Columbia Street, Albany, New York.

As you know, the IDA executed the prior mortgages relating to 76 North Pearl Street and 1 Steuben Place as part of IDA sales tax and mortgage tax exemption benefits for these prior projects. Would you please arrange to place this request to execute the cross-collateral mortgages on the agenda for the February 20, 2020 IDA meeting, amending the original Application for Benefits by 45 Columbia Street Assoc. LLC?

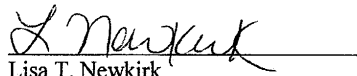
The Borrower does not expect any increase in the Project cost as a result of this request. No mortgage tax exemption will be required for these collateral mortgages.

Please let me know if you need anything further in connection with this request.

Thank you.

Very truly yours,

SCIOCCHETTI & ABBOTT, PLLC



Lisa T. Newkirk

LTN:b

cc: 45 Columbia Street Assoc., LLC