

**AMENDED APPROVING RESOLUTION
745 BROADWAY ALBANY, L.L.C. f/n/a 745 BROADWAY APARTMENTS LLC f/n/a
BROADWAY 915, LLC PROJECT**

A regular meeting of City of Albany Industrial Development Agency (the “Agency”) was convened in public session at The Capital Center located at 55 Eagle Street in the City of Albany, Albany County, New York on September 23, 2021 at 12:15 p.m., local time.

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

PRESENT:

Susan Pedo	Chair
Lee E. Eck, Jr.	Vice Chair
Darius Shahinfar	Treasurer
Anthony Gaddy	Secretary
Robert T. Schofield	Member

Each of the members present participated in the meeting either in person or remotely pursuant to the signing into law on September 2, 2021 of Chapter 417 of the Laws of 2021.

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Sarah Reginelli	Chief Executive Officer
Mark Opalka	Chief Financial Officer
Thomas Conoscenti	Chief Operating Officer
Andrew Corcione	Project Services Director
Ashley Mohl	Director of Development, Capitalize Albany Corporation
Renee McFarlin	Senior Economic Developer, Capitalize Albany Corporation
Michael Bohne	Communications & Marketing Manager, Capitalize Albany Corporation
Nora Culhane Friedel	Economic Development Specialist, Capitalize Albany Corporation
Erin Grace	Executive Assistant, Capitalize Albany Corporation
Marisa Franchini, Esq.	Corporation Counsel
Nadene E. Zeigler, Esq.	Special Agency Counsel

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

Resolution No. 0921-__

RESOLUTION AMENDING A RESOLUTION ENTITLED “RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR BROADWAY 915, LLC (THE “COMPANY”).”

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, in January, 2020, Broadway 915, LLC, a New York State limited liability company (the “Original Company”), submitted an application, as amended in September, 2020 (the “Original Application”) to the Agency, a copy of which Application is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the “Original Project”) for the benefit of the Original Company, said Original Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 1.38 acre parcel of land located at 745 Broadway (currently tax map number 65.83-1-28) in the City of Albany, Albany County, New York (the “Land”), (2) the construction on the Land of an approximately 99,535 square foot, five (5) story building with approximately 90 parking spaces (collectively, 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 Facility, and the Equipment being collectively referred to as the “Original Project Facility”), all of the foregoing to constitute an approximately 80 unit residential apartment building to be owned and operated by the Original 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 Original Project Facility to the Original Company or such other person as may be designated by the Original Company and agreed upon by the Agency; and

WHEREAS, on October 22, 2020, the members of the Agency adopted a resolution (the “Approving Resolution”) entitled “Resolution Authorizing Execution of Documents in Connection with a Lease/Leaseback Transaction for an Original Project for Broadway 915, LLC (the “Company”); and

WHEREAS, pursuant to an amended application submitted to the Agency in February, 2021 (the “Amended Application”), the Original Company informed the Agency that the Original Company changed membership interest and in connection with this change formed a new company, 745 Broadway Apartments LLC, a New York limited liability company, (the “Second Company”), to undertake the Original Project and by resolution adopted by the members of the Agency on March 18, 2021, the Agency agreed to the designation of the Second Company, as the company to undertake the Original Project; and

WHEREAS, in September, 2021, the Agency received another application with respect to the Original Project (the “Application”), which Application supplants the Original Application and the Amended Application, from 745 Broadway Albany, L.L.C. (the “Company”), which Company replaces the

Second Company, which Application request the Agency to (A) designate the Company, as the company to undertake the Original Project, (B) increase the Financial Assistance being provided by the Agency to the Company and (C) revise the description of the Original Project (collectively, the “Amendment”);

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

Section 1. Based upon an examination of the Amendment, the Agency hereby determines that since compliance by the Agency with the Amendment does not result in the Agency providing more than \$100,000 of additional “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 Amendment.

Section 2. Beginning with the third recital clause of the Approving Resolution, the recital clauses are hereby amended to read as follows:

“WHEREAS, in January, 2020, Broadway 915, LLC (the “Original Company”), a limited liability company duly organized and validly existing under the laws of the State of New York, submitted an application, as amended in September, 2020 (the “Original Application”) to the Agency, which Original Application requested that the Agency consider undertaking a project (the “Original Project”) for the benefit of the Original Company, said Original Project to include the following: (A) (1) the acquisition of an interest in an approximately 1.38 acre parcel of land located at 745 Broadway (currently tax map number 65.83-1-28) in the City of Albany, Albany County, New York (the “Land”), (2) the construction on the Land of an approximately 99,535 square foot, five (5) story building with approximately 90 parking spaces (collectively, 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 Facility, and the Equipment being collectively referred to as the “Original Project Facility”), all of the foregoing to constitute an approximately 80 unit residential apartment building to be owned and operated by the Original 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 Original Project Facility to the Original Company or such other person as may be designated by the Original Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on September 17, 2020 (the “Public Hearing Resolution”), the Executive Director 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 Original Project and the financial assistance being contemplated by the Agency with respect to the Original Project, to be mailed on September 28, 2020 to the chief executive officers of the county and of each city, town, village and school district in which the Original Project Facility is to be located, (B) caused notice of the Public Hearing to be posted on September 28, 2020 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 September 29, 2020 in the Albany Times Union, a newspaper of general circulation available to the residents of City of Albany, Albany County, New York, (D) as a result of the ban on large meetings or gatherings pursuant to

Executive Order 202.1, as supplemented, and the suspension of the Open Meetings Law relating to public hearings pursuant to Executive Order 202.15, as supplemented, each as issued by Governor Cuomo in response to the novel Coronavirus (COVID-19) pandemic, conducted the Public Hearing on October 14, 2020 at 12:00 o'clock p.m. local time, electronically via conference call rather than in person, 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 October 22, 2020 (the "Resolution Confirming SEQR Determination"), the Agency (A) concurred in the determination that the City of Albany Planning Board (the "Planning Board") is the "lead agency" with respect to SEQRA, and (B) acknowledged receipt of a negative declaration from the Planning Board issued on January 28, 2020 (the "Negative Declaration"), in which the Planning Board determined that the Original 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 Original Project; and

WHEREAS, by further resolution adopted by the members of the Agency on October 22, 2020 (the "Commercial/Retail Finding Resolution"), the Agency (A) determined that the Original Project constituted a "commercial project" within the meaning of the Act, (B) found that although the Original 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 Original Project, the Agency is authorized to provide financial assistance in respect of the Original Project pursuant to Section 862(2)(a) of the Act because the Original Project Facility is located in a highly distressed area, (C) determined, following a review of the Public Hearing Report, that the Original 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 Original Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Original Project by the Agency unless and until the Mayor of the City of Albany, as chief executive officer of the 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 Original Project; and

WHEREAS, in connection with the Original Application, the Original Company made a request to the Agency to deviate from its uniform tax exemption policy (the "Pilot Request") and pursuant to the Pilot Request, by resolution adopted by the members of the Agency on October 22, 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 Original Project; and

WHEREAS, by further resolution adopted by the members of the Agency on October 22, 2020 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of April 1, 2021 (the "Lease Agreement") between the Agency and the Original Company and certain other

documents related thereto and to the Original Project (collectively with the Lease Agreement, the “Basic Documents”). Pursuant to the terms of the Lease Agreement, (A) the Original Company will agree (1) to cause the Original Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Original Project and (B) the Agency has leased the Original Project Facility to the Original Company. The Lease Agreement grants to the Original Company certain options to acquire the Original Project Facility from the Agency; and

WHEREAS, pursuant to an amended application submitted to the Agency in February, 2021 (the “Amended Application”), the Original Company informed the Agency that the Original Company changed membership interest and in connection with this change formed a new company, 745 Broadway Apartments LLC, a New York limited liability company, (the “Second Company”), to undertake the Original Project and by resolution adopted by the members of the Agency on March 18, 2021, the Agency agreed to the designation of the Second Company, as the company to undertake the Original Project; and

WHEREAS, by certificate dated March 26, 2021 (the “Public Approval”), the Mayor, as chief executive officer of the City of Albany, New York, confirmed the proposed action to be taken by the Agency with respect to the Original Project for the purposes of Section 862(2)(c) of the Act; and

WHEREAS, in September, 2021, the Agency received another application with respect to the Project (the “Application”), which Application supplants the Original Application and the Amended Application, from 745 Broadway Albany, L.L.C. (the “Company”), which Company replaces the Second Company, which Application requests the Agency to (A) designate the Company, as the company to undertake the Project (as defined below), (B) increase the Financial Assistance being provided by the Agency to the Company and (C) revise the description of the Original Project (collectively, the “Amendment”); and

WHEREAS, pursuant to the Application, a copy of which Application is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the “Project”) which amends the Original Project for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 1.38 acre parcel of land located at 745 Broadway (currently tax map number 65.83-1-28) in the City of Albany, Albany County, New York (the “Land”), (2) the construction on the Land of an approximately 99,535 square foot, five (5) story building with approximately 90 parking spaces (collectively, 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 Facility, and the Equipment being collectively referred to as the “Project Facility”), all of the foregoing to constitute an approximately 80 unit residential apartment building to include approximately 2,400 square feet of commercial/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 (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, based upon an examination of the Amendment, the Agency hereby determines that since compliance by the Agency with the Amendment does 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 Amendment; and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in the City of Albany, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of the City of Albany, New York by undertaking the Project in the City of Albany, New York; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the “Agency Documents”): (A) a certain lease to agency (the “Lease to Agency” or the “Underlying Lease”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease 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”); (B) a certain license agreement (the “License to Agency” or the “License Agreement”) by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (1) a license to enter upon the balance of the Land (the “Licensed Premises”) for the purpose of undertaking and completing the Project and (2) 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 (as hereinafter defined); (C) a lease agreement (and a memorandum thereof) (the “Lease Agreement”) by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency’s administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (D) a payment in lieu of tax agreement (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility; (E) a uniform agency project agreement (the “Uniform Agency Project Agreement”) by and between the Agency and the Company regarding the granting of the financial assistance and the potential recapture of such assistance; (F) 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; (G) 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; (H) a New York State Department of Taxation and Finance form entitled “IDA Appointment of Project Operator or Agency 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”); (I) if the Company intends to finance the Project with borrowed money, a mortgage and any other security documents and related documents (collectively, the “Mortgage”) from the Agency and the Company to the Company’s lender with respect to the Project (“the “Lender”), which Mortgage will grant a lien on and security interest in the Project Facility to secure a loan from the Lender to the Company with respect to the Project (the “Loan”); (J) various certificates relating to the Project; (K) if the Company intends to request the Agency to appoint (1) the Company, as agent of the Agency and (2) a contractor or contractors, as agent(s) of the Agency prior to closing on the Project and the Lease Agreement, agency and indemnification agreements, interim Section 875 GML recapture agreements, interim sales tax exemption letters and interim thirty-day sales tax reports (collectively, the “Interim Documents”); and (L) various certificates relating to the Project (the “Closing Documents”);”

Section 3. Exhibit A of the Approving Resolution is hereby amended in full to read as the attached Exhibit A to this Resolution.

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

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:

Susan Pedo	VOTING	_____
Lee E. Eck, Jr.	VOTING	_____
Darius Shahinfar	VOTING	_____
Anthony Gaddy	VOTING	_____
Robert T. Schofield	VOTING	_____

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned Secretary of City of Albany Industrial Development Agency (the “Agency”), DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the resolution contained therein, held on September 23, 2021, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Agency and of such resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Chapter 417 of the Laws of 2021 (the “2021 Laws”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given; and (D) there was a quorum of the members of the Agency, either in person or attending remotely in accordance with the 2021 Laws, 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 September, 2021.

Secretary

(SEAL)

EXHIBIT A

DESCRIPTION OF THE PROJECT EVALUATION AND EXPECTED PUBLIC BENEFITS

745 BROADWAY ALBANY, L.L.C. PROJECT

Pursuant to the City of Albany Industrial Development Agency’s (the “Agency”) Uniform Criteria for the Evaluation of Projects Policy, the following general uniform criteria were utilized by the “Agency” to evaluate and select the project for which the Agency can provide financial assistance. In the discussions had between the Project Beneficiary and the Agency with respect to the Project Beneficiary’s request for Financial Assistance from the Agency with respect to the Project, the Project Beneficiary has represented to the Agency that the Project is expected to provide the following benefits to the Agency and/or to the residents of City of Albany, Albany County, New York (the “Public Benefits”):

Description of Evaluation Criteria/Benefit		Applicable to Project (indicate Yes or No)		Criteria Assessment/ Expected Benefit
1.	Retention direct and indirect of existing jobs	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Project will increase the level of activity Downtown, thereby promoting the retention of existing jobs. The Company expects that the Project will result in the retention and creation of employment in the retail, restaurant, entertainment and office operations located in the surrounding area.
2.	Creation of direct and indirect new permanent jobs	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Project will increase the level of activity Downtown, thereby promoting the creation of new permanent jobs. The Project will create 2 new full time equivalent jobs. The Company expects that the Project will result in the retention and creation of employment in the retail, restaurant, entertainment and office operations located in the surrounding area.
3.	Estimated value of tax exemptions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The exemptions have been weighed against the cumulative benefits of the Project.

				<p>NYS Sales and Compensating Use Tax Exemption: \$612,725 Mortgage Recording Tax Exemption: \$181,600 Real Property Tax Exemption: \$4,478,240</p> <p>The Project will not receive a Real Property Tax Exemption from the IDA.</p>
4.	Private sector investment	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<p>Project applicant expects to invest over \$22.7 million of private investment in the Project.</p>
5.	Likelihood of Project being accomplished in a timely fashion	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<p>High likelihood that Project will be accomplished in a timely fashion.</p> <p>The Project received City of Albany Planning Board approvals.</p> <p>The Project has received a term sheet and letter of intent for Project Financing.</p> <p>The Applicant has a signed purchase and sale agreement.</p>
6.	Extent of new revenue provided to local taxing jurisdictions.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<p>Project will result in new revenue to local taxing jurisdictions under the proposed PILOT program through the City of Albany.</p> <p>Project will result in an increase in assessed value from the current total assessment: \$510,000 (Per City of Albany Commissioner of Assessment and Taxation 2019 Assessment Roll) to the estimated improved total assessment: \$6,230,000 (Per City of Albany Commissioner of Assessment and Taxation).</p>

7.	Other:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<p>The Project will an underutilized property and create approximately 1 FTE.</p> <p>The Project commits to utilizing 90% Regional Labor for construction jobs.</p> <p>The Project will increase the customer base to support local businesses and employers.</p> <p>The Project will have a positive revitalizing effect on the community by developing currently underutilized land in a strategically identified neighborhood location..</p> <p>The Project meets the intent and furthers the implementation of the following City of Albany strategic initiatives: Albany 2030.</p>
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