

**RESOLUTION CONSENTING TO REFINANCING AND
SECOND MODIFICATION OF BASIC DOCUMENTS
1211 WESTERN AVE PROPERTY ASSOCIATES LLC PROJECT**

A regular meeting of City of Albany Industrial Development Agency (the "Agency") was convened in public session at the office of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York on February 22, 2024 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:

Elizabeth Staubach	Chair
Lee E. Eck, Jr.	Vice Chair
Darius Shahinfar	Treasurer
Anthony Gaddy	Secretary
Joseph Better	Member
John F. Maxwell	Member

ABSENT:

Christopher Betts	Member
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AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Ashley Mohl	Interim Chief Executive Officer
Andrew Corcione	Chief Operating Officer
Renee McFarlin	Senior Economic Developer, Capitalize Albany Corporation
Michael Bohne	Communications & Marketing Manager, Capitalize Albany Corporation
Emma Fullem	Economic Development Specialist, Capitalize Albany Corporation
Cassidy Roberts	Program Assistant, Capitalize Albany Corporation
Marisa Franchini, Esq.	Agency Counsel
A. Joseph Scott, III, Esq.	Special Agency Counsel

The following resolution was offered by Joseph Better, seconded by Darius Shahinfar, to wit:

Resolution No. 0224-_____

RESOLUTION AUTHORIZING THE EXECUTION/CONSENT BY CITY OF
ALBANY INDUSTRIAL DEVELOPMENT AGENCY OF CERTAIN REFINANCING
LOAN DOCUMENTS AND SECOND MODIFICATION OF THE BASIC
DOCUMENTS IN CONNECTION WITH THE 1211 WESTERN AVE PROPERTY
ASSOCIATES 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 July 29, 2021 (the "Closing"), the Agency granted certain financial assistance to 1211 Western Ave Property Associates LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of Delaware, in connection with the following project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in an approximately 0.92 acre parcel of land located at 1211 Western Avenue (tax map number 64.22-1-10) in the City of Albany, Albany County, New York (the "Land"), together with an approximately 30,000 square foot building located thereon (the "Existing Facility"), (2) demolition of the Existing Facility and the construction on the Land of an approximately 190,968 square foot building (the "Facility") and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the "Equipment") (the Land, the Existing Facility, the Facility, and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned by the Company and operated as an approximately 136 unit residential apartment building, with approximately 1842 square feet of commercial/retail space, with a parking garage to accommodate approximately 150 parking spaces and any other directly and indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, 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 a lease agreement dated as of July 1, 2021 (the "Lease Agreement") by and between the Company and the Agency; and

WHEREAS, simultaneously upon 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 July 1, 2021 (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 July 1, 2021 (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 entered 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 July 1, 2021 (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 agreements dated as of July 1, 2021 (collectively, 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 July 1, 2021 (the "Uniform Agency Project Agreement") related to the granted 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”) (together with the Lease Agreement, the above-enumerated documents being collectively referred to as the “Basic Documents”); and

WHEREAS, in order to finance a portion of the costs of the Project, the Company obtained a loan in the principal sum of up to \$24,500,000 (the “Loan”) from Northwest Bank (the “Lender”), which Loan was secured by (1) a building loan mortgage, security agreement and fixture filing dated as of July 1, 2021 (the “Mortgage”) from the Agency and the Company to the Lender and (2) an assignment of rents and leases dated as of July 1, 2021 (the “Assignment of Rents”) from the Agency and the Company to the Lender; and

WHEREAS, in September, 2023, the Agency and the Company entered into a modification agreement dated as of September 1, 2023 (the “Modification Agreement”), which Modification Agreement extended the term of the Completion Date (as defined in the Lease Agreement); and

WHEREAS, by correspondence dated January 23, 2024 (the “Request”), which Request is attached hereto as Exhibit A, the Agency was informed that the Company has discharged the Loan and will be obtaining construction financing for the Project from the International Bank of Chicago (“IBOC”) in the amount of \$18,670,000 (the “IBOC Loan”), which IBOC Loan will be secured by a building loan mortgage and associated security instruments, including a subordination agreement (collectively, the “IBOC Documents”); and

WHEREAS, in connection with the Request, the Company is requesting the Agency to (A) acknowledge the IBOC Loan, (B) enter into the IBOC Loan Documents and (C) again modify the Basic Documents to reflect the replacement of the Lender with IBOC (the “Second Modification”); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the Request; and

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

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

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

(A) The Request constitutes a "Type II action" pursuant to 6 NYCRR 617.5(c)(29), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Request.

(B) Pursuant to the Basic Documents, the Company will receive the remainder of the mortgage recording tax benefit of \$75,000, which amount was not utilized at Closing.

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

Section 2. Subject to (A) compliance with the terms and conditions in the Basic Documents with respect to the Request, (B) approval of the IBOC Loan Documents and a second modification agreement ((the "Second Modification Agreement") and collectively, with the IBOC Loan Documents, the "Refinancing Documents"), by counsel to the Agency, and (C) payment by the Company of all fees and expenses of the Agency in connection with the Request and the delivery of the Refinancing Documents, including the fees of Agency Counsel, the Agency hereby (a) consents to the Request and (b) determines to enter into the Refinancing Documents.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chair (or Vice Chair) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Refinancing Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in the forms thereof as the Chair (or Vice Chair) shall approve, the execution thereof by the Chair (or Vice Chair) to constitute conclusive evidence of such approval.

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

Section 5. This Resolution shall take effect immediately.

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

Elizabeth Staibach	VOTING	YES
Lee E. Eck, Jr.	VOTING	YES
Darius Shahinfar	VOTING	YES
Anthony Gaddy	VOTING	YES
Joseph Better	VOTING	YES
Christopher Betts	VOTING	ABSENT
John F. Maxwell	VOTING	YES

The foregoing Resolution was thereupon declared duly adopted.

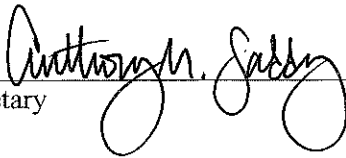
STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

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 February 22, 2024 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 22nd day of February, 2024.


Secretary

(SEAL)

EXHIBIT A
REQUEST
- SEE ATTACHED -

WHITEMAN
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January 23, 2024

Via Federal Express

Ms. Elizabeth Staubach, Chair
City of Albany Industrial Development Agency
21 Lodge Street
Albany, New York 12207

RE: 1211 Western Ave Property Associates LLC – Notice and Requests related to New Lender

Dear Ms. Staubach:

This firm represents 1211 Western Ave Property Associates LLC (the “Company”) with respect to its construction of a new 190,968± square foot building containing 136 residential units, 1,842± square feet of commercial space and an internal parking garage with 150 parking spaces (the “Project”). As you know, the City of Albany Industrial Development Agency (the “Agency”) approved the grant of certain financial assistance (the “Financial Assistance”) for the Project on September 17, 2020, and the Company and Agency closed on such Financial Assistance on July 29, 2021, pursuant to the Basic Documents (as defined in the Closing Memorandum issued by the Agency), as modified by that certain Modification Agreement dated as of September 1, 2023.

This letter shall serve as written notice that the Company has discharged its prior indebtedness with Northwest Bank and has, in turn, received a commitment from International Bank of Chicago (“IBOC”) for construction financing for the Project in the amount of up to \$18,670,000.00 (the “IBOC Loan”). In connection with its commitment, IBOC has indicated that it will require the Agency to join in execution of the mortgage and associated security instruments at closing. As such, the Company hereby requests that the Agency (i) acknowledge the IBOC Loan; and (ii) joins in execution of the mortgage and associated security instruments at the IBOC Loan closing. If approved by the Agency, the Company anticipates closing on the IBOC Loan within the next four to six weeks. We will forward to your counsel drafts of the requested instruments once received.

Additionally, while the Company is not requesting any additional Financial Assistance at this time in connection with its closing on the IBOC Loan, we understand that the Company was approved by the Agency for greater Financial Assistance than has been utilized to date. Accordingly, the

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Company hereby requests that the Agency applies toward the IBOC Loan closing any remaining Financial Assistance which has been previously approved by the Agency, but which has been unapplied. We understand that this includes a remaining Seventy-Five Thousand Dollars (\$75,000.00) in mortgage recording tax exemption.

Finally, for the purposes of the Basic Documents, as modified, the Company hereby requests the same be further modified to revise all references to Northwest Bank and/or the prior financing with Northwest Bank to refer to and mean IBOC and/or the IBOC Loan, as the case may be. By copy of this letter, we respectfully request that your counsel provide us with the proposed modification documents at their convenience.

On behalf of the Company, thank you for your consideration. Please do not hesitate to contact me should the Agency have any questions or require additional information.

Very truly yours,



Robert M. Gach

cc: A. Joseph Scott III, Esq. (via email only: ascott@hodgsonruss.com)
Nadene E. Zeigler, Esq. (via email only: nzeigler@hodgsonruss.com)

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