

**RESOLUTION AUTHORIZING MODIFICATION OF EXISTING FINANCING
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 May 16, 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, Esq.	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
A. Joseph Scott.	Special Agency Counsel
Christopher C. Canada, Esq.	Special Agency Counsel

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

Resolution No. 0524-__

RESOLUTION AUTHORIZING THE EXECUTION OF CERTAIN LOAN
MODIFICATION DOCUMENTS WITH RESPECT TO THE 563 NEW SCOTLAND
AVE LLC PROJECT.

WHEREAS, 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 industrial, manufacturing, warehousing, commercial, research, and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and

industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on September 21, 2021 (the “Closing”), the Agency granted certain financial assistance to 563 New Scotland Ave LLC (the “Company”), in connection with a project (the “Project”) for the benefit of the Company, said Project to include 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 of the Project Facility to the Company pursuant to the terms of a lease agreement dated as of September 1, 2021 (the “Lease Agreement”) by and between the Agency and the Company; 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 September 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 September 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 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 September 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) certain payment in lieu of tax agreements dated as of September 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 September 1, 2021 (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 sales tax exemption letters (collectively, 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") (the above enumerated documents, together with the Lease Agreement, 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 \$26,509,000 (the "Loan") from Berkshire Bank (the "Lender"), which Loan was secured by (1) a mortgage dated as of September 1, 2021 (the "Mortgage") from the Agency and the Company to the Lender and (2) an assignment of rents and leases dated as of September 1, 2021 (the "Assignment of Rents") from the Agency and the Company to the Lender; and

WHEREAS, in connection with the undertaking of the Project, which Project is being developed in three separate phases, the Company has requested, solely because the Agency has a leasehold interest in the Land (the "Request"), which Request is attached hereto as Exhibit A, that the Agency execute certain loan modification documents (collectively, the "Loan Modification Documents") with respect to the modification of the Mortgage and Loan; 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 reviewed the Request in order to make a determination as to whether the execution and delivery of the Loan Modification 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) The approval of the Request is not an "Action" under SEQRA and therefore is not subject to SEQRA review by the Agency.

(B) Pursuant to the Basic Documents, the Company may use the remainder of the mortgage recording tax benefit of \$73,040, which amount was not utilized at Closing.

(C) No additional financial assistance will be provided by the Agency to the Company with respect to the Request.

(D) 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 terms 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 of the Basic Documents with respect to the Request, (B) approval of the Loan Modification 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 Loan Modification Documents, including the fees of Agency Counsel, the Agency hereby (a) consents to the Request and (b) determines to enter into the Loan Modification 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 to execute and deliver the Loan Modification Documents and any related documents necessary to provide for the Request, 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, with terms and conditions approved by the Chair (or Vice Chair), 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 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:

Elizabeth Staubach	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, Esq.	VOTING	YES

The foregoing Resolution was thereupon declared duly adopted.

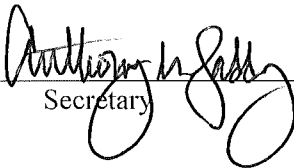
STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

I, the undersigned, Secretary of the 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 May 16, 2024, 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 insofar 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 respect 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 public 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 16th day of May, 2024.


Secretary

(S E A L)

EXHIBIT A

REQUEST

- SEE ATTACHED -

563 New Scotland Ave LLC
363 Ontario Street
Suite 2
Albany, New York 12208

May 6, 2024

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

Re: Loan Modification for the 563 New Scotland Ave LLC Project
563 New Scotland Ave LLC ("Company") and City of Albany Industrial Development
Agency ("Agency")

Dear Ms. Staubach:

The above Project closed pursuant to a Lease Agreement dated as of September 1, 2021. The Company financed the Project with Berkshire Bank and is in the process of modifying the existing financing. There is an existing payment in lieu of tax agreement in place with respect to the Project so the Agency will be required to execute some of the loan modification documents.

No additional or further financial assistance is being requested by the Company.

Please let me know if you need any further information in order to approve the execution of the loan modification documents. Thank you.

Sincerely,

563 New Scotland Ave LLC



Ryan Jankow
Member

cc: Hodgson Russ