

**RESOLUTION WAIVING DEFAULT  
HOLLAND AVE OZ, 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 November 21, 2024 at 12:15 o’clock 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
Darius Shahinfar	Treasurer
Anthony Gaddy	Secretary
John F. Maxwell	Member

**ABSENT:**

Lee E. Eck, Jr.	Vice Chair
Joseph Better	Member
Christopher Betts	Member

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Ashley Mohl	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
Christopher C. Canada, Esq.	Special Agency Counsel

The following resolution was offered by Darius Shahinfar, seconded by Anthony Gaddy, to wit:

Resolution No. 1124-05

**RESOLUTION WAIVING DEFAULT IN CONNECTION WITH THE HOLLAND AVE  
OZ, 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 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 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 December 30, 2021 (the “Closing”), the Agency granted certain financial assistance to Holland Ave OZ, LLC (the “Company”), a New York State limited liability company, in connection with the following project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 1.18 acre parcel of land located at 25 Holland Avenue (Tax Map number: 76.47-1-25.1) in the City of Albany, Albany County, New York (the “Land”), (2) the construction on the Land of an approximately 67,132 square foot, four (4) story building with associated parking (the “Facility”) and (3) the acquisition and installation therein and thereon of certain machinery, equipment and other 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 be owned and operated by the Company as an approximately 60 unit multi-family apartment complex 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 estate 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 a lease agreement dated as of December 1, 2021 (the “Lease Agreement”) by and between the Agency and the Company; and

WHEREAS, simultaneously with the Closing, (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of December 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 the Land and all improvements now or hereafter located on the Land (collectively, the “Leased Premises”); (2) a certain license agreement dated as of December 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 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 December 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 agreement dated as of December 1, 2021 (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 December 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") (the above enumerated documents being collectively referred to as the "Basic Documents"); and

WHEREAS, pursuant to the Basic Documents, the Company has failed to comply with its Community Commitments and therefore has triggered an "Event of Default"; and

WHEREAS, pursuant to correspondence dated September 25, 2024 (the "Request"), which Request is attached hereto as Exhibit A, the Company is requesting the Agency to not pursue the Agency's remedies under an Event of Default; and

WHEREAS, in connection with the Request and pursuant to the Agency's staff memorandum attached hereto as Exhibit B (the "Staff Memo"), the Agency's staff is recommending the Agency to not pursue the Agency's remedies available under an Event of Default; 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"), 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)(26), 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 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) receipt by the Chief Executive Officer of (1) the Agency's administrative fee relating to the Request, if any, and (2) counsel's fees relating to the Request; based on the Request and the Staff Memo, the Agency hereby determines to not pursue the Agency's remedies with respect to an Event of Default under the Basic Documents and waives the breaches outlined in the Staff Memo; provided, however, that this waiver shall not be deemed to be a waiver of any other breach under the Basic Documents.

Section 3. The Agency hereby authorized the Chair, Chief Executive Officer and Chief Operating Officer of the Agency to implement the Request and the Staff Memo.

Section 4. All action taken by the Agency's staff, Chief Executive Officer and Chief Operating Officer of the Agency with respect to the Request and the Staff Memo are hereby ratified and confirmed.

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

The foregoing Resolution was thereupon declared duly adopted.

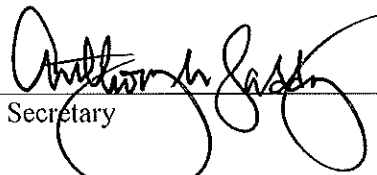
STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ALBANY            )

I, the undersigned Secretary of City of Albany Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on November 21, 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 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"), 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 21st day of November, 2024.

  
\_\_\_\_\_  
Secretary

(SEAL)

EXHIBIT A

REQUEST

- SEE ATTACHED -



September 25, 2024

**SENT VIA ELECTRONIC MAIL**

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

RE: Holland Ave OZ, LLC - IDA Project No. 0101-21-08

Dear Ms. Staubach:

In July of 2021, at the time of application to the City of Albany Industrial Development Agency (the "IDA"), Holland Ave OZ, LLC (the "Company") anticipated investing \$12,107,638 in the new development project located at 25 Holland Avenue. As of project completion, the actual investment in the project totals \$18,365,216.

Commensurate with the rise in project cost, the 115 construction jobs originally estimated in 2021 increased to 279 actual construction jobs. The Company met its commitment to employing Regional Labor in relation to the originally estimated and the actual construction jobs created. Ninety percent (90%) of the actual construction jobs created were filled by Regional Laborers. The company met its commitment to City of Albany Labor in relation to the originally estimated construction jobs with 15.65% filled by Albany Labor. Due to circumstances beyond its control, including the COVID-19 pandemic, the timing of construction, the availability of subcontractor crews, and the relocation of laborers over time, the Company reached 6.5% City of Albany Labor with respect to the actual 279 construction jobs created.

Of the subcontractors on the construction project, 37.97% were minority and women owned operations based upon the originally estimated construction cost; of this percentage, 20.47% could be verified as New York State certified. One subcontractor provided a MWBE certification issued by New York City; this subcontractor could not be counted. Numerous subcontractors that are minority and women owned remain in the process of obtaining state certifications and therefore could not be counted by project completion. Based upon the actual construction costs, which significantly exceeded original estimates primarily due to the increased cost of construction during the pandemic, the participation of MWBE *state certified* subcontractors measured 15.51%.

The Company respectfully requests that the IDA not take any adverse action in consideration of the substantially increased investment in the project and the City of Albany. At the time of application had the Company projected that (1) the total project cost upon completion


Correspondence to Elizabeth Staubach, Chair, CAIDA  
September 25, 2024  
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would be one and a half times greater than originally anticipated and (2) the actual number of construction workers would be nearly two and a half times greater than originally anticipated, the project would have qualified for increased points in accordance with the Community Benefit Metrics under the IDA's 2020 Project Evaluation and Assistance Framework. Hence, a reduction in the total number of points awarded to the project does not appear justified.

Thank you for your attention to this request.

Sincerely,

Holland Ave OZ, LLC

  
Bill (Sep 25, 2024 15:23 EDT)

William M. Hoblock, Esq.

cc: Christopher Canada, Esq.

EXHIBIT B

STAFF MEMO

- SEE ATTACHED -

## MEMO

**TO:** City of Albany Industrial Development Agency Board of Directors  
**FROM:** City of Albany Industrial Development Agency Staff  
**RE:** Holland Ave OZ, LLC  
**DATE:** November 8<sup>th</sup>, 2024

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### **Background:**

This project received approval for sales, mortgage recording and real property tax exemptions in 2021. The Applicant agreed to achieve three (3) Community Commitments as part of its scoring and eligibility under the Project Evaluation and Assistance Framework. These commitments were utilization of  $\geq 90\%$  Regional Labor for construction jobs, utilization of  $\geq 15\%$  City of Albany Labor for construction jobs, and  $\geq 20\%$  of construction contracts awarded to NYS or federally certified MWBE entities. As per the Closing Documents, the City of Albany Industrial Development Agency (the "Agency") requires Local Labor Tracking Forms be submitted following the completion of the project. CAIDA Staff received a post-construction reporting submission from Holland Ave OZ, LLC on August 7<sup>th</sup>, 2024.

### **Current Status:**

Staff conducted a thorough review of the project's local labor reporting materials. Although the project successfully achieved its Regional Labor threshold, there were shortfalls in the City of Albany Labor and MWBE Community Commitments. Based on a final total of 279 Construction jobs, 6.5% were City of Albany residents. Based on a final construction cost of over \$12.2 M, 15.5% of contracts were performed by NYS-Certified MWBE entities. Per the Lease Agreement, the failure to achieve a Community Commitment is an Event of Default with remedies up to and including recapture of the of the financial benefits provided by the Agency and/or the amendment/termination of the Documents.

CAIDA Staff notified the Project Beneficiary of these deficiencies and provided an opportunity to revisit the reporting and compile more information regarding the difficulties meeting the agreed upon commitments. The Project Beneficiary submitted a formal response that cited unexpected inflation of both the total project cost and the number of construction workers needed as the main source of the difficulty in meeting their Community Commitments. Based on the project's original estimate of 115 construction workers, the project would have met its City of Albany labor target at 15.7%. Based on the original estimated construction cost of \$9,288,775, the project would have met its MWBE target at 20.5%.

### **Recommendation:**

Based on the below cited facts, Staff recommends the Board refrain from pursuing any of the available remedies, including recapture of the financial assistance provided and the termination/amendments of the documents.

- The \$18.3 M project was completed in May 2024 and brought 60 market rate residential units to the University Heights neighborhood.

- The project resulted in the creation of 279 construction jobs (more than double the originally estimated amount), provided over \$1.9M in construction contracts to MWBE entities, and is anticipated to create two permanent full-time jobs.
- The project owners have shown cooperation and transparency throughout the local labor review process and are compliant with the Agency in all other aspects of the project.