

**RESOLUTION AUTHORIZING COMMENCEMENT OF LITIGATION  
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 offices of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York on August 31, 2026 at 12:15 p.m., local time.

The meeting was called to order by the (Vice) Chair and, upon roll being called, the following members of the Agency were:

|                       |            |
|-----------------------|------------|
| Elizabeth Staubach    | Chair      |
| Lee E. Eck, Jr.       | Vice Chair |
| Anthony Gaddy         | Secretary  |
| Joseph Better         | Member     |
| John F. Maxwell, Esq. | Member     |

**ABSENT:**

|                  |           |
|------------------|-----------|
| Darius Shahinfar | Treasurer |
|------------------|-----------|

**THE FOLLOWING PERSONS WERE ALSO PRESENT:**

|                             |                                                                     |
|-----------------------------|---------------------------------------------------------------------|
| Ashley Mohl                 | Chief Executive Officer                                             |
| Andrew Corcione             | Chief Operating Officer                                             |
| Andrew Biggane              | Chief Financial Officer                                             |
| Michael Bohne               | Communications and Marketing Manager, Capitalize Albany Corporation |
| Cassidy Roberts             | Economic Developer, Capitalize Albany Corporation                   |
| Kaylie-Hogan Schnittker     | Senior Economic Developer, Capitalize Albany Corporation            |
| Maria Lynch                 | Executive Assistant                                                 |
| Robert Magee, Esq.          | Agency Counsel                                                      |
| Christopher C. Canada, Esq. | Special Agency Counsel                                              |

The following resolution was offered by Joseph Better, seconded by John F. Maxwell, Esq., to wit:

**Resolution No. 0826-05**

**RESOLUTION AUTHORIZING CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY TO COMMENCE LITIGATION RELATING TO RECAPTURE OF FINANCIAL ASSISTANCE FOR THE 1211 WESTERN AVE PROPERTY ASSOCIATES LLC PROJECT.**

WHEREAS, City of Albany Industrial Development Agency (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 manufacturing, not-for-profit and commercial

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, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, on July 29, 2021, 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, due to the failure of the Company to comply with the terms and obligations under the Lease Agreement and the Uniform Agency Project Agreement (the "Non-Compliance"), the Agency provided written notice to the Company on May 29, 2025 (the "Initial Default Letter"), which Initial Default Letter notified the Company (i) of the Non-Compliance and (ii) that the failure of the Company to remedy the Non-Compliance within thirty (30) days of the date of the Initial Default Letter would result in an Event of Default under the Lease Agreement and the Uniform Agency Project Agreement; and

WHEREAS, to provide the Company with additional time to cure the Non-Compliance, the Agency and the Company entered into a memorandum of understanding dated August 25, 2025 (the "MOU"); and

WHEREAS, pursuant to Section 3(E) of the MOU, the Company was required to commence the construction and undertaking of the Project within sixty (60) days following the issuance of a building permit relating to the Project by the City of Albany (the "Building Permit"), with the determination of whether the Company commenced such construction and undertaking of the Project being in the absolute discretion of the Agency under the terms of the MOU; and

WHEREAS, the Building Permit was issued by the City of Albany on December 16, 2025; and

WHEREAS, pursuant to Section 5 of the MOU, an Event of Default (as defined therein) includes the failure by the Company to perform or observe any covenant, condition or agreement required by the Company under the MOU and the continuance of such Event of Default for a period of five (5) days after written notice thereof is provided by the Agency to the Company; and

WHEREAS, due to more than sixty (60) days having elapsed since the issuance of the Building Permit, and the Agency having determined that the commencement of the construction and undertaking of the Project had not occurred, counsel to the Agency on March 13, 2026 provided the Company with written notice of the occurrence of an Event of Default pursuant to Section 5(A) of the MOU due to the failure of the Company to commence the construction and undertaking of the Project on behalf of the Agency (the "Written Default Notice"); and

WHEREAS, pursuant to Section 6(A) of the MOU, whenever an Event of Default has occurred thereunder, the Agency may terminate the Lease Agreement and the Payment in Lieu of Tax Agreement, and convey to the Company all of the Agency's right, title and interest in and to the Project Facility; and

WHEREAS, as a result of (i) more than five (5) days having elapsed since the delivery of the Written Default Notice to the Company and the Agency having determined that the commencement of the construction and the undertaking of the Project had still not occurred and (ii) the Non-Compliance remaining unremedied by the Company, the Agency, pursuant to a resolution adopted by the members of the Agency on March 19, 2026 authorized, pursuant to Section 6(A) of the MOU, to terminate the Lease Agreement, the License Agreement and the Payment in Lieu of Tax Agreement and to convey the Project

Facility to the Company pursuant to a bill of sale from the Agency to the Company (the "Reconveyance"); and

WHEREAS, subsequently (i) the Lease to Agency, the License to Agency and the Lease Agreement were terminated pursuant to a termination of lease to underlying lease, a termination of lease agreement and a termination of license agreement, respectively, recorded in the Office of the Albany County Clerk and (ii) the Department of Assessment of the City of Albany was notified that, as a result of the terminations of the Lease to Agency, the Lease Agreement and the License to Agency, the Payment of Lieu of Tax Agreement would in term terminate; and

WHEREAS, during the meeting of the Agency on May 20, 2026, the members of the Agency determined that, as a result of the Company's failure to complete the acquisition, construction and installation of the Project, a Recapture Event had occurred under and as defined in the Uniform Agency Project Agreement; and

WHEREAS, as directed by the members of the Agency, counsel to the Agency on June 1, 2026 provided written notice to the Company of the occurrence of such Recapture Event pursuant to Section 4.03(F) of the Uniform Agency Project Agreement and formally demanded that the Company remit the amounts of Financial Assistance due to the Agency pursuant to Section 4.03(A) of the Uniform Agency Project Agreement (collectively, the "Recapture Amount") by no later than July 1, 2026 in accordance with the provisions of the Uniform Agency Project Agreement; and

WHEREAS, to date the Company has failed to remit the Recapture Amount to the Agency; and

WHEREAS, the Agency wishes to pursue its remedies against the Company including the commencement of litigation (collectively, the "Litigation") for purposes of collecting the Recapture Amount from the Company; 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 commence the Litigation;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. Pursuant to SEQRA, the commencement of the Litigation is not an "Action" under SEQRA and therefore is not subject to SEQRA review by the Issuer.

Section 2. The Agency hereby authorizes the commencement of the Litigation.

Section 3. The Agency hereby authorizes Hodgson Russ LLP to act as counsel to the Agency in connection with the Litigation.

Section 4. The Agency is hereby authorized to execute and deliver all documents, certificates and instruments relating to the Litigation (collectively, the "Litigation Documents") and, where appropriate, the Secretary of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, with such changes, variations, omissions and insertions as the Chairperson, Vice Chairperson or Chief Executive Officer of the Agency shall approve, the execution thereof by the

Chairperson, Vice Chairperson or Chief Executive Officer 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 Litigation Documents, 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 Litigation Documents 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    |
| Darius Shahinfar      | VOTING | ABSENT |
| Anthony Gaddy         | VOTING | YES    |
| Joseph Better         | VOTING | YES    |
| John F. Maxwell, Esq. | VOTING | YES    |

The resolution was thereupon declared duly adopted.

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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 annexed extract of the minutes of the meeting of the Agency, including the resolution contained therein, held on August 31, 2026, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar 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 public 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 31<sup>st</sup> day of August, 2026.

BY: \_\_\_\_\_

*Anthony M. Jassby*  
Secretary

(SEAL)