

**RESOLUTION APPROVING SECOND 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 June 17, 2021 at 12:15 p.m., local time.

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

**PRESENT:**

Tracy L. Metzger	Chair
Susan Pedo	Vice Chair
Lee E. Eck, Jr.	Secretary
Hon. Darius Shahinfar	Treasurer
Anthony Gaddy	Member
Robert T. Schofield, Esq.	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	Chief Operating Officer
Ashley Mohl	Director of Development, Capitalize Albany Corporation
Andrew Corcione	Senior Economic Developer II, Capitalize Albany Corporation
Renee McFarlin	Senior Economic Developer, Capitalize Albany Corporation
Michael Bohne	Communications & Marketing, Capitalize Albany Corporation
Nora Culhane	Economic Development Specialist, Capitalize Albany Corporation
Virginia Rawlins	Program Assistant, Capitalize Albany Corporation
Erin Grace	Executive Assistant, Capitalize Albany Corporation
A. Joseph Scott, III, Esq.	Special Agency Counsel

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

Resolution No. 0621-\_\_

RESOLUTION APPROVING A SECOND 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 was scheduled to expire on January 16, 2021, unless the Agency granted an extension to such expiration date; and

WHEREAS, by resolution adopted by the members of the Agency on November 19, 2020 (the “Resolution Approving Extension of Approval Resolution”), the Agency determined to extend the expiration date of the Approving Resolution to July 16, 2021; and

WHEREAS, although the Company intends to close the Project prior to July 16, 2021, the Company has informed the Agency that it would like to again extend the expiration date of the Approving Resolution, as extended, to January 16, 2022 (the “Second Extension Request”), which Second Extension Request is attached hereto as Exhibit A; and

WHEREAS, the members of the Agency have reviewed the Second Extension Request and desire to extend the expiration date of the Resolution Approving Extension of Approval 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 Second Extension Request, the Agency hereby finds that the findings and determinations relating to the Project contained in Section 3 of the Approving Resolution, as extended, 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, as extended, from July 16, 2021 to January 16, 2022.

Section 2. The Agency hereby determines as follows: to extend the expiration date of the Approving Resolution, as extended, to January 16, 2022.

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 and the Resolution Approving Extension of Approval 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 Second Extension Request and the granting of the Second 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 Pedo	VOTING	_____
Lee E. Eck, Jr.	VOTING	_____
Hon. Darius Shahinfar	VOTING	_____
Anthony Gaddy	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 June 17, 2021 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 June, 2021.

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

(SEAL)

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)

May 14, 2021

Revised Extension Request Letter

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

Attention: Tracy Metzger

Re: 563 New Scotland Ave LLC ("Company")  
with City of Albany Industrial Development Agency ("Agency")  
563 New Scotland Avenue Project ("Project")

Dear Ms. Metzger:

On May 5, 2021, we sent a letter to the Agency requesting a six (6) month extension with respect to the Agency approvals for the above Project. We wanted to provide some additional information in support of the request.

As a result of the COVID 19 pandemic many financial institutions have delayed approvals for new projects, especially multifamily housing projects. In addition, long delays and increased pricing in materials have resulted in issues obtaining construction contracts with guaranteed maximum prices which is typically required by lenders. The Company has been diligently working to obtain financing and has received a term sheet from Berkshire Bank ("Bank"). The Bank is currently performing third party due diligence and we are hoping to be able to close the loan by the end of June, 2021. We have made substantial progress with respect to construction contracts and hope to have an agreements shortly.

F:\ADM\Administrative\djl\ankow, Ryan\New Scotland Avenue\City of Albany IDA Application\CAIDA 2nd extension letter revised.doc

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

---

Another issue the Applicant has been working through is the relocation of the post office within the project. The Applicant has been waiting for direction from the post office regarding both temporary and new space requirements. We are hoping to have this issue resolved next month.

The existing approvals expire mid July 2021. While the Company is hopeful it will be ready to close before the expiration date, it is applying for this additional time in case there are further unanticipated delays in closing. We are hoping this will be the last extension request. We do not anticipate having to modify any existing City of Albany permits and approvals with this extension. We appreciate the Agency continuing to work with us in this regard. Please let me know if you require any further or additional information. 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))