

**RESOLUTION CONSENTING TO THIRD 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 August 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
-------------------	--------

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
Renee McFarlin	Senior Economic Developer, 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
Brett Williams, Esq.	Agency Counsel
A. Joseph Scott, III., Esq.	Special Agency Counsel

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

Resolution No. 0824-\_\_

RESOLUTION AUTHORIZING THE EXECUTION/CONSENT BY CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY OF A THIRD MODIFICATION OF THE BASIC DOCUMENTS IN CONNECTION WITH THE 1211 WESTERN AVE PROPERTY ASSOCIATES LLC PROJECT.

WHEREAS, 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 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) from December 31, 2023 to August 31, 2024; and

WHEREAS, in June, 2024 the Agency and the Company entered into a second modification agreement (the “Second Modification Agreement”), which Second Modification Agreement modified certain terms of the Basic Documents; and

WHEREAS, by correspondence dated August 7, 2024 (the “Request”), which Request is attached hereto as Exhibit A, Company has again requested an extension of the Completion Date, as modified from August 31, 2024 to April 30, 2025 (the “Third 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) 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) compliance with the terms of the Corporation’s counsel letter dated July 30, 2024 and attached hereto as Exhibit B, (C) delivery of the Restoration Plan required under the City Code and the Corporation Counsel letter no later than August 30, 2024, in form and substance acceptable to the City, (D) evidence of current certificates of insurance acceptable to the Agency, (E) approval of a third modification agreement by Agency Counsel (the “Third Modification Agreement”) and (F) payment by the Company of all fees and expenses of the Agency in connection with the Request and the delivery of the Third Modification Agreement, including the fees of Special Agency Counsel, the Agency hereby (a) consents to the **extension of the Completion Date from August 31, 2024 to October 31, 2024** and (b) determines to enter into the Third Modification Agreement.

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 Third Modification Agreement, 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 Third Modification Agreement, 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 Third Modification Agreement 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 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	VOTING	YES

The foregoing Resolution was thereupon declared duly adopted.

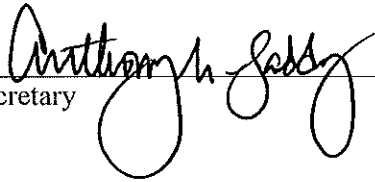
STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ALBANY )

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 August 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 22<sup>nd</sup> day of August, 2024.

  
Secretary

(SEAL)

EXHIBIT A

REQUEST

- SEE ATTACHED -

WITTEMAN  
OSTERMAN  
& HANNA LLP

One Commerce Plaza  
Albany, New York 12260  
518.487-7777 fax

Attorneys at Law  
[www.woh.com](http://www.woh.com)

S.J. Capocelatro IV  
Associate  
518.487.7687 phone  
[scapocelatro@woh.com](mailto:scapocelatro@woh.com)

August 7, 2024

Via Federal Express and Electronic Mail

Elizabeth Staubach, Chair  
City of Albany Industrial Development Agency  
21 Lodge Street  
Albany, New York 12207  
(c/o Andy Corcione: [acorcione@capitalizealbany.com](mailto:acorcione@capitalizealbany.com))

**RE: 1211 Western Ave – Request for Extension of Completion Date**

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 granting 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, the basic documents of which were modified pursuant to that certain Modification Agreement, dated as of September 1, 2023 (the “First Modification Agreement”), and further modified by that certain Second Modification Agreement, dated as of June 10, 2024 (the “Second Modification Agreement”). Pursuant to the Uniform Project Agency Agreement, as modified by the Modification Agreement, the current completion date for the Project is August 31, 2024 (the “Completion Date”).

For the reasons explained below, the Company respectfully requests that the Completion Date and the expiration of the Sales Tax Exemption Letter be extended to April 30, 2025. To assist in the Agency’s review of this request, the updated construction timeline is as follows:

- Superstructure – Completed
- Finish Carpentry – Present through February 2025
- MEP – Present through February 2025
- Kitchen Installations – by December 2024
- Appliance Installations – by January 2025
- Plumbing Fixture Installations – November 2024 through January 2025
- Lobby Finishes and Fit-out – by February 2025
- Site Work Completion and TCO Inspections – by February 2025

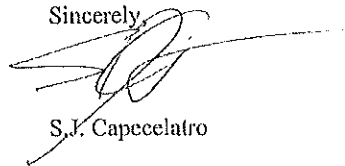
City of Albany Industrial Development Agency  
August 7, 2024  
Page 2

As you know, the Project has encountered significant delays which necessitated the prior extension of the Completion Date under the First Modification Agreement. Part of the delay was caused by the Company's termination of its financing with Northwest Bank and subsequent search for a new construction lender. As disclosed in the Second Modification Agreement the Company located a new lender, International Bank of Chicago. The Company closed on its financing with International Bank of Chicago as of June 10, 2024. Construction of the Project remobilized on June 17, 2024, and has been continuing in earnest since then.

The Company is eager to complete the Project and achieve the resulting financial benefits to the City of Albany and its citizens. Nevertheless, the Company continues to rely on the Financial Assistance to make the project economically feasible. Therefore, the Company asks that the Agency extend the Completion Date.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'S.J. Capocelatro', with a long horizontal flourish extending to the right.

S.J. Capocelatro

Enclosures

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

4898-1939-1446.

EXHIBIT B  
CORPORATION COUNSEL'S LETTER

- SEE ATTACHED -



**CITY OF ALBANY**  
**DEPARTMENT OF LAW**  
24 EAGLE STREET  
ALBANY, NEW YORK 12207  
TELEPHONE (518) 434-5050  
[WWW.ALBANYNY.GOV](http://WWW.ALBANYNY.GOV)

**KATHY SHEEHAN**  
FRANCHINI  
MAYOR  
COUNSEL

**MARISA A.**  
CORPORATION

\*VIA EMAIL\*

July 30, 2024

Jacky He  
CEO  
1211 Western Ave. Property Associates, LLC  
C/O DMG Investments, LLC

Re: 1211 Western Ave. Development

Dear Jacky,

As you are aware, the above-referenced development has been under construction for over three years. During this time, your project has created an undue hardship on both the neighboring properties, pedestrians and the surrounding community as a whole. Your temporary closure plan was never intended to remain implemented during this extremely delayed timeline and is putting a strain on our infrastructure as well as the public's use of public property.

Given the above, by this letter, we are hereby giving you notice that you must restore the street to City standards as soon as possible. We request that you submit a restoration plan to Gary Bohl at the Department of General Services within ten business days of receipt of this letter. This plan must outline your plan to restore the curb line along Western Ave. from University Drive to Tudor Drive and restore Western Avenue from curb to curb to the City's specifications within 30 days of approval.

As you are aware, your sidewalk closing permit is set to expire in December of this year. Your responsiveness to this matter will be taken into consideration when we contemplate an

extension of that permit. We appreciate your cooperation with our goal of beginning to put the public spaces surrounding your project back in order.

Please feel free to reach out with any questions.

Yours,

A handwritten signature in cursive script that reads "Marisa Franchini". The signature is written in black ink and includes a decorative flourish at the end.

Marisa Franchini, Esq.  
Corporation Counsel

cc: Ashley Mohl, Interim President, Capitalize Albany Corporation  
Andrew Corcione, Director, Real Estate Development, Capitalize Albany Corporation  
David Galin, Chief of Staff to Mayor Kathy Sheehan  
Councilman Tom Hoey  
Gary H Bohl, Director of Operations, Department of General Services