

**RESOLUTION AUTHORIZING NEW MORTGAGE - 2019
122 2ND STREET ASSOC., LLC PROJECT**

A regular meeting of Albany County Industrial Development Agency (the “Agency”) was convened in public session in Room 740 at 112 State Street in the City of Albany, Albany County, New York on May 15, 2019 at 6:00 o’clock p.m., local time.

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

PRESENT:

Hon. William M. Clay	Chairman
Hon. Joseph E. O’Brien	Vice Chairman
Michael Paparian	Treasurer
Theresa M. Ries	Secretary
Marlene McTigue	Assistant Secretary
Anton Dreslin	Member
Douglas Roether	Member

ABSENT:

None.

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Paul L. Weafer	Chief Executive Officer
William Murphy	Chief Financial Officer
Leslie Butcher	Executive Assistant
Walter J. Forman, Esq.	Agency Counsel
A. Joseph Scott, III, Esq.	Special Counsel
Christopher C. Canada, Esq.	Special Counsel

The following resolution was offered by Michael Paparian, seconded by Theresa M. Ries to wit:

Resolution No. 0519-

RESOLUTION AUTHORIZING THE EXECUTION BY ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN MORTGAGE AND RELATED DOCUMENTS IN CONNECTION WITH THE 122 2ND STREET ASSOC., LLC PROJECT.

WHEREAS, Albany County 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 178 of the 1975 Laws of New York, as amended, constituting Section 903-b 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 July 1, 2015 (the “Lease Closing”), the Agency granted certain financial assistance to 122 2nd Street Assoc., LLC (the “Company”) to assist in financing a project (the “Project”) consisting of the following: (A) (1) the acquisition of an interest in a parcel of land containing approximately .41 acres and located at 142 State Street (currently Tax Map # 76.33-1-14) in the City of Albany, Albany County, New York (the “Land”), together with the existing facility located thereon containing approximately 180,000 square feet of space (the “Facility”), (2) the renovation and reconstruction of the Facility, and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property, including without limitation, tenant improvement and finish (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 by the Company, to constitute a hotel, restaurant and banquet facility and to be operated by the Company as a hotel, restaurant and banquet facility 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 (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, the Company executed and delivered to the Agency (A) a certain lease to agency dated as of June 1, 2015 (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 “Premises”); and (B) a bill of sale dated as of June 1, 2015 (the “Bill of Sale to Agency”), which conveyed to the Agency all right, title and interest of the Company in the Equipment; and

WHEREAS, in order to finance a portion of the costs of the Project, the Company obtained a loan (the “Loan”) from Pioneer Savings Bank (the “Lender”), which Loan was secured by a mortgage, assignment of rents, security agreement and fixture filing dated as of July 1, 2015 (the “Mortgage”) from the Agency and the Company to the Lender; and

WHEREAS, by correspondence dated May 8, 2019 (the “Request”), which Request is attached hereto as Exhibit A, the Agency was informed that the Company intends to replace the Loan with a new loan (the “New Loan”) from a commercial bank (the “New Lender”), which New Loan will be secured by a mortgage (the “New Mortgage”) from the Agency and the Company to the New Lender; and

WHEREAS, in connection with the Request, the Company would like the Agency to enter into the New Mortgage and any other security documents and related documents (collectively, the “New Financing Documents”); and

WHEREAS, in connection with the execution and delivery of the New Financing Documents, the Agency will not be providing any benefits to the Company via exemption from the mortgage recording tax; 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 ALBANY COUNTY 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)(23), 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) The Agency will not be granting any mortgage recording tax exemption relating to the Request.

(C) 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) approval of the form of the New Financing Documents, by Agency Counsel and Agency Special Counsel, (B) completion by Agency staff of the internal review of the Project, (C) receipt by the Chair of (1) the Agency's administrative fee relating to the Request, if any, and (2) counsel's fees relating to the Request, and (D) satisfaction of the following additional conditions: **None**, the Agency hereby approves the Request and authorizes the execution by the Agency of the New Financing Documents.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chairman (or Vice Chairman) of the Agency is hereby authorized to execute and deliver the New Financing Documents to the Company, 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 substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) 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 New Financing 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 New Financing Documents 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:

Hon. William M. Clay	VOTING	<u>YES</u>
Hon. Joseph E. O'Brien	VOTING	<u>YES</u>
Michael Paparian	VOTING	<u>YES</u>
Theresa M. Ries	VOTING	<u>YES</u>
Marlene McTigue	VOTING	<u>YES</u>
Anton Dreslin	VOTING	<u>YES</u>
Douglas Roether	VOTING	<u>YES</u>

The foregoing Resolution was thereupon declared duly adopted.

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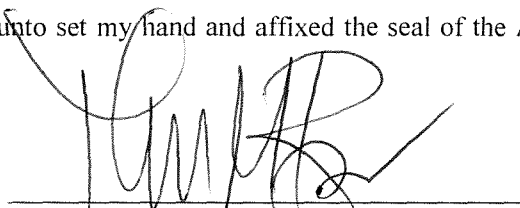
STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

I, the undersigned (~~Assistant~~) Secretary of Albany County 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 May 15, 2019 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 15th day of May, 2019.



(~~Assistant~~) Secretary

(SEAL)

EXHIBIT A
REQUEST FROM 122 2ND STREET ASSOC., LLC

- SEE ATTACHED -

SCIOCCHETTI & ABBOTT, PLLC

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Suite 102
Latham, New York 12110
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Lisa T. Newkirk, Esq.
lnewkirk@pvs.law.com

May 10, 2019

Hon. William M. Clay, Chairman
Albany County Industrial Development Agency
112 State Street, Room 740
Albany, New York 12207

Re: 122 2nd Street, Watervliet, NY 12189
Request to Refinance – 122 2nd Street Assoc., LLC

Dear Mr. Clay:

The above referenced parcel, 122 2nd Street, Watervliet, NY 12189 (the "Premises"), was purchased by 122 2nd Street Assoc., LLC (the "Company") on December 22, 2014. Subsequent to the acquisition, Company financed the Premises with Pioneer Savings Bank to provide for the rehabilitation of the property. At that time, the Albany County Industrial Development Agency ("IDA") approved financial assistance for the acquisition, reconstruction and rehabilitation, purchase and installation of machinery and equipment of the "Project Facility" (as defined in the Projects Benefits Agreement dated as of July 1, 2015) by way of a real property tax abatement (PILOT Agreement), sales tax exemption and mortgage tax exemption. The principal amount of the loan which closed as of July 1, 2015 was \$6,878,500.00. Thereafter, the construction loan was increased and a second construction loan mortgage, in the principal amount of \$360,000.00, closed on November 2, 2017 with IDA participation.

The project has reached stabilization, and the Project Facility has been fully completed. As such, the principals desire to refinance. There is no change in the use of the Project Facility which continues to be owned and operated by Company as a mixed-use, retail/residential facility with 63 apartment units and other directly and indirectly related activities. All requirements of the Projects Benefits Agreement and accompanying 2015 IDA closing documents have been met and/or satisfied.

On behalf of the Company, we request the IDA's consent to refinance the above referenced mortgage loans with Walker & Dunlop, LLC for a permanent loan in the approximate amount of \$9,000,000.00, to be secured by a first lien on the Premises under the Fannie Mae Multifamily Delegated Underwriting and Servicing Product (the "DUS Program").

Please advise if you have any questions regarding this request or need any additional information.

Very truly yours,

SCIOCCHETTI & ABBOTT, PLLC


Lisa T. Newkirk

LTN:b

cc: 122 2nd Street Assoc., LLC