

**RESOLUTION AUTHORIZING MODIFICATION TO BASIC DOCUMENTS
FOR THE EXTENSION OF DEADLINE TO SALES TAX EXEMPTION
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 17, 2023 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
Hon. 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:

Sarah Reginelli	Chief Executive Officer
Andrew Corcione	Project Services Director
Renee McFarlin	Senior Economic Developer, Capitalize Albany Corporation
Emma Fullem	Program Assistant, Capitalize Albany Corporation
Amy Horwitz	Executive Assistant, Capitalize Albany Corporation
Marisa Franchini, 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. 0823-__

**RESOLUTION AUTHORIZING THE EXECUTION BY CITY OF ALBANY
INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN MODIFICATION
AGREEMENT 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 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 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, the Company has requested, pursuant to the correspondence attached hereto as Exhibit A, that the Agency modify the terms of the Basic Documents in order to extend the Completion Date (as defined in the Basic Documents) and, accordingly, the date of the expiration of the Sales Tax Exemption Letter from December 31, 2023 to August 31, 2024 (the “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”), it appears that the Modification 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 Modification, the Agency hereby makes the following determinations:

(A) The Modification constitutes a “Type II action” pursuant to 6 NYCRR 617.5(c), (26), and therefor that, pursuant to 6 NYCRR 617.6(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Modification.

(B) That since compliance by the Agency with the Modification 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 Modification.

Section 2. Subject to (A) compliance with the terms and conditions in the Basic Documents, (B) evidence of current certificates of insurance acceptable to the Agency, and (C) payment by the Company of all fees and expenses of the Agency in connection with the delivery of the Modification Agreement, including the fees of Special Agency Counsel, the Agency hereby (a) consents to the Modification and (b) determines to enter into the Modification Agreement.

Section 3. The form and substance of the Modification Agreement (in substantially the form presented to this meeting) are hereby approved.

Section 4. 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 Modification Agreement to the Company, and, where appropriate, the Secretary of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions 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 5. 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 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 Modification Agreement binding upon the Agency.

Section 6. 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
Hon. Darius Shahinfar	VOTING	YES
Anthony Gaddy	VOTING	YES
Joseph Better	VOTING	YES
Christopher Betts	VOTING	YES
John F. Maxwell, Esq.	VOTING	YES

The foregoing Resolution was thereupon declared duly adopted.

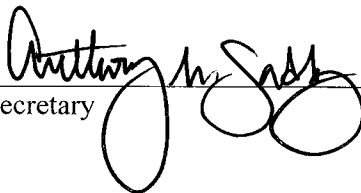
STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

I, the undersigned Secretary of 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 17, 2023, 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 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 17th day of August, 2023.



Secretary

(SEAL)

EXHIBIT A

REQUEST

- SEE ATTACHED -

WHITEMAN
OSTERMAN
& HANNA LLP

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Robert M. Gach
Partner
518.487.7687 phone
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August 4, 2023

Via Federal Express

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

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

Dear Ms. Staubach:

This letter shall supersede and replace our extension request letter to you dated July 26, 2023. 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. Pursuant to the Uniform Project Agency Agreement, the completion date for the Project is December 31, 2023 (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 August 31, 2024. To assist in the Agency’s review of this request, the following additional documents are enclosed herewith:

- (1) Updated Construction Schedule;
- (2) Description of Work Completed; and
- (3) Updated Project Budget.

While the Company diligently pursued substantial completion of the Project, construction has been significantly delayed due to the actions of the Company’s general contractor (the “GC”) and National Grid, as well as Covid-19-related material shortages and price volatility. Specifically, construction has been frequently interrupted because of the GC’s failure to: (1) properly staff the Project; (2) construct the Project to plans and specifications; and (3) timely provide necessary shop drawings. The Company continues to work with the GC to correct these issues moving forward. Completion of the project has also been delayed by an approximately six-month postponement of the

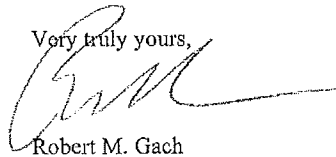
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relocation of an overhead utility line by National Grid. These delays were unforeseeable at the time of closing.

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.

Very truly yours,



Robert M. Gach

Enclosures

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

4862-8429-3237,

Updated Construction Timeline:

- Concrete podium completed by Dec 30, 2022
- Framing completion by Oct 12, 2023
- Building enclosed by Dec 9, 2023
- Elevator completed by Feb 24, 2024
- TCO & Turnover to Owner's vendors by August 31, 2024

Description of Work Completed:

- Foundation & concrete podium
- Underground plumbing
- overhead utility line relocation to underground
- City water main replacement

Development Budget

Project: Air Albany (The Dakota)
 Project Address: 1211 Western Avenue, Albany, NY
 Project City: Albany, NY

Air Albany (1211 Western Avenue, Albany)	
	Budget
Land	\$ 2,400,000
Buildings	\$ 26,625,840
Machinery and Equipment Cost	
Utilities, roads and appurtenant costs	
Architects and engineering fees	\$ 1,400,000
Cost of Bond Issue (legal, financial and printing)	
Construction loan fees and interest (if applicable)	\$ 993,790
Other (specify)	\$ 1,169,600
Contingency (Hard & Soft)	\$ 1,043,775
Admin, indirect Cost	\$ 3,102,309
Total	\$ 36,735,314