

**RESOLUTION AUTHORIZING PUBLIC HEARING WITH RESPECT TO
ADDITIONAL BENEFITS
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 December 19, 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 |
| John F. Maxwell | Member |

ABSENT:

| | |
|-------------------|--------|
| Joseph Better | Member |
| Christopher Betts | Member |

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

| | |
|----------------------------|---|
| Ashley Mohl | Interim Chief Executive Officer |
| Andrew Corcione | Chief Operating Officer |
| Andrew Biggane | Director of Finance and Operations, Capitalize Albany Corporation |
| Michael Bohne | Communications and Marketing Manager, Capitalize Albany Corporation |
| Cassidy Roberts | Program Assistant, Capitalize Albany Corporation |
| Maria Lynch | Executive Assistant |
| Olivia Sewak | Program Assistant, Capitalize Albany Corporation |
| Marisa Franchini, Esq. | Agency Counsel |
| A. Joseph Scott, III, Esq. | Special Agency Counsel |
| Christoper C. Canada, Esq. | Special Agency Counsel |

The following resolution was offered by Darius Shahinfar, seconded by Lee E. Eck, Jr., to wit:

Resolution No. 1224-____

**RESOLUTION AUTHORIZING THE INTERIM CHIEF EXECUTIVE OFFICER TO
CONDUCT A PUBLIC HEARING REGARDING THE ADDITIONAL BENEFITS IN
CONNECTION WITH THE 563 NEW SCOTLAND AVE 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 128 of the 1974 Laws of New York, as amended, constituting Section 903-d

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 manufacturing, warehousing, research, commercial and industrial 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 Company and the Agency; 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 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; (C) the Agency and the Company executed and delivered the uniform agency project agreement dated as of September 1, 2021 (the "Uniform Agency Project Agreement") by and between the Agency and the Company relating to the terms of the granting by the Agency of the Financial Assistance to the Company; (D) 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; (E) 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 (F) 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") (collectively with the Lease Agreement, 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, due to substantial unforeseen cost increases and delays beyond the Company's control, the Company is requesting, per the attached request (the "Request"), additional mortgage recording tax benefits in the amount of \$211,960 and (B) an extension of the Completion Date of the Phase II Project (as such terms are defined in the Lease Agreement) from July 31, 2025 to August 31, 2026; 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; and

WHEREAS, pursuant to Section 859-a of the Act, prior to the Agency providing any financial assistance of more than \$100,000 to any project, the Agency, among other things, must hold a public hearing with respect said project;

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) That since the Request will result in the Agency providing financial assistance exceeding \$100,000, the Agency hereby authorizes the Interim Chief Executive Officer of the Agency, after consultation with the members of the Agency, Agency and Special Agency Counsel, (A) to establish the time, date and place for a public hearing of the Agency to hear all persons interested in the Project (the "Public Hearing"); (B) to cause the Public Hearing to be held in a city, town or village where the Project Facility is located, and to cause notice of such Public Hearing to be given to the public by publishing a notice or notices of such Public Hearing in a newspaper of general circulation available to the residents of the governmental units where the Project Facility is located, such notice or notices to comply with the requirements of Section 859-a of the Act; (C) to cause notice of the Public Hearing to be given to the chief executive officer of the county and of each city, town, village and school district in which the Project Facility is located to comply with the requirements of Section 859-a of the Act; (D) to conduct such Public Hearing; (E) to cause a report of the Public Hearing fairly summarizing the views presented at such Public Hearing (the "Report") to be prepared; (F) to cause a copy of the Report to be made available to the members of the Agency; and (G) to cause this resolution to be sent via certified mail, return receipt requested to the chief executive officer of the County and of each city, town, village and school district in which the Project Facility is to be located to comply with the requirements of Section 859-a of the Act.

Section 2. The Chair, Vice Chair and/or Interim Chief Executive Officer of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 3. All action taken by the Interim Chief Executive Officer of the Agency in connection with the Public Hearing with respect to the Project prior to the date of this Resolution is hereby ratified and confirmed.

Section 4. 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 | ABSTAIN |
| Joseph Better | VOTING | ABSENT |
| Christopher Betts | VOTING | ABSENT |
| John F. Maxwell | VOTING | YES |

The foregoing Resolution was thereupon declared duly adopted.

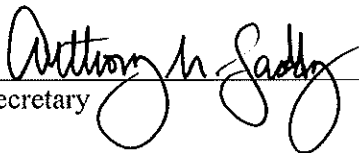
STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

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 December 19, 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 the whole of such proceedings of the Agency and of such Resolution set forth therein 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 19th day of December, 2024.


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
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December 12, 2024

REVISED REQUEST

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

Attention: Elizabeth Staubach

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

Dear Ms. Staubach:

The above project closed with the Agency as of September 1, 2021. Phase I of the Project is nearly completed and the Company is moving forward with Phase II. In connection therewith the Company obtained a financing commitment for \$28,500,000 ("Phase II Loan"). The Company is requesting an additional mortgage recording tax exemption with respect to the Phase II Loan.

In the original application the Company requested a mortgage recording tax exemption of \$338,130 based on anticipated financing for Phase I and Phase II of the Project in the amount of \$33,813,000.00. The Phase I Loan utilized \$265,090.00 of the mortgage recording tax exemption leaving a remaining exemption of \$73,040.00 for Phase II. However, the Phase II Loan will require a mortgage tax exemption equal to \$285,000.00. Therefore, the Company is requesting the Agency approve an additional mortgage recording tax exemption in the amount of \$211,960.00.

In addition, the original anticipated completion date of Phase II was July 31, 2025. The Company anticipates completion of Phase II to be on or about August 31, 2026. Therefore the Company is also requesting an extension of the Phase II completion date to August 31, 2026.

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Law Office of Debra J. Lambek PLLC

As you can see from this request the original financing projections need to be modified. As a result of the COVID 19 pandemic costs for materials and labor have skyrocketed and there have been many unanticipated delays. Financing projects has also become more challenging. My client was very fortunate that he was able to continue to move forward and complete this Project even with the delays and cost increases.

We appreciate the Agency continuing to work with us with respect to this Project. Please let me know if you require any further or additional information. Thank you.

Very truly yours,

Debra J Lambek

Debra J. Lambek
Counsel

cc: Ryan Jankow (Via Email to rjankow@jankowcompanies.com)
Michael Hipp (Via Email to mhipp@jankowcompanies.com)
Andrew Corcione, Capital Albany Corporation
(Via email to acorcione@capitalizealbany.com)
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