

**RESOLUTION AUTHORIZING MODIFICATION TO BASIC DOCUMENTS  
FOR THE EXTENSION OF DEADLINE TO SALES TAX EXEMPTION  
705 BROADWAY HOTEL, 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 |
|-------------------|--------|

**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 705 BROADWAY HOTEL, 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 August 2, 2022 (the “Closing”), the Agency granted certain financial assistance to 705 Broadway Hotel, 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 0.43 acre parcel of land located at 82 Montgomery Street in the City of Albany, Albany County, New York (tax map number 76.27-1-18.2) (the “Land”), (2) the construction on the Land of an approximately 74,000 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 Facility, and the Equipment being collectively referred to as the “Project Facility”), all of the foregoing to constitute a 110 room seven (7) story hotel 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 July 1, 2022 (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 July 1, 2022 (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 July 1, 2022 (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, 2022 (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 July 1, 2022 (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 July 1, 2022 (the “Uniform Agency Project Agreement”) related to the granted Financial Assistance by the Agency 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 Agency (A) and Pioneer Management Group, LLC (the "Contractor") entered into (1) a certain agency indemnification agreement dated as of July 1, 2022 (the "Contractor Agency and Indemnification Agreement") by and between the Agency and the Contractor and (2) a certain recapture agreement dated as of July 1, 2022 (the "Contractor Section 875 GML Recapture Agreement") by and between the Agency and the Contractor; (B) executed and delivered to the Contractor a sales tax exemption letter (the "Contractor Sales Tax Exemption Letter") and (C) filed a Thirty-Day Sales Tax Report (the "Contractor Thirty-Day Sales Tax Report") and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the 2020 Project (the "Additional Thirty-Day Project Report") (the above enumerated documents being collectively referred to as the "Basic Documents"); and

WHEREAS, the Company and the Contractor have 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 extension of the expiration of the Sales Tax Exemption Letter from August 15, 2023 to December 31, 2023 (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.

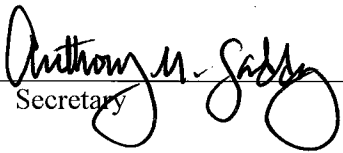
STATE OF NEW YORK                    )  
                                                  ) ss.:  
COUNTY OF ALBANY                    )

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 17<sup>th</sup> day of August, 2023.

  
\_\_\_\_\_  
Secretary

(SEAL)

EXHIBIT A

REQUEST

- SEE ATTACHED -

677 Broadway, Suite 401 | Albany, NY 12207  
Tel: 518.465.2333 | [map](#)

**From:** Mark W. Roney <[mark.roney@pioneerco.com](mailto:mark.roney@pioneerco.com)>  
**Sent:** Monday, July 31, 2023 4:21 PM  
**To:** Andrew Corcione <[ACorcione@capitalizealbany.com](mailto:ACorcione@capitalizealbany.com)>; Scott III, A. Joseph <[Ascott@hodgsonruss.com](mailto:Ascott@hodgsonruss.com)>  
**Cc:** Bennett, Melissa C. <[mbennett@barclaydamon.com](mailto:mbennett@barclaydamon.com)>; Melissa Zell <[melissa.zell@pioneerco.com](mailto:melissa.zell@pioneerco.com)>; Emma Fullem <[efullem@capitalizealbany.com](mailto:efullem@capitalizealbany.com)>; Canfield, James J. <[jcanfield@barclaydamon.com](mailto:jcanfield@barclaydamon.com)>; [TConoscenti@capitalizealbany.com](mailto:TConoscenti@capitalizealbany.com)  
**Subject:** Albany Hyatt  
**Importance:** High

External Email - Use Caution

Hello Andy and Joe,

The good news is we are hurtling towards construction completion (mid-August) and a hotel opening of late September. We had mistakenly thought that our sales tax exemption expired at year end, however upon closer inspection it is August 15, 2023. Obviously we will not have all the vendors paid out with retentions liquidated by that time. We would like to request an extension, with no additional exemption amount, to December 31, 2023. Andy and Emma I do have VM into you on this.

Please let me know how to proceed, it would be ideal if we could get on the August 17<sup>th</sup> agenda so we don't have a gap in coverage.

Thanks mark.

MARK W. RONEY CPA| Chief Financial Officer | Pioneer Companies  
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