

# 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 Peto, Vice Chair  
Darius Shahinfar, Treasurer  
Lee Eck, Secretary

Dominick Calsolaro  
Robert Schofield  
L. Lloyd Stewart

Sarah Reginelli, Chief Executive Officer  
Mark Opalka, Chief Financial Officer  
Marisa Franchini, Agency Counsel  
A. Joseph Scott, Special Counsel

To: Tracy Metzger  
Susan Peto  
Darius Shahinfar  
Lee Eck

Dominick Calsolaro  
Robert Schofield  
L. Lloyd Stewart

CC: Sarah Reginelli  
Marisa Franchini  
Joe Scott  
Mark Opalka

Thomas Conoscenti  
Andy Corcione  
Virginia Rawlins  
Tammie Fanfa

Date: November 13, 2020

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## IDA REGULAR BOARD MEETING

A Regular Meeting of the City of Albany Industrial Development Agency Board of Directors will be held on  
**Thursday, November 19<sup>th</sup>, 2020 at 12:15 pm**  
and conducted telephonically pursuant to Executive Order No. 202.1 issued by the New York State Governor's Office.

### AGENDA

#### Roll Call, Reading & Approval of the Minutes of the Board Meeting of October 22, 2020

#### Report of Chief Financial Officer

- A. Financial Report

#### Unfinished Business

#### New Business

- A. Morris Place, LLC (105 Morris St)
  - i. Resolution Authorizing Amendment to Basic Documents
- B. 363 Ontario St., LLC
  - i. Resolution Authorizing Third Amendment to Basic Documents
- C. 563 New Scotland Ave, LLC (New Scotland Village)
  - i. Resolution Approving Extension of Approval Resolution
- D. West Mall Office Center, LLC (4 Central Ave)
  - i. Resolution Authorizing Assignment and Assumption
- E. Capitalize Albany Corporation (Liberty Park Acquisition Assistance)  
*Please note that any materials for this item will be included in a supplemental packet available on the CAIDA website.*

#### Other Business

- A. Agency Update
- B. Compliance Update

#### Adjournment

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Mark Opalka, *Chief Financial Officer*  
Marisa Franchini, *Agency Counsel*

## IDA MINUTES OF THE REGULAR BOARD MEETING October 22, 2020 at 12:15 p.m.

Attending: Susan Pedo, Robert Schofield, Dominick Calsolaro, Lee Eck, Lloyd Stewart and Darius Shahinfar

Absent: Tracy Metzger

Public Present: Debra Lambek, Mark Aronowitz and Sameh Assad

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

*These minutes are of a meeting conducted telephonically pursuant to Executive Order No. 202.1 issued by New York State Governor Andrew M. Cuomo, which suspended provisions of Article 7 of the Public Officers Law requiring public in-person access to public meetings and authorizing board members to participate in said meetings by conference call or similar service. Each of the members and staff present participated by conference/video call.*

Acting Chair Susan Pedo called the Regular Meeting of the IDA to order at 12:18 p.m.

### **Roll Call, Reading and Approval of Minutes of the September 17, 2020 Board Meeting**

Acting Chair Susan 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 Susan Pedo made a proposal to dispense with the reading of the minutes and to approve the minutes of the regular Board meeting of September 17, 2020 as presented. A motion to accept the minutes, was made by Darius Shahinfar and seconded by Lloyd Stewart. A vote being taken, the motion passed with all members voting aye.

### **Unfinished Business**

#### **Broadway 915, LLC**

Acting Chair Susan Pedo introduced the *Broadway 915, LLC* project to the Board for Approving Resolutions. Staff gave a brief synopsis of the project and the analysis that was undertaken at the Finance Committee and Board over the course of several months. Staff noted a public hearing was held for this project previously. Representatives from the Applicant were present to answer any questions that the Board members may have. The Board discussed the merits and costs/benefits of the project.

Acting Chair Susan Pedo presented to the Board the *SEQR Resolution Broadway 915, LLC Project*. A motion to approve the *SEQR Resolution Broadway 915, LLC Project* was made by Lee Eck and seconded by Dominick Calsolaro. A vote being taken, the resolution passed unanimously with all members voting aye.

Acting Chair Susan Pedo presented to the Board the *Commercial Retail Finding Resolution Broadway 915, LLC*. A motion to approve the *Commercial Retail Finding Resolution Broadway 915, LLC Project* was made by Dominick Calsolaro and seconded by Lee Eck. A vote being taken, the resolution passed unanimously with all members voting aye.

Acting Chair Susan Pedo presented to the Board the *PILOT Deviation Approval Resolution Broadway 915, LLC Project*. Staff noted for the record that the requested deviation from the Agency's Uniform Tax Exemption Policy has been noted in previous meetings and in the meeting materials. A cost benefit analysis has been completed in addition to this analysis, the project was analyzed through the Project Evaluation and Assistance Framework both processes concluding that the project in fact merited a deviation. A motion to approve *PILOT Deviation Approval Resolution Broadway 915, 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.

Acting Chair Susan Pedo presented to the Board the *Approving Resolution Broadway 915, LLC*. Staff brought Appendix A of the resolution at hand to the Board's attention noting that the Description of the Project Evaluation and the Expected Public Benefits serves to outlines the expected public benefits of the project as well as the community commitments. A motion to adopt *the Approving Resolution Broadway 915, LLC Project* was made by Lloyd Steward and seconded by Darius Shahinfar. A vote being taken, the resolution passed unanimously with all members voting aye.

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

Staff provided an update on the monthly financials that there were no project closings expected for October. A \$1,500 application fee was received in October. Staff also advised that New Scotland Village project is now expected to close in 2021 so no revenue from that project will be received for 2020 as budgeted. Staff advised the board that based on projections, the IDA is on track to have a year to end date balance of approx. \$2.6 M.

### **New Business**

#### Columbia 455 Harriman, LLC (455 Patroon Creek Blvd)

Staff reviewed the information of the request for an administrative action in relation to the refinancing of the Project. No additional assistance is being sought from the Agency. IDA staff informed the Board that a representative of the project was present to answer any questions. A motion to approve the *Resolution Authorizing Refinance* was made by Darius Shahinfar and seconded by Lee Eck. A vote being taken, the motion passed with all members voting aye to adopt the resolution.

#### Morris Place, LLC (105 Morris St)

Staff advised the Board that the project closed with the Agency in 2019. The request involves a one year extension of the PILOT only, sliding from 2020 to 2021 due to construction delays associated with the COVID-19 pandemic. Staff and Agency Counsel noted the holding of a public hearing was unnecessary due to the request resulting in an additional abatement less than of \$100,000. Robert Schofield recused himself any discussion regarding the Project due to a previously identified conflict of interest. A motion to approve the *Resolution Authorizing Amendment to the PILOT Agreement* was made by L. Lloyd Stewart and seconded by Darius Shahinfar. A vote being taken, the motion passes with all members voting aye to adopt the resolution.

#### Small Business Adaptation Program

Staff noted an in-depth presentation on the Small Business Adaptation Program (SBAP) occurred at the October Finance Committee meeting along with a discussion of the applications and a public comment period. Staff provided a brief overview of the program noting that 62 applications were received for the program, of which 51 had requested assistance from the IDA for PPE grants totaling approximately \$138,000. Based on staff review of eligible activities, approximately \$114,983 is being recommended in awards. Disadvantaged business enterprises (DBEs) comprised 71% (34) of the eligible applications and more than 70% of applicants are within identified Neighborhood Strategy Areas. Staff advised the Board that all documentation is on file and that the administration of the grant program will be ongoing with a program closeout date of October 2021. A motion to approve the *Resolution Approving Grant Applications* was made by Darius Shahinfar and seconded by Lee Eck. A vote being taken, the motion passes with all members voting aye to adopt the resolution.

### CAIDA Budget

Acting Chair Susan Pedo presented the *2021 Budget Approval Resolution* to the Board. A draft copy of the budget had been previously discussed with the Finance Committee and publically posted at Albany City Hall within the required timeframe. A motion to approve the resolution was made by Darius Shahinfar and seconded by Lee Eck. A vote being taken, the resolution passed unanimously.

### Approval of Accounting Firm 2020

Susan Pedo, Chair of the Audit Committee, informed the Board that the Audit Committee met with Teal, Becker & Chiaramonte to discuss the Audit Engagement letter and formally recommended the engagement. Susan Pedo advised the Board that this is Katharine Doran's fourth year serving as a shareholder. The cost of services provided to the Agency increased by 3%. Fieldwork for the audit is expected to commence in December of 2020. The Board discussed the service and past performance of Teal, Becker & Chiaramonte. Staff was requested to disseminate the contact information for the audit team to the Board should any members have questions/concerns and wish to speak directly to the auditors. Acting Chair Susan Pedo presented to the Board the *Approval Resolution Selection of Accountants for FY-2020 Audit*. A motion to adopt the resolution was made by Robert Schofield and seconded by Lee Eck. A vote being taken, the resolution passed unanimously.

### **Other Business**

#### Agency Update

None

#### Compliance Update

None

There being no further business, Acting Chair Pedo adjourned the meeting at 12:53 p.m.

Respectfully submitted,

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Lee Eck, Secretary

**City of Albany IDA**  
2020 Monthly Cash Position  
October 2020

	<i>Actual</i>										<i>Projected</i>		
	January	February	March	April	May	June	July	August	September	October	November	December	YTD Total
<b>Beginning Balance</b>	\$ 3,361,084	\$ 3,386,228	\$ 3,618,874	\$ 3,527,576	\$ 3,514,819	\$ 3,395,587	\$ 3,287,282	\$ 3,229,216	\$ 3,187,940	\$ 3,082,485	\$ 3,025,911	\$ 3,019,919	\$ 3,361,084
<b>Revenue</b>													
<b>Fee Revenue</b>													
Application Fee	\$ -	\$ 1,500	\$ 1,500	\$ 1,500	\$ -	\$ -	\$ 1,500	\$ -	\$ -	\$ 1,500	\$ 34,160	\$ -	\$ 41,660
Agency Fee	68,474	130,045	-	26,611	26,000	-	-	-	-	-	-	-	\$ 251,130
Administrative Fee	-	-	-	-	4,400	-	-	15,000	-	-	-	-	19,400
Modification Fee	500	1,000	-	-	-	-	-	2,000	1,500	500	-	-	5,500
<b>Subtotal - Fee Revenue</b>	\$ 68,974	\$ 132,545	\$ 1,500	\$ 28,111	\$ 30,400	\$ -	\$ 1,500	\$ 17,000	\$ 1,500	\$ 2,000	\$ 34,160	\$ -	\$ 317,690
<b>Other Revenue</b>													
Project Benefit Agreement	\$ -	\$ 100,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100,000
9% LIHTC Fee	10,000	-	10,000	-	-	-	-	-	-	-	-	-	20,000
Interest Income	2,529	2,457	2,644	1,833	1,875	1,791	1,792	1,763	1,668	1,679	1,585	1,582	23,197
CRC	-	-	-	-	-	-	-	-	-	-	-	-	-
NYS BIC	-	-	-	-	-	-	-	-	-	-	-	-	-
Misc	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Subtotal - Other Revenue</b>	\$ 12,529	\$ 102,457	\$ 12,644	\$ 1,833	\$ 1,875	\$ 1,791	\$ 1,792	\$ 1,763	\$ 1,668	\$ 1,679	\$ 1,585	\$ 1,582	\$ 143,197
<b>Total - Revenue</b>	\$ 81,503	\$ 235,002	\$ 14,144	\$ 29,944	\$ 32,275	\$ 1,791	\$ 3,292	\$ 18,763	\$ 3,168	\$ 3,679	\$ 35,745	\$ 1,582	\$ 460,887
<b>Expenditures</b>													
Management Contract	\$ -		\$ 82,371	\$ 41,186	\$ 82,372	\$ 41,185	\$ 41,186	\$ 41,186	\$ 41,185	\$ 41,186	\$ 41,186	\$ 41,186	\$ 494,229
Consulting Fees	13,999	-	3,799	-	1,100	-	18,520	499	1,880	2,249	-	-	\$ 42,046
Strategic Activities	-	-	-	-	-	-	-	-	-	-	-	262,500	262,500
Website Maintenance/Livestream Setup	-	-	-	-	-	-	4,691	-	3,058	-	-	-	7,749
Audits	-	-	-	1,500	5,500	-	-	-	-	-	-	-	7,000
Agency Counsel	42,000	-	-	-	-	-	-	-	-	-	-	-	42,000
ED Support	-	-	-	-	62,500	62,500	-	-	62,500	-	-	62,500	250,000
Sub-lease AHCC	-	-	18,321	-	-	-	-	18,339	-	16,819	-	18,750	72,229
NYS BIC	-	-	-	-	-	-	-	-	-	-	-	-	-
D & O Insurance	-	-	-	-	-	1,720	-	-	-	-	-	-	1,720
Misc.	360	186	950	15	35	-	-	15	-	-	550	550	2,661
Legal Expenses	-	-	-	-	-	-	-	-	-	-	-	20,000	20,000
Other Expenses	-	2,170	-	-	-	-	1,653	-	-	-	-	-	3,823
<b>Total - Expenditures</b>	\$ 56,359	\$ 2,356	\$ 105,441	\$ 42,701	\$ 151,507	\$ 110,096	\$ 61,359	\$ 60,039	\$ 108,623	\$ 60,254	\$ 41,736	\$ 405,486	\$ 1,205,956
<b>Ending Balance</b>	\$ 3,386,228	\$ 3,618,874	\$ 3,527,576	\$ 3,514,819	\$ 3,395,587	\$ 3,287,282	\$ 3,229,216	\$ 3,187,940	\$ 3,082,485	\$ 3,025,911	\$ 3,019,919	\$ 2,616,015	\$ 2,616,015

# City of Albany IDA

Fee Detail by Month

October 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	\$ -	\$ 95,045	\$ -	\$ -	\$ 95,045
	705 Broadway Hotel				500	500
	Capital District Apartments				500	500
	45 Columbia Street Associates, LLC		35,000			-
<i>March</i>	Lofts at Pine Hills	1,500				-
	<b>TOTAL</b>	\$ 1,500	\$ 130,045	\$ -	\$ 1,000	\$ 132,545
	FC 705 Broadway LLC	\$ 1,500		\$ -	\$ -	\$ 1,500
						-
<i>April</i>	<b>TOTAL</b>	\$ 1,500	\$ -	\$ -	\$ -	\$ 1,500
	39 Columbia Street	\$ -	\$ 26,611	\$ -		\$ 26,611
	Capitalize Albany Corporation	\$ 1,500				
	<b>TOTAL</b>	\$ 1,500	\$ 26,611	\$ -	\$ -	\$ 28,111
<i>May</i>	427 Washington Avenue	\$ -	\$ 26,000	\$ -	\$ -	\$ 26,000
	Broadway 915, LLC			4,400		4,400
	<b>TOTAL</b>	\$ -	\$ 26,000	\$ 4,400	\$ -	\$ 30,400
<i>June</i>		\$ -	\$ -	\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -	\$ -	\$ -

# City of Albany IDA

Fee Detail by Month

October 2020

	Name	Application Fee	Agency Fee	Administration Fee	Modification Fee	TOTAL FEE
<i>July</i>	Home Leasing	1,500	-	\$ -	\$ -	\$ 1,500 -
	<b>TOTAL</b>	<b>\$ 1,500</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,500</b>
<i>August</i>	1211 Western Avenue	\$ -	\$ -	\$ 15,000	\$ -	\$ 15,000
	16 Sheridan Avenue	\$ -	-	\$ -	1,000	1,000
	FC 705 Broadway, LLC				\$ 1,000	1,000
	<b>TOTAL</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 15,000</b>	<b>\$ 2,000</b>	<b>\$ 17,000</b>
<i>September</i>	363 Ontario Street, LLC	\$ -	\$ -	\$ -	\$ 500	\$ 500
	39 Columbia Street Associates				\$ 500	500
	Madison Properties of Albany				\$ 500	
	<b>TOTAL</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,500</b>	<b>\$ 1,500</b>
<i>October</i>	Laughlin Dawn	\$ -	\$ -	\$ -	\$ 500	\$ 500
	Broadway 915, LLC	1,500			-	1,500
						-
	<b>TOTAL</b>	<b>\$ 1,500</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 500</b>	<b>\$ 2,000</b>
<i>November</i>	363 Ontario Street	\$ 34,160	\$ -	\$ -	\$ -	\$ 34,160
					-	-
					-	-
	<b>TOTAL</b>	<b>\$ 34,160</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 34,160</b>
<i>December</i>		\$ -	\$ -	\$ -	\$ -	\$ -
				-	-	-
	<b>TOTAL</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
	<b>2020 TOTAL</b>	<b>\$ 41,660</b>	<b>\$ 251,130</b>	<b>\$ 19,400</b>	<b>\$ 5,500</b>	<b>\$ 317,690</b>

**RESOLUTION AUTHORIZING AMENDMENT TO BASIC DOCUMENTS  
MORRIS PLACE 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 November 19, 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
Darius Shahinfar	Treasurer
Lee E. Eck, Jr.	Secretary
Dominick Calsolaro	Member
Robert T. Schofield	Member
L. Lloyd Stewart	Member

Each of the members present participated in the meeting telephonically pursuant to Executive Order No. 202.1, as supplemented, issued by New York State Governor Andrew M. Cuomo, suspending provisions of Article 7 of the Public Officers Law that require public in-person access to public meetings and authorizing board members to participate in said meetings by conference call or similar service.

**ABSENT:**

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Sarah Reginelli	Chief Executive Officer
Mark Opalka	Chief Financial Officer
Thomas Conoscenti	Vice President, Capitalize Albany Corporation
Ashley Mohl	Director of Development, Capitalize Albany Corporation
Andrew Corcione	Senior Economic Developer II, Capitalize Albany Corporation
Michael Bohne	Communications & Marketing, Capitalize Albany Corporation
Nora Culhane	Program Assistant, 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. 1120-\_\_

RESOLUTION AUTHORIZING THE EXECUTION BY CITY OF ALBANY  
INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN MODIFICATION  
AGREEMENT IN CONNECTION WITH THE MORRIS PLACE 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 May 3, 2019 (the “Closing”), the Agency entered into a lease agreement dated as of May 1, 2019 (the “Lease Agreement”) by and between the Agency and Morris Place 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 10,000 square foot parcel of land located at 105 Morris Street in the City of Albany, Albany County, New York (tax map no. 76.22-4-44) (the “Land”), together with an existing approximately 8,568 square foot building located thereon (the “Existing Facility”), (2) the demolition of the Existing Facility and the construction of an approximately 38,240 square foot, five (5) story building located thereon (the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, 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 an approximately twenty-eight (28) unit residential apartment building with indoor parking space for approximately 16 cars 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 May 1, 2019 (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 May 1, 2019 (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 May 1, 2019 (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 May 1, 2019 (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 May 1, 2019 (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, and (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”) (together with the Lease Agreement, the above enumerated documents being collectively referred to as the “Basic Documents”); and

WHEREAS, the Company has requested, pursuant to the correspondence attached hereto as Exhibit A, that the Agency modify the terms of the Basic Documents in order to extend the Completion Date (as defined in the Lease Agreement), from December 31, 2020, to April 30, 2021 (the “Modification”); and

WHEREAS, in connection with the Modification, the Company has requested that the Agency enter into a certain modification agreement dated as of November 1, 2020 (the “Modification Agreement”), by and between the Company and the Agency, a copy of which is attached hereto as Exhibit B; 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”), it appears that the Modification 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 Modification, the Agency hereby makes the following determination:

(A) The Modification constitutes a “Type II action” pursuant to 6 NYCRR 617.5(1), (2), (23) and (26), and therefor that, pursuant to 6 NYCRR 617.6(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Modification.

(B) That since compliance by the Agency with the Modification 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 Modification.

Section 2. Subject to (A) compliance with the terms and conditions in the Basic Documents and (B) payment by the Company of all fees and expenses of the Agency in connection with the delivery of the Modification Agreement, including the fees of Special Agency Counsel, the Agency hereby (a) consents to the Modification and (b) determines to enter into the Modification Agreement.

Section 3. The form and substance of the 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 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 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 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	_____
Darius Shahinfar	VOTING	_____
Lee E. Eck, Jr.	VOTING	_____
Dominick Calsolaro	VOTING	_____
Robert T. Schofield	VOTING	_____
L. Lloyd Stewart	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 November 19, 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”) except as modified by Executive Order 202.1, as supplemented, 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, either in-person or appearing telephonically in accordance with Executive Order 202.1, as supplemented, 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 \_\_\_\_\_ day of November, 2020.

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

(SEAL)

EXHIBIT A

REQUEST

-SEE ATTACHED-

# Morris Place LLC

---

105 Morris Street  
Albany, NY 12208  
(914) 260-4652  
[sameh.asaad@gmail.com](mailto:sameh.asaad@gmail.com)

November 04, 2020

To: The City of Albany IDA  
21 Lodge Street  
Albany, NY 12207  
Attn: Tracy Metzger

Dear Ms Metzger,

We are writing in regards to our development project on 105 Morris Street in Albany. As you know, we had a total lockdown on construction in Albany for the months of April and May and we only resumed construction in mid June. Additionally, it has been difficult to get back to a full construction capacity due to 1) workers not wanting to come back to work due to fear of COVID-19 and 2) shortage of material & equipment because of the manufacturing halt that happened. The net of this is that our current projected completion date for construction will be April 2021 (barring any further unforeseen circumstances related to COVID-19 or otherwise). This is approximately one year later than the original target completion date.

In view of the above, we kindly ask that the CAIDA help this strategic project by extending the project tax exempt status until April 2021.

Please let us know if this will be feasible.

Thank you so much for your understanding.

Regards,



Sameh Asaad  
Member, Morris Place LLC

EXHIBIT B  
MODIFICATION AGREEMENT  
-SEE ATTACHED-

DRAFT FOR DISCUSSION PURPOSES ONLY  
DATED: NOVEMBER 19, 2020

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CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY  
AND  
MORRIS PLACE LLC

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MODIFICATION AGREEMENT

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DATED AS OF NOVEMBER 1, 2020

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RELATING TO (A) THE LEASE/LEASE BACK TRANSACTION OF  
CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY  
DATED MAY 3, 2019 AND (B) CERTAIN RELATED DOCUMENTS.

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## TABLE OF CONTENTS

(This Table of Contents is for convenience of reference  
only and is not part of the Modification Agreement)

	<u>PAGE</u>
PARTIES .....	1
RECITALS .....	1
Section 1. Definitions .....	
Section 2. Modification of Basic Documents .....	
Section 3. Provisions of the Modification Agreement Construed with the Basic Documents .....	
Section 4. Basic Documents as Amended to Remain in Effect .....	
Section 5. Recording.....	
Section 6. Execution of Counterparts .....	
SIGNATURES.....	
ACKNOWLEDGEMENTS.....	

## MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT dated as of November 1, 2020 (the "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") and MORRIS PLACE LLC, a limited liability company organized and existing under the laws of the State of New York (the "State") having an office for the transaction of business located at 2 Haymont Terrace, Briarcliff Manor, New York (collectively, the "Company");

### 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, on May 3, 2019 (the "Closing"), the Agency entered into a lease agreement dated as of May 1, 2019 (the "Lease Agreement") by and between the Agency and Morris Place 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 10,000 square foot parcel of land located at 105 Morris Street in the City of Albany, Albany County, New York (tax map no. 76.22-4-44) (the "Land"), together with an existing approximately 8,568 square foot building located thereon (the "Existing Facility"), (2) the demolition of the Existing Facility and the construction of an approximately 38,240 square foot, five (5) story building located thereon (the "Facility") and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, 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 an approximately twenty-eight (28) unit residential apartment building with indoor parking space for approximately 16 cars 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 May 1, 2019 (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 May 1, 2019 (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 May 1, 2019 (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 May 1, 2019 (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 May 1, 2019 (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, and (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”) (together with the Lease Agreement, the above enumerated documents being collectively referred to as the “Basic Documents”); and

WHEREAS, the Company has requested that the Agency modify the terms of the Basic Documents in order to extend the Completion Date (as defined in the Lease Agreement) (the “Modification”); and

WHEREAS, by resolution adopted by the members of the Agency on November 19, 2020 (the “Modification Resolution”), the members of the Agency (A) determined that pursuant to SEQRA, the Modification is a “Type II Action” and, therefore, the Agency has no further responsibilities under SEQRA with respect to the Modification; (B) determined to amend the Basic Documents to extend the Completion Date; and (C) authorized the execution and delivery of this Modification Agreement with respect to the 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 Basic Documents.

SECTION 2. MODIFICATION OF BASIC DOCUMENTS. (A) In each of the Basic Documents where the date of December 31, 2020 appears it shall be replaced by the date of April 30, 2021.

SECTION 3. PROVISIONS OF MODIFICATION AGREEMENT CONSTRUED WITH THE BASIC DOCUMENTS. All of the covenants, agreements and provisions of this Modification Agreement shall be deemed to be and shall be construed as part of the Basic Documents 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 Basic Document and any covenant, agreement or provision contained in this Modification Agreement, such covenant, agreement or provision contained herein shall govern.

SECTION 4. BASIC DOCUMENTS AS AMENDED TO REMAIN IN EFFECT. Except as amended by this Modification Agreement, the Basic Documents shall remain unmodified and in full force and effect and the terms and conditions thereof are hereby confirmed.

SECTION 5. RECORDING. This Modification Agreement may, at the request of the Company, be recorded by the Agency in such office or offices as may at the time be provided by law as the proper place or places for the recordation thereof. The Company agrees to pay all costs in connection with said recording.

SECTION 6. EXECUTION OF COUNTERPARTS. This 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 and the Company have caused this Modification Agreement to be executed by their duly authorized officer and to date this Modification Agreement as of the day and year first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

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

MORRIS PLACE LLC

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

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

On the \_\_\_\_ day of November, 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 she executed the same in her capacity, and that by 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 November, 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

**RESOLUTION AUTHORIZING THIRD AMENDMENT TO BASIC DOCUMENTS  
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 November 19, 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
Darius Shahinfar	Treasurer
Lee E. Eck, Jr.	Secretary
Dominick Calsolaro	Member
Robert T. Schofield	Member
L. Lloyd Stewart	Member

Each of the members present participated in the meeting telephonically pursuant to Executive Order No. 202.1, as supplemented, issued by New York State Governor Andrew M. Cuomo, suspending provisions of Article 7 of the Public Officers Law that require public in-person access to public meetings and authorizing board members to participate in said meetings by conference call or similar service.

**ABSENT:**

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Sarah Reginelli	Chief Executive Officer
Mark Opalka	Chief Financial Officer
Thomas Conoscenti	Vice President, Capitalize Albany Corporation
Ashley Mohl	Director of Development, Capitalize Albany Corporation
Andrew Corcione	Senior Economic Developer II, Capitalize Albany Corporation
Michael Bohne	Communications & Marketing, Capitalize Albany Corporation
Nora Culhane	Program Assistant, 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. 1120-\_\_

RESOLUTION AUTHORIZING THE EXECUTION BY CITY OF ALBANY  
INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN THIRD  
MODIFICATION AGREEMENT 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 (the “Closing”), (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 “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, on October 15, 2019, the Company and the Contractor requested that the Agency modify the terms of the Basic Documents in order to extend the Completion Date (as defined in the Basic Documents) from December 31, 2019 to December 31, 2020 (the “Modification”); and

WHEREAS, by resolution adopted by the members of the Agency on November 21, 2019 (“Resolution Authorizing Amendment to Basic Documents”), to accommodate the Modification, the Agency determined to enter into a certain modification agreement in connection thereto; and

WHEREAS, on or about February 1, 2020, the Company, the Contractor and the Agency entered into a modification agreement dated as of February 1, 2020 (the “Modification Agreement”), which Modification Agreement extended the Completion Date from December 31, 2019 to December 31, 2020; and

WHEREAS, on or about August 1, 2020, the Company and the Agency entered into a second modification agreement dated as of August 1, 2020 (the “Second Modification Agreement”), which Second Modification Agreement amended certain terms of the Payment in Lieu of Tax Agreement; and

WHEREAS, due to delays caused by the COVID-19 pandemic, the Company and the Contractor have again requested, pursuant to the correspondence attached hereto as Exhibit A, that the Agency modify the terms of the Basic Documents, as amended pursuant to the Modification Agreement, in order to extend the Completion Date from December 31, 2020 to December 31, 2021 (the “Third Modification”); and

WHEREAS, in connection with the Third Modification, the Company and the Contractor have requested that the Agency enter into a certain modification agreement (the "Third Modification Agreement"), by and among the Company, the Contractor and the Agency, a copy of which is attached hereto as Exhibit B; 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"), it appears that the Third Modification 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 Third Modification, the Agency hereby makes the following determinations:

(A) The Third Modification constitutes a "Type II action" pursuant to 6 NYCRR 617.5(c)(26) and (31), and therefor that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Third Modification.

(B) That since compliance by the Agency with the Third Modification 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 Third Modification.

Section 2. Subject to (A) compliance with the terms and conditions in the Basic Documents, as amended pursuant to the Modification Agreement, (B) evidence of current certificates of insurance acceptable to the Agency, and (C) payment by the Company of all fees and expenses of the Agency in connection with the delivery of the Third Modification Agreement, including the fees of Special Agency Counsel, the Agency hereby (a) consents to the Third Modification and (b) determines to enter into the Third Modification Agreement.

Section 3. The form and substance of the Third 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 Third 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 Third 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 Third 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	_____
Darius Shahinfar	VOTING	_____
Lee E. Eck, Jr.	VOTING	_____
Dominick Calsolaro	VOTING	_____
Robert T. Schofield	VOTING	_____
L. Lloyd Stewart	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 November 19, 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”) except as modified by Executive Order 202.1, as supplemented, 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, either in-person or appearing telephonically in accordance with Executive Order 202.1, as supplemented, 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 \_\_\_\_\_ day of November, 2020.

---

(Assistant) Secretary

(SEAL)

EXHIBIT A

REQUEST

- SEE ATTACHED –

## **Law Office of Debra J. Lambek PLLC**

---

302 Washington Avenue Extension  
Albany, New York 12203

Debra J. Lambek  
Counsel  
(518) 862-9133 Ext. 4225  
[dlambek@lambeklaw.com](mailto:dlambek@lambeklaw.com)

### **REVISED**

November 11, 2020

Ms. Tracy Metzger, Chairperson  
City of Albany Industrial Development Agency  
21 Lodge Street  
Albany, New York 12207

Re: 363 Ontario St LLC ("Company") with  
City of Albany Industrial Development Agency ("Agency")  
363 Ontario Street Project ("Project")  
Closing Date: August 23, 2018

Dear Tracy:

In connection with the above Project, the Company is hereby requesting an extension of the sale tax exemption for the Project from December 31, 2020 through December 31, 2021. The description of the Project remains unchanged.

The extension is being requested because of the delays due to the COVID -19 pandemic. Phase III construction has just started but will not be completed until late summer of 2021, assuming no further or additional shutdowns of construction activity. There have been contractor delays and materials shortages, which has led to a delay in the construction of this Project.

If you have any questions or comments, please do not hesitate to call.

Very truly yours,

Debra J. Lambek  
Counsel

DJL:mmml

cc: Anthony Corcione, Capitalize Albany (Via Email to [acorcione@capitalizealbany.com](mailto:acorcione@capitalizealbany.com))  
Ryan Jankow, 363 Ontario St LLC (Via Email to [ryan.jankow@gmail.com](mailto:ryan.jankow@gmail.com))  
Nadene Zeigler, Esq. (Via Email to [nzeigler@hodgsonruss.com](mailto:nzeigler@hodgsonruss.com))  
A. Joseph Scott, Esq. (Via email to [ascott@hodgsonruss.com](mailto:ascott@hodgsonruss.com))

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EXHIBIT B  
THIRD MODIFICATION AGREEMENT

- SEE ATTACHED -



DRAFT FOR DISCUSSION PURPOSES ONLY  
DATED: NOVEMBER 19, 2020

---

CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

AND

363 ONTARIO ST LLC

AND

J. LUKE CONSTRUCTION CO., LLC

---

THIRD MODIFICATION AGREEMENT

---

DATED AS OF \_\_\_\_\_ 1, 2020

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RELATING TO (A) THE LEASE/LEASE BACK TRANSACTION OF  
CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY  
DATED AUGUST 1, 2018 AND (B) CERTAIN RELATED  
DOCUMENTS.

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## TABLE OF CONTENTS

(This Table of Contents is for convenience of reference  
only and is not part of the Third Modification Agreement)

	<u>PAGE</u>
PARTIES .....	1
RECITALS .....	1
Section 1. Definitions .....	
Section 2. Modification of Basic Documents .....	
Section 3. Provisions of the Third Modification Agreement Construed with the Basic Documents .....	
Section 4. Basic Documents as Amended to Remain in Effect .....	
Section 5. Recording.....	
Section 6. Execution of Counterparts .....	
SIGNATURES.....	
ACKNOWLEDGEMENTS.....	

### THIRD MODIFICATION AGREEMENT

THIS THIRD MODIFICATION AGREEMENT dated as of \_\_\_\_\_ 1, 2020 (the “Third 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”), 363 ONTARIO ST LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at P.O. Box 1366, Guilderland, New York (the “Company”);

#### 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, 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 certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease of the Project Facility to the Company pursuant to the Lease Agreement; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the “Closing”), (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 “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, on October 15, 2019, the Company and the Contractor requested that the Agency modify the terms of the Basic Documents in order to extend the Completion Date (as defined in the Basic Documents) from December 31, 2019 to December 31, 2020 (the “Modification”); and

WHEREAS, by resolution adopted by the members of the Agency on November 21, 2019 (“Resolution Authorizing Amendment to Basic Documents”), to accommodate the Modification, the Agency determined to enter into a certain modification agreement in connection thereto; and

WHEREAS, on or about February 1, 2020, the Company, the Contractor and the Agency entered into a modification agreement dated as of February 1, 2020 (the “Modification Agreement”), which Modification Agreement extended the Completion Date from December 31, 2019 to December 31, 2020; and

WHEREAS, on or about August 1, 2020, the Company and the Agency entered into a second modification agreement dated as of August 1, 2020 (the “Second Modification Agreement”), which Second Modification Agreement amended certain terms of the Payment in Lieu of Tax Agreement; and

WHEREAS, due to delays caused by the COVID-19 pandemic, the Company and the Contractor have again requested that the Agency modify the terms of the Basic Documents, as amended pursuant to the Modification Agreement, in order to extend the Completion Date from December 31, 2020 to December 31, 2021 (the “Third Modification”); and

WHEREAS, by resolution adopted by the members of the Agency on November 19, 2020 (the “Resolution Authorizing Third Amendment to Basic Documents”), the members of the Agency (A) determined that pursuant to SEQRA, the Third Modification is a “Type II Action” and, therefore, the Agency has no further responsibilities under SEQRA with respect to the Third Modification; (B) determined to amend the Basic Documents, as amended pursuant to the Modification Agreement, to extend the Completion Date; and (C) authorized the execution and delivery of this Third Modification Agreement with respect to the Third 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 Basic Documents.

SECTION 2. THIRD MODIFICATION OF BASIC DOCUMENTS. In each of the Basic Documents where the date of December 31, 2019 has been modified to read as December 31, 2020, it shall be replaced with December 31, 2021.

SECTION 3. PROVISIONS OF THIRD MODIFICATION AGREEMENT CONSTRUED WITH THE BASIC DOCUMENTS. All of the covenants, agreements and provisions of this Third Modification Agreement shall be deemed to be and shall be construed as part of the Basic Documents 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 Basic Document and any covenant, agreement or provision contained in this Third Modification Agreement, such covenant, agreement or provision contained herein shall govern.

SECTION 4. BASIC DOCUMENTS AS AMENDED TO REMAIN IN EFFECT. Except as amended by this Third Modification Agreement, the Basic Documents shall remain unmodified and in full force and effect and the terms and conditions thereof are hereby confirmed.

SECTION 5. RECORDING. This Third Modification Agreement may, at the request of the Company, be recorded by the Agency in such office or offices as may at the time be provided by law as the proper place or places for the recordation thereof. The Company agrees to pay all costs in connection with said recording.

SECTION 6. EXECUTION OF COUNTERPARTS. This Third 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 Third Modification Agreement to be executed by their duly authorized officer and to date this Third Modification Agreement as of the day and year first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

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

363 ONTARIO ST LLC

By: \_\_\_\_\_  
Authorized Officer

J. LUKE CONSTRUCTION CO., LLC

By: \_\_\_\_\_  
Authorized Officer

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

On the \_\_\_\_ day of November, 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 she executed the same in her capacity, and that by 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 November, 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 November, 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

**APPROVING EXTENSION OF APPROVAL RESOLUTION  
563 NEW SCOTLAND AVE 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 November 19, 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
Darius Shahinfar	Treasurer
Lee E. Eck, Jr.	Secretary
Dominick Calsolaro	Member
Robert T. Schofield	Member
L. Lloyd Stewart	Member

Each of the members present participated in the meeting telephonically pursuant to Executive Order No. 202.1, as supplemented, issued by New York State Governor Andrew M. Cuomo, suspending provisions of Article 7 of the Public Officers Law that require public in-person access to public meetings and authorizing board members to participate in said meetings by conference call or similar service.

**ABSENT:**

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Sarah Reginelli	Chief Executive Officer
Mark Opalka	Chief Financial Officer
Thomas Conoscenti	Vice President, Capitalize Albany Corporation
Ashley Mohl	Director of Development, Capitalize Albany Corporation
Andrew Corcione	Senior Economic Developer II, Capitalize Albany Corporation
Michael Bohne	Communications & Marketing, Capitalize Albany Corporation
Nora Culhane	Program Assistant, 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. 1120-\_\_

RESOLUTION APPROVING AN EXTENSION OF THE EXPIRATION DATE  
RELATING TO THE APPROVING RESOLUTION ADOPTED BY THE CITY OF  
ALBANY INDUSTRIAL DEVELOPMENT AGENCY WITH RESPECT TO A  
COMMERCIAL PROJECT FOR 563 NEW SCOTLAND AVE LLC

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 and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, in September, 2019, 563 New Scotland Ave LLC, a New York State limited liability company (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 approximately 21 parcels of land containing in the aggregate approximately 3.65 acres located at 563 New Scotland Avenue (tax map number 64.81-1-56), 583 New Scotland Avenue (tax map number 64.81-1-67), 301 South Allen Street (tax map number 64.81-1-63), 313 South Allen Street (tax map number 64.81-1-64), 311 South Allen Street (tax map number 64.81-1-65), 319 South Allen Street (tax map number 64.81-1-66), 90 Onderdonk Avenue (tax map number 64.81-1-47), 92 Onderdonk Avenue (tax map number 64.81-1-48), 94 Onderdonk Avenue (tax map number 64.81-1-49), 95 Onderdonk Avenue (tax map number 64.81-1-70), 96 Onderdonk Avenue (tax map number 64.81-1-50), 97 Onderdonk Avenue (tax map number 64.81-1-37), 98 Onderdonk Avenue (tax map number 64.81-1-51), 99 Onderdonk Avenue (tax map number 64.81-1-38), 100 Onderdonk Avenue (tax map number 64.81-1-52), 101 Onderdonk Avenue (tax map number 64.81-1-39), 102 Onderdonk Avenue (tax map number 64.81-1-53), 104 Onderdonk Avenue (tax map number 64.81-1-54), 111 Onderdonk Avenue (tax map number 64.81-1-40), 116 Onderdonk Avenue (tax map number 64.81-1-55) and Onderdonk Avenue (tax map number 64.81-1-72) in the City of Albany, Albany County, New York (collectively, the “Land”), together with seven (7) buildings located thereon (collectively, the “Existing Facility”), (2) the demolition of the Existing Facility, (3) the construction on the Land of four (4) buildings containing in the aggregate approximately 300,000 square feet (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 an approximately 188 unit residential apartment complex, commercial/retail space and approximately 255 parking spaces 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 certain sales and use taxes, real property taxes, real property 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 October 17, 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 November 26, 2019 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted on November 27, 2019 on a public bulletin board located at Albany City Hall located at 24 Eagle Street in the City of Albany, Albany County, New York as well as on the Agency’s website, (C) caused notice of the Public Hearing to be published on November 30, 2019 in The Times Union, a newspaper of general circulation available to the residents of City of Albany, Albany County, New York, (D) conducted the Public Hearing on December 11, 2019 at 12:00 o’clock p.m., local time at 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 “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public 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 January 16, 2020 (the “Resolution Confirming SEQR Determination”), the Agency (A) concurred in the determination that the City of Albany Planning Board (the “Planning Board”) and the City of Albany Board of Zoning Appeals (the “Zoning Board”) are each the “lead agency” with respect to SEQRA, (B) acknowledged receipt of a negative declaration from the Planning Board issued on August 27, 2019 (the “Planning Board 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 (C) acknowledged receipt of a negative declaration from the Zoning Board issued on June 13, 2019 (the “Zoning Board Negative Declaration”), in which the Zoning 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 January 16, 2020 (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 census tract 17 which is contiguous to census tract 5.02 which is 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 January 16, 2020 (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 January 16, 2020 (the “Approving Resolution”), the Agency determined to grant the Financial Assistance and to enter into a lease agreement (the “Lease Agreement”) between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the “Basic Documents”). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, by certificate dated January 27, 2020 (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, pursuant to the Agency’s Policy Manual, the Approving Resolution is scheduled to expire on January 16, 2021, unless the Agency grants an extension to such expiration date; and

WHEREAS, the Company has provided a written request dated September 30, 2020 (the “Extension Request”), a copy of which Extension Request is attached to this Resolution, requesting that the Agency extend the scheduled expiration date of the Approving Resolution; and

WHEREAS, the members of the Agency have reviewed the Extension Request and desire to extend the expiration date of the Approving Resolution;

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

Section 1. Based upon the representations made by the Company in the Extension Request, the Agency hereby finds that the findings and determinations relating to the Project contained in Section 3 of the Approving Resolution continue to be in effect, and, therefore, the Agency hereby determines that it is desirable and in the public interest to extend the expiration date of the Approving Resolution from January 16, 2021 to July 16, 2021.

Section 2. The Agency hereby determines as follows: to extend the expiration date of the Approving Resolution to July 16, 2021.

Section 3. 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 this Resolution, 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 this Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of this Resolution binding upon the Agency.

Section 4. Except as modified by this Resolution, the Approving Resolution shall remain in full force and effect and the terms and conditions thereof are hereby confirmed.

Section 5. All action taken by the Chief Executive Officer of the Agency, Agency Counsel and Agency Special Counsel with respect to the Project, the Extension Request and the granting of the Extension Request is hereby ratified and confirmed.

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 Peto	VOTING	_____
Hon. Darius Shahinfar	VOTING	_____
Lee E. Eck, Jr.	VOTING	_____
Dominick Calsolaro	VOTING	_____
Robert T. Schofield, Esq.	VOTING	_____
L. Lloyd Stewart	VOTING	_____

The 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 November 19, 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”) except as modified by Executive Order 202.1, as supplemented, 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, either in-person or appearing telephonically in accordance with Executive Order 202.1, as supplemented, 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 \_\_\_\_\_ day of November, 2020.

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

(S E A L)



SCHEDULE A  
EXTENSION REQUEST

- SEE ATTACHED -

## Law Office of Debra J. Lambek PLLC

---

302 Washington Avenue Extension  
Albany, New York 12203

Debra J. Lambek  
Counsel  
(518) 862-9133 Ext. 4225  
[dlambek@lambeklaw.com](mailto:dlambek@lambeklaw.com)

September 30, 2020

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

Attention: Tracy Metzger

Re: 563 New Scotland Avenue Project ("Project")

Dear Ms. Metzger:

The City of Albany Industrial Development Agency ("Agency") approved the above Project. It is my understanding the approvals expire on January 16, 2021. We are still working toward a closing and hereby request an extension of the Agency approvals to July 16, 2021.

As a result of the COVID 19 pandemic we have been facing many delays including delays with financing and construction. While we are working diligently toward a closing, all dates have been pushed back as we wait for final lender terms, construction pricing and scheduling. We are further concerned that if all these items are resolved in the winter, we will be facing additional increases in cost due to winter conditions. Therefore, we are requesting an extension of the Agency approvals to provide us with an opportunity to move forward and complete the project.

Please let us know if there is any additional information you need in connection with the above request. Thank you.

Very truly yours,



Debra J. Lambek  
Counsel

DJL\mml

cc: Ryan Jankow (Via Email to [rjankow@jankowcompanies.com](mailto:rjankow@jankowcompanies.com))  
Michael Hipp (Via Email to [mhipp@jankowcompanies.com](mailto:mhipp@jankowcompanies.com))  
Andrew Corcione, Capital Albany Corporation  
(Via email to [acorcione@capitalizealbany.com](mailto:acorcione@capitalizealbany.com))  
Nadene Zeigler, Esq. (Via Email to [nzeigler@hodgsonruss.com](mailto:nzeigler@hodgsonruss.com))

**RESOLUTION AUTHORIZING ASSIGNMENT AND ASSUMPTION  
WEST MALL OFFICE CENTER LLC PROJECT**

A regular meeting of City of Albany Industrial Development Agency (the “Agency”) was convened in public session at the offices of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York on November 19, 2020 at 12:15 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
Darius Shahinfar	Treasurer
Lee E. Eck, Jr.	Secretary
Dominick Calsolaro	Member
Robert T. Schofield	Member
L. Lloyd Stewart	Member

Each of the members present participated in the meeting telephonically pursuant to Executive Order No. 202.1, as supplemented, issued by New York State Governor Andrew M. Cuomo, suspending provisions of Article 7 of the Public Officers Law that require public in-person access to public meetings and authorizing board members to participate in said meetings by conference call or similar service.

**ABSENT:**

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Sarah Reginelli	Chief Executive Officer
Mark Opalka	Chief Financial Officer
Thomas Conoscenti	Vice President, Capitalize Albany Corporation
Ashley Mohl	Director of Development, Capitalize Albany Corporation
Andrew Corcione	Senior Economic Developer II, Capitalize Albany Corporation
Michael Bohne	Communications & Marketing, Capitalize Albany Corporation
Nora Culhane	Program Assistant, 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. 1120-\_\_

RESOLUTION CONSENTING TO AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS WITH RESPECT TO THE ASSIGNMENT AND ASSUMPTION OF THE WEST MALL OFFICE CENTER 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 October 23, 2018 (the “Closing Date”), the Agency granted certain “financial assistance” within the meaning of the Act (the “Financial Assistance”) for the benefit of West Mall Office Center LLC (the “Current Company”) in connection with a project (the “Project”) being undertaken by the Agency consisting of the following: (A) (1) the acquisition of an interest in an approximately 10,716 square foot of land located at 4 Central Avenue in the City of Albany, Albany County, New York (tax map number 65.80-2-24 the “Land”), together with an existing approximately 41,893 square foot building located thereon (the “Facility”), (2) the reconstruction and 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 Current Company and operated as a multi-use facility including retail space and approximately 36-one bedroom apartments and any other directly and indirectly related activities and uses; (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 estate transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease of the Project Facility to the Current Company pursuant to the lease agreement dated as of October 1, 2018 (the “Lease Agreement”) by and between the Agency and the Current Company; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the “Closing”), (A) the Current Company executed and delivered to the Agency (1) a certain lease to agency dated as of October 1, 2018 (the “Lease to Agency”) by and between the Current Company, as landlord, and the Agency, as tenant, pursuant to which the Current 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 (2) a certain bill of sale dated as of October 1, 2018 (the “Bill of Sale to Agency”), which conveyed to the Agency all right, title and interest of the Current Company in the Equipment, (B) the Current Company and the Agency executed and delivered (1) a certain recapture agreement (the “Section 875 GML Recapture Agreement”) by and between the Current Company 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 October 1, 2018 (the “Uniform Agency Project Agreement”) relating to the granting of the Financial Assistance by the Agency to the Current Company,

(C) the Agency executed and delivered to the Current 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 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”)(the above-enumerated documents being collectively referred to as the “Basic Documents”); and

WHEREAS, in March, 2019, in order to finance a portion of the costs of the Project, the Current Company obtained (A) a loan in the principal sum of up to \$1,300,000 (the “Loan”) from TBG Funding LLC (the “Lender”), which Loan was secured by (a) a mortgage and security agreement dated as of the date of the closing on the Loan (the “Mortgage”) from the Agency and the Current Company to the Lender and (b) an assignment of leases and rents dated as of the date of the closing of the Loan (the “Assignment of Rents”) from the Agency and the Current Company to the Lender and (B) a loan in the principal sum of up to \$1,600,000 (the “Building Loan”) from the Lender, which Building Loan was secured by (a) a building loan mortgage and security agreement dated as of the date of the closing on the Building Loan (the “Building Loan Mortgage”) from the Agency and the Current Company to the Lender and (b) an assignment of leases and rents dated as of the date of the closing of the Building Loan (the “Building Loan Assignment of Rents”) from the Agency and the Current Company to the Lender; and

WHEREAS, pursuant to a request (the “Request”) attached hereto as Exhibit A, the Agency has been requested to convey the Project Facility and its interests in the Basic Documents to West Mall LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “New Company”) and, in connection with such conveyance, provide for the assignment of the Basic Documents from the Current Company to the New Company, as described in the Request (the “Assignment”); and

WHEREAS, the Lease Agreement provides that the Current Company is prohibited from selling, leasing, transferring or otherwise conveying any part of the Project Facility without the prior written consent of the Agency; and

WHEREAS, in connection with the conveyance of the Project Facility, the Current Company and the New Company have requested (the “Request”) that the Agency execute documents providing for the following (the “Conveyance and Assignment Documents”): the consent by the Agency of the conveyance of the Project Facility and the assignment and assumption of the Basic Documents from the Current Company to the New Company; 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 execution and delivery of the Conveyance and Assignment Documents; and

WHEREAS, pursuant to SEQRA, the Agency has reviewed the Request in order to make a determination as to whether the execution and delivery of the Conveyance and Assignment Documents is subject to SEQRA, and it appears that the Request is not an “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) Pursuant to SEQRA, the approval of the Request is not an “Action” under SEQRA and therefore is not subject to SEQRA review by the Agency.

(B) The Agency will **not** be granting any **additional** 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. The Agency hereby approves (A) the assignment to, and assumption by, the New Company of all of the Current Company’s interest in the Project Facility and the Basic Documents, including but not limited to the benefits of the Lease Agreement, and (B) the assumption by the New Company of all obligations of the Current Company under the Basic Documents pursuant to the Assignment and Assumption; subject in each case, however to the following conditions: (1) evidence of current certificates of insurance acceptable to the Agency; (2) receipt of confirmation from Agency counsel that no modifications shall result from the Request that result in any new tax relief for the Project (such as an extension of the term); (3) approval by Agency Special Counsel and Agency Counsel of the form of the Conveyance and Assignment Documents to be executed by the Agency in connection with the Request; (4) receipt by the Agency of its administrative fee relating to the Assignment, and all fees and expenses incurred by the Agency with respect to the Assignment, including the fees and expenses incurred by Agency Special Counsel with respect thereto; (5) the execution and delivery of a Uniform Agency Project Agreement in form acceptable to the Agency, if required (collectively, with the Conveyance and Assignment Documents, the “Assigned Documents”), and (6) the following additional conditions: none.

Section 3. Subject to (A) satisfaction of the conditions contained in Section 2 hereof, including the condition that no modifications provide any new tax relief for the Project (such as an extension of the term); and (B) the execution and delivery of the Assigned Documents by the other parties thereto, the Chair (or Vice Chair) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Assigned 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 substantially the forms thereof approved by Agency Special Counsel and Agency Counsel, 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 Request and the Assignment, 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 Request.

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	_____
Robert T. Schofield, Esq.	VOTING	_____
L. Lloyd Stewart	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 November 19, 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”) except as modified by Executive Order 202.1, 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, either in-person or appearing telephonically in accordance with Executive Order 202.1, 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 \_\_\_\_\_ day of November, 2020.

---

(Assistant) Secretary

(SEAL)



EXHIBIT A

REQUEST

- SEE ATTACHED -

**WEST MALL OFFICE CENTER LLC  
2158 82ND STREET  
BROOKLYN, NEW YORK 11214**

November 10, 2010

**VIA FEDEX**

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

Re: 4 Central Avenue, Albany, New York (the "Project")  
Transfer of title from West Mall Office Center LLC

Dear Ms. Metzger:

I am writing to request the consent of the City of Albany IDA (the "IDA") to: (1) the transfer of the owner entity of 4 Central Avenue to a newly formed entity owned and controlled by PDS 2016 Trust; and (2) to formalize my request that the IDA agree to join in and execute such documents as are required to consummate financing of this property. As you may know 4 Central Ave. is presently owned by West Mall Office Center LLC, with David Shemano being the beneficial owner of this entity.

At the meeting held on March 19, 2020, the IDA consented to the transfers of the interests in West Mall Office Center LLC to be owned 99.9% by PDS 2016 Trust, which is a trust formed for David Shemano as Settlor, with David Stern Management Corp. to remain owner of the .10%.

In connection with our refinancing of the above property, our lender is requiring that title be transferred to a newly-formed LLC, which does not own any other real estate assets. As such, we intend to transfer 4 Central Avenue from its present owner West Mall Office Center LLC to West Mall LLC, a Delaware limited liability company, which will be owned 99.9% by PDS 2016 Trust, the trust described above was formed for David Shemano as Settlor, and .10% by David Stern Management Corp. Attached is the organizational chart for the existing and proposed structures. As you will note, there is identity between the two structures as far as the LLC ownership and ultimate beneficiaries, with no unrelated third parties being proposed.

With respect to the IDA joining in such documents as are necessary to conclude the financing, as you know this Project received certain exemptions from the IDA, such as sales tax and mortgage recording tax exemptions. It is my understanding that as a result of the receipt of these IDA benefits, the IDA needs to agree to join any necessary loan documents for a period of five years. We request that the IDA agree to join in such loan documents as are necessary to conclude this financing.

We appreciate your courtesy and assistance in this matter. Please contact me with any questions.

Sincerely,

WEST MALL OFFICE CENTER LLC

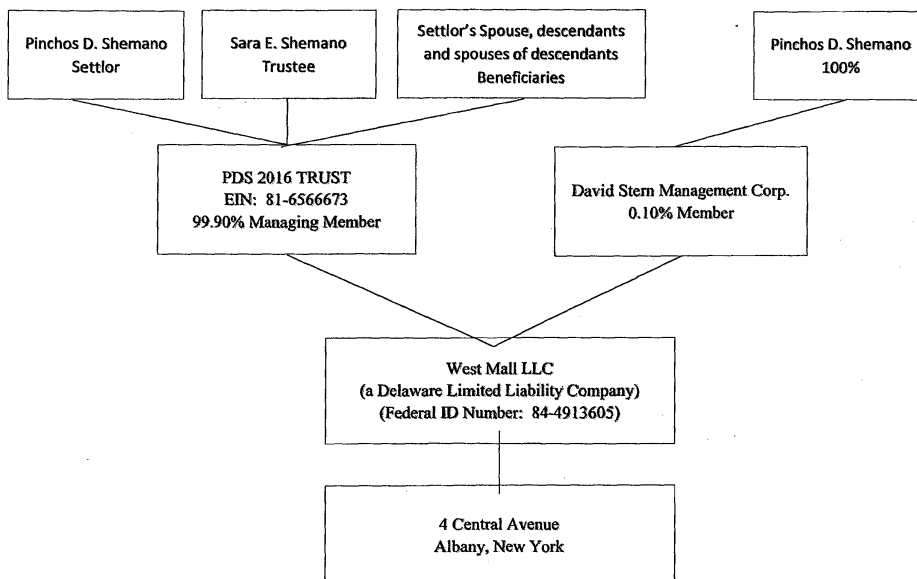
S/

By:   
Name: David Shemano

{West Mall Office-IDA re refinancing consent / 02258180.DOCX / 2}

Title: Authorized Signatory  
cc: Nadine Shadlock, Esq. (Via email: Nadine@nadineshadlock.com)

{West Mall Office-IDA re refinancing consent / 02258180.DOCX / 2}



{Org Chart / 02258185.DOCX / 2}

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through November 10, 2020.

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Selected Entity Name: WEST MALL LLC

Selected Entity Status Information

**Current Entity Name:** WEST MALL LLC

**DOS ID #:** 5873422

**Initial DOS Filing Date:** NOVEMBER 06, 2020

**County:** KINGS

**Jurisdiction:** DELAWARE

**Entity Type:** FOREIGN LIMITED LIABILITY COMPANY

**Current Entity Status:** ACTIVE

Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

ATTN: DAVID SHEMANO

2158 82ND STREET

BROOKLYN, NEW YORK, 11214

**Registered Agent**

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

### \*Stock Information

# of Shares	Type of Stock	\$ Value per Share
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[https://appext20.dos.ny.gov/corp\\_public/CORPSEARCH.ENTITY\\_INFORMATION?p\\_token=0FEDED0DD3F7AD6AFE431FED1451ED3603E73BB8E...](https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_token=0FEDED0DD3F7AD6AFE431FED1451ED3603E73BB8E...) 1/2