CLOSING ITEM	NO.: A-9
	CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY
	AND
	HARMONY MILLS SOUTH LLC,
	UNIFORM AGENCY PROJECT AGREEMENT
	DATED AS OF AUGUST 1, 2019
	ELATING TO FINANCIAL ASSISTANCE GRANTED BY THE GENCY WITH RESPECT TO A CERTAIN PROJECT LOCATED

AT 90 STATE STREET IN THE CITY OF ALBANY, ALBANY COUNTY, NEW YORK.

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UNIFORM AGENCY PROJECT AGREEMENT

THIS UNIFORM AGENCY PROJECT AGREEMENT dated as of August 1, 2019 (the "Uniform Agency Project Agreement") by and between CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York (the "State") having an office for the transaction of business located at 21 Lodge Street, Albany, New York 12207 (the "Agency") and HARMONY MILLS SOUTH LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having an office for the transaction of business located at 90 State Street, Albany, New York (the "Company");

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York, as amended; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; 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, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 325 of the Laws of 1974 of the State, as amended, codified as Section 903-a of the General Municipal Law of the State (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in June, 2019, Harmony Mills South LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of New York, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a 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 0.38 acre parcel of land located at 90 State Street in the City of Albany, Albany County, New York (tax map no. 76.42-1-5) (the "Land"), together with the existing 15 story building located thereon containing approximately 233,753 square feet of space (the "Facility"), (2) the renovation and reconstruction of portions of the Facility and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (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 and to constitute a mixed use residential/commercial/retail facility, containing approximately one hundred fifty-four (154) residential apartment units, 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 (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, by resolution adopted by the members of the Agency on July 18, 2019 (the "Public Hearing Resolution"), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the "Public Hearing") pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on July 26, 2019 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted (1) on July 26, 2019 at Albany City Hall located at 24 Eagle Street in the City of Albany, Albany County, New York, as well as on the Agency's website, (C) caused notice of the Public Hearing to be published on July 30, 2019 in the Albany Times Union, a newspaper of general circulation available to the residents of the City of Albany, New York, (D) conducted the Public Hearing on August 14, 2019 at 12:00 o'clock p.m., local time at the offices of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York, and (E) prepared a report of the Public Hearing (the "Public Hearing Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; 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 (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on August 22, 2019 (the "SEQR Resolution"), the Agency (A) concurred in the determination that the City of Albany Planning Board (the "Planning Board") is the "lead agency" with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Planning Board issued on November 16, 2017 (the "Negative Declaration"), in which the Planning Board determined that the Project would not have a significant adverse environmental impact on the environment, and therefore, that an environmental statement need not be prepared with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on August 22, 2019 (the "Commercial/Retail Finding Resolution"), the Agency (A) determined that the Project constituted a "commercial project" within the meaning of the Act, (B) found that although the Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act because the Project Facility is located in census tract 11 which is contiguous to census tract 1, 8 and 25 which are in a highly distressed area, (C) determined, following a review of the Public Hearing Report, that the Project would serve the public purposes of the Act by preserving permanent private sector jobs in the State of New York, and (D) determined that the Agency would proceed with the Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Project by the Agency unless and until the Mayor of City of Albany, as chief executive officer of City of Albany, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Project; and

WHEREAS, by resolution adopted by the members of the Agency on August 22, 2019 (the "Pilot Deviation Approval Resolution"), the members of the Agency determined to deviate from the Agency's uniform tax exemption policy with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on August 22, 2019 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of August 1, 2019 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, by certificate dated August 27, 2019 (the "Public Approval"), the Mayor, as chief executive officer of the City of Albany, New York, approved the proposed action to be taken by the Agency with respect to the Project for purposes of Section 862(2)(c) of the Act; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of August 1, 2019 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease 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 August 1, 2019 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (a) a license to enter 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 August 1, 2019 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver (1) a certain payment in lieu of tax agreement dated as of August 1, 2019 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree 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 August 1, 2019 (the "Uniform Agency Project Agreement") relating to the granting of the Financial Assistance by the Agency to the Company, (D) the Agency will file with the assessor and mail 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 will execute and deliver 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 will file 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"); and

WHEREAS, (A) the Agency has established certain policies allowing denial of Financial Assistance to any project which does not deliver the public benefits promised at the time said project was

approved by the Agency (the "Public Benefits"), (B) the Agency is unwilling to grant Financial Assistance to a project unless the beneficiary of such project agrees that the amount of Financial Assistance to be received by such beneficiary with respect to such project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of such project in delivering the promised Public Benefits, and (C) the Agency has created this Uniform Agency Project Agreement in order to establish the conditions under which the Agency will be entitled to recapture some or all of the Financial Assistance that has been granted to the Company under the Basic Documents if the Project is unsuccessful in whole or in part in delivering the promised Public Benefits; and

WHEREAS, the Company desires to receive certain Financial Assistance from the Agency with respect to the Project, and accordingly is willing to enter into this Uniform Agency Project Agreement in order to secure such Financial Assistance from the Agency: and

WHEREAS, all things necessary to constitute this Uniform Agency Project Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Uniform Agency Project Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS TO WIT:

ARTICLE I

DEFINITIONS

SECTION 1.01. DEFINITIONS. All capitalized terms used herein and not otherwise defined herein shall have the same meanings as set forth in the Lease Agreement. The following words and terms used in this Uniform Agency Project Agreement shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent.

"Application" means the application submitted by the Company to the Agency in June, 2019 with respect to the Project, a copy of which is attached as Schedule D, in which the Company (A) described the Project, (B) requested that the Agency grant certain Financial Assistance with respect to the Project, and (C) indicated the Public Benefits that would result from approval of the Project by the Agency.

"Basic Documents" shall have the meaning set forth in the Lease Agreement, and includes this Uniform Agency Project Agreement.

"Community Commitments" means the community commitments described in Schedule F to this Uniform Agency Project Agreement.

"Completion Date" means the earlier to occur of (A) December 31, 2022 or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement, or (C) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

"Contract Employee" means (A) a full-time, private-sector employee (or self-employed individual) that is not on the Company's payroll but who has worked for the Company at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee, or (B) 2 part-time, private-sector employees (or self-employed individuals) that are not on the Company's payroll but who have worked for the Company at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee.

"Conveyance Documents" shall have the meaning set forth in the Lease Agreement.

"Equipment" shall have the meaning set forth in the Lease Agreement.

"Facility" shall have the meaning set forth in the Lease Agreement.

"Financial Assistance" means exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes as more particularly described in the Basic Documents.

"Full Time Equivalent Employee" means (A) a full-time, permanent, private-sector employee on the Company's payroll, who has worked at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (B) two part-time, permanent, private-sector employees on Company's payroll, who have worked at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks and who are entitled to

receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (C) a Contract Employee.

"Initial Employment Plan" means the initial plan, based on the employment projections contained in the Application, regarding the number of people expected to be employed at the Project Facility and certain other matters, in substantially the form attached as Exhibit G to the Lease Agreement.

"Land" means an approximately 0.38 acre parcel of land located at 90 State Street in the City of Albany, Albany County, New York.

"Lease Agreement" means the lease agreement dated as of August 1, 2019 by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

"Payment in Lieu of Tax Agreement" means the payment in lieu of tax agreement dated as of August 1, 2019 by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility, as such agreement may be amended or supplemented from time to time.

"Project" shall have the meaning set forth in the Lease Agreement.

"Project Facility" means, collectively, the Land, the Facility, and the Equipment.

"Recapture Events" shall mean the following:

- (1) failure to complete the acquisition, construction, and installation of the Project Facility;
- (2) failure by the Company to meet at least eighty percent (80%) of the Employment Level requirements contained in Section 3.02(E) hereof and in the Application or the Initial Employment Plan;
- (3) liquidation of substantially all of the Company's operating assets and/or cessation of substantially all of the Company's operations;
- (4) relocation of all or substantially all of Company's operations at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility;
- (5) transfer of jobs equal to at least fifteen percent (15%) of the Company's Employment Level out of the City of Albany, New York;
- (6) failure by the Company to comply with the annual reporting requirements or to provide the Agency with requested information;
 - (7) sublease of all or part of the Project Facility in violation of the Basic Documents;
- (8) a change in the use of the Project Facility, other than as residential rental housing facility and other directly and indirectly related uses;

- (9) failure by the Company to provide, or cause to be provided, the "Community Commitments" described in Section 3.01(B)(3) hereof; or
- (10) failure by the Company to make an actual investment in the Project by the Completion Date equal to or exceeding 90% of the Total Project Costs as set forth in the Application.

"Recapture Period" means the approximate twenty-three (23) year period ending on December 31, 2042.

SECTION 1.02. INTERPRETATION. In this Uniform Agency Project Agreement, unless the context otherwise requires:

- (A) the terms "hereby", "hereof', "herein", "hereunder" and any similar terms as used in this Uniform Agency Project Agreement, refer to this Uniform Agency Project Agreement, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the date of this Uniform Agency Project Agreement;
- (B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;
- (C) words importing the singular number shall mean and include the plural number, and vice versa;
- (D) any headings preceding the texts of the several Articles and Sections of this Uniform Agency Project Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Uniform Agency Project Agreement nor affect its meaning, construction or effect; and
- (E) any certificates, letters or opinions required to be given pursuant to this Uniform Agency Project Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Uniform Agency Project Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant, and covenant as follows:

- (A) <u>Power</u>. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State to enter into this Uniform Agency Project Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement.
- (B) <u>Authorization</u>. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Uniform Agency Project Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery, and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.
- (C) <u>Conflicts</u>. The Agency is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 2.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant, and covenant as follows:

- (A) <u>Power</u>. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State and has the power under the laws of the State of New York to enter into this Uniform Agency Project Agreement and to perform and carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement, and by proper action of its members has been duly authorized to execute, deliver and perform this Uniform Agency Project Agreement.
- (B) <u>Authorization</u>. The Company is authorized and has the power under its articles of organization, operating agreement and the laws of the State of New York to enter into this Uniform Agency Project Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement. By proper action of its members, the Company has duly authorized the execution, delivery, and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.
- (C) <u>Conflicts</u>. The Company is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement by (and the execution, delivery and performance of this Uniform Agency Project Agreement, the consummation of the transactions

contemplated hereby and the fulfillment of and compliance with the provisions of this Uniform Agency Project Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization, operating agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Uniform Agency Project Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Uniform Agency Project Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) <u>Governmental Consent</u>. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery, or performance of this Uniform Agency Project Agreement by the Company or as a condition to the validity of this Uniform Agency Project Agreement.

ARTICLE III

COVENANTS AND AGREEMENTS

SECTION 3.01. FINANCIAL ASSISTANCE. (A) <u>Financial Assistance</u>. In the Application or Initial Employment Plan, the Company certified to the Agency employment information with respect to the Project Facility, and the operations of the Company. In reliance on the certifications provided by the Company in the Application or Initial Employment Plan, the Agency agrees to provide the Company with the following Financial Assistance related to the Project:

(1) sales and use tax exemptions (estimated): \$925,400

(2) a real property tax exemption (estimated): \$6,930,175

(3) a mortgage recording tax exemption (estimated): \$173,512

- (B) <u>Description of Project and Public Purpose of Granting Financial Assistance to the Project</u>. In the Application and in the discussions had between the Company and the Agency with respect to the Company's request for Financial Assistance from the Agency with respect to the Project, the Company has represented to the Agency as follows:
 - (1) That the Project is described as follows: (a) the acquisition of an interest in an approximately 0.38 acre parcel of land located at 90 State Street in the City of Albany, Albany County, New York (tax map no. 76.42-1-5) (the "Land"), together with the existing 15 story building located thereon containing approximately 233,753 square feet of space (the "Facility"), (b) the renovation and reconstruction of portions of the Facility and (c) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (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 and to constitute a mixed use residential/commercial/retail facility, containing approximately one hundred fifty-four (154) residential apartment units, and any other directly and indirectly related activities.
 - (2) That the Project will furnish the following benefits to the residents of the City of Albany, New York (the "Public Benefits"): as described in Exhibit A to the Approving Resolution.
 - (3) That the Company will provide, or cause to be provided, the Community Commitments described in Schedule F hereof.
- (C) <u>Payment in Lieu of Tax Agreement</u>. A copy of the Payment in Lieu of Tax Agreement is attached as Schedule C. The attached Payment in Lieu of Tax Agreement describes the dates the payments in lieu of taxes are to be made and includes a table describing the amount of payments in lieu of taxes to be made.
- (D) <u>Contingent Nature of the Financial Assistance</u>. Notwithstanding the provisions of Section 3.01(A) of this Uniform Agency Project Agreement, the Agency and the Company agree that the amount of Financial Assistance to be received by the Company with respect to the Project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of the Project in delivering the promised Public Benefits.

(E) <u>Application</u>. The Company represents and warrants that the information contained in the Application is true and correct.

SECTION 3.02. COMPANY AGREEMENTS. The Company hereby agrees as follows:

- (A) <u>Filing Closing</u>. To file with the Agency, prior to the Closing Date, the Initial Employment Plan.
- (B) <u>Filing Annual</u>. To file with the Agency, on an annual basis, within sixty (60) days after the end of each calendar year, a report regarding the number of people employed at the Project Facility and certain other matters as required under Applicable Law, an annual employment verification/compliance report (the "Annual Verification Report," in substantially the form attached hereto as Schedule E).
- (C) <u>Employment Listing</u>. To list new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)).
- (D) <u>Employment Consideration</u>. Except as otherwise provided by collective bargaining agreement, the Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.
- (E) <u>Employment Level</u>. (1) To maintain, as described in the Application or Initial Employment Plan, the following employment level (the "Employment Level") during the term of the Uniform Agency Project Agreement, as follows:

Year		Total Employees		
2019-2022		Not Applicable		
	2023 and thereafter	5 Full Time Equivalent Employees		

- (2) (a) To verify that the Employment Level is being achieved at the Project Facility and the information contained in the Annual Verification Report, the Company is required to submit, or cause to be submitted, within sixty (60) days after the end of each calendar year: a form NYS-45 as of the last payroll date in the month of December (the "Quarterly Report," a copy of which is attached hereto as Schedule A and, together with the Annual Verification Report described in Section 3.02(B) above, being collectively referred to as the "Employment Affidavits") or some other form that is explicitly approved by the Agency. Full Time Equivalent Employees for each calendar year during the term of this Uniform Agency Project Agreement shall be the number reported in the Employment Affidavits delivered by the Company pursuant to Section 3.02(B) and this Section 3.02(E)(2).
 - (b) In the event that some or all of the Full Time Equivalent Employees employed at the Project Facility constitute Contract Employees, it shall be the responsibility of the Company to deliver, or cause to be delivered, the Quarterly Reports of the employers relating to such Contract Employees. The Company hereby agrees to

provide such Quarterly Reports in accordance with the terms contained in Section 3.02(E)(2)(a) above.

- (F) <u>Non-Discrimination</u>. (1) At all times during the term of this Uniform Agency Project Agreement, the Company shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Company shall use its best efforts to ensure that employees and applicants for employment with the Company or any subtenant of the Project Facility are treated without regard to their race, color, creed, age, sex, or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.
 - (2) The Company agrees that, in all solicitations or advertisements for employees placed by or on behalf of the Company during the term of this Uniform Agency Project Agreement, the Company will state in substance that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.
- (G) <u>Information</u>. Whenever requested by the Agency, to provide and certify or cause to be provided and certified by third party vendors, such information concerning the Company, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to verify and confirm the reports submitted by the Company pursuant to this Uniform Agency Project Agreement.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

SECTION 4.01. EVENTS OF DEFAULT DEFINED. (A) The following shall be "Events of Default" under this Uniform Agency Project Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Uniform Agency Project Agreement, any one or more of the following events:

- (1) A default in the performance or observance of any of the covenants, conditions or agreements on the part of the Company in this Uniform Agency Project Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.
 - (2) The occurrence of an "Event of Default" under any other Basic Document.
- (3) Any representation or warranty made by the Company herein or in any other Basic Document proves to have been false at the time it was made.

SECTION 4.02. REMEDIES ON DEFAULT. (A) Whenever any Event of Default hereunder shall have occurred, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

- (1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 of the Lease Agreement, and (b) all other payments due under this Uniform Agency Project Agreement or any of the other Basic Documents; or
- (2) terminate the Lease Agreement and the Payment in Lieu of Tax Agreement and convey to the Company all the Agency's right, title and interest in and to the Project Facility (the conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the delivery by the Agency of the Termination of Lease to Agency and the Bill of Sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title); or
- (3) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements, or covenants of the Company under this Uniform Agency Project Agreement.
- (B) No action taken pursuant to this Section 4.02 (including repossession of the Project Facility) shall relieve the Company from its obligations to make any payments required by this Uniform Agency Project Agreement and the other Basic Documents.

SECTION 4.03. RECAPTURE OF FINANCIAL ASSISTANCE. (A) <u>General</u>. Upon the occurrence of a Recapture Event that occurs during the Recapture Period, the Agency may require the Company to provide for the recapture of the project financial assistance provided as of the date of determination (the "Project Financial Assistance"), all in accordance with the terms of this Section 4.03. The Company

hereby agrees, if requested by the Agency, to pay within thirty (30) days to the Agency the recapture of the Project Financial Assistance, as provided in this Section 4.03.

- (B) <u>Project Financial Assistance to be Recaptured</u>. The Project Financial Assistance to be recaptured, as adjusted by the provisions of Section 4.03(C) below, by the Agency from the Company upon the occurrence of a Recapture Event during a Recapture Period shall be an amount equal to a percentage (as provided in subsection (C) below) multiplied by the sum of the following:
 - (1) the portion of the amount of New York State sales and use taxes allocable to Albany County that the Company would have paid as of the date of determination in connection with the undertaking of the Project if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency;
 - (2) the amount of any mortgage recording tax exemption provided by the Agency to the Company in connection with the undertaking of the Project (i.e., excluding the transit authority portion of the mortgage recording tax which the Agency has not provided an exemption); and
 - (3) the difference between the amount of the payment in lieu of tax payments paid by the Company under the Payment in Lieu of Tax Agreement and the amount of the general real property ad valorem taxes that would have been payable by the Company to the Taxing Entities if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency.
- (C) <u>Amount of Project Financial Assistance to be Recaptured</u>. Upon the occurrence of a Recapture Event, the Company shall pay to the Agency the following amounts as recapture:

Year	Amount of Recapture
2019	100% of the Project Financial Assistance
2020	100% of the Project Financial Assistance
2021	100% of the Project Financial Assistance
2022	100% of the Project Financial Assistance
2023	95% of the Project Financial Assistance
2024	90% of the Project Financial Assistance
2025	85% of the Project Financial Assistance
2026	80% of the Project Financial Assistance
2027	75% of the Project Financial Assistance
2028	70% of the Project Financial Assistance
2029	65% of the Project Financial Assistance
2030	60% of the Project Financial Assistance
2031	55% of the Project Financial Assistance
2032	50% of the Project Financial Assistance
2033	45% of the Project Financial Assistance
2034	40% of the Project Financial Assistance
2035	35% of the Project Financial Assistance
2036	30% of the Project Financial Assistance
2037	25% of the Project Financial Assistance
2038	20% of the Project Financial Assistance
2039	15% of the Project Financial Assistance
2040	10% of the Project Financial Assistance

2041	5% of the Project Financial Assistance
2042	0% of the Project Financial Assistance

- (D) <u>Redistribution of Project Financial Assistance to be Recaptured</u>. Upon the receipt by the Agency of any amount of Project Financial Assistance pursuant to this Section 4.03, the Agency shall redistribute such amount within thirty (30) days of such receipt to the Taxing Entity that would have received such amount but for the granting by the Agency of the Project Financial Assistance.
- (E) <u>Survival of Obligations</u>. The Company acknowledges that the obligations of the Company in this Section 4.03 shall survive the conveyance of the Project Facility to the Company and the termination of the Lease Agreement.
- (F) Agency Review of Recapture Determination. The Agency's determination to recapture all or a portion of the Project Financial Assistance shall be made by the Agency after an evaluation of the criteria for recapture set forth in the Agency's "Recapture Benefits Policy" as in effect as of the Closing Date (a copy of which policy is attached hereto as Schedule B). If the Agency determines that a Recapture Event has occurred, it shall give notice of such determination to the Company. The Company shall have thirty (30) days from the date the notice is deemed given to submit a written response to the Agency's determination and to request a written and/or oral presentation to the Agency why the proposed recapture amount should not be paid to the Agency. The Company may make its presentation at a meeting of the Agency. The Agency shall then vote on a resolution recommending (i) a termination of Financial Assistance, (ii) a recapture of Financial Assistance, (iii) both a termination and a recapture of Finance Assistance, (iv) a modification of Financial Assistance or (iv) no action.
- SECTION 4.04. LATE PAYMENTS. (A) One Month. If the Company shall fail to make any payment required by this Uniform Agency Project Agreement within thirty days of the date that written notice of such payment is sent from the Agency to the Company at the address provided in Section 5.05 of this Uniform Agency Project Agreement, the Company shall pay the amount specified in such notice together with a late payment penalty equal to five percent (5%) of the amount due.
- (B) Thereafter. If the Company shall fail to make any payment required by this Uniform Agency Project Agreement when due and such delinquency shall continue beyond the thirty days after such notice, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the Agency until such payment in default shall have been made in full, and the Company shall pay the same to the Agency together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.
- SECTION 4.05. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. If the Company should default in performing any of its obligations, covenants or agreements under this Uniform Agency Project Agreement and the Agency should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency within thirty (30) days not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

- SECTION 4.06. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Uniform Agency Project Agreement or now or hereafter existing at law or in equity or by statute.
- (B) <u>Delay</u>. No delay or omission in exercising any right or power accruing upon the occurrence of a Recapture Event or an Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.
- (C) <u>Notice Not Required</u>. In order to entitle the Agency to exercise any remedy reserved to it in this Uniform Agency Project Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Uniform Agency Project Agreement.
- (D) <u>No Waiver</u>. In the event any provision contained in this Uniform Agency Project Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release, or modification of this Uniform Agency Project Agreement shall be established by conduct, custom, or course of dealing.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. TERM. This Uniform Agency Project Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the execution and delivery of this Uniform Agency Project Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Uniform Agency Project Agreement shall continue to remain in effect until December 31, 2042.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Uniform Agency Project Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Uniform Agency Project Agreement may not be effectively amended, changed, modified, altered, or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, property addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) <u>Addresses</u>. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Harmony Mills South LLC 90 State Street Albany, New York 12207 Attention: Uri Kaufman, Manager

WITH A COPY TO:

Law Office of Nadine F. Shadlock 12 Van Rensselaer Boulevard Albany, New York 12204 Attention: Nadine F. Shadlock, Esq.

IF TO THE AGENCY:

City of Albany Industrial Development Agency 21 Lodge Street Albany, New York 12207 Attention: Chair

WITH A COPY TO:

Office of the Corporation Counsel City Hall, Eagle Street - Room 106 Albany, New York 12207 Attention: William G. Kelly, Jr., Esq.

and

Hodgson Russ LLP 677 Broadway, Suite 301 Albany, New York 12207 Attention: A. Joseph Scott, III, Esq.

(C) <u>Change of Address</u>. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Uniform Agency Project Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Uniform Agency Project Agreement are intended to be for the benefit of the Agency.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Uniform Agency Project Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Uniform Agency Project Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Uniform Agency Project Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Uniform Agency Project Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 5.10. SURVIVAL OF OBLIGATIONS. The obligations of the Company to make the filings and listings required by Section 3.02 hereof shall survive the termination of this Uniform Agency Project Agreement, and all such filings and reports after such termination shall be made upon demand of the party to whom such filings and reports are due.

IN WITNESS WHEREOF, the Agency and the Company have caused this Uniform Agency Project Agreement to be executed in their respective names by duly authorized officers thereof, all being done

done as of the date first above written.	aminos ey duzy municiped carrons univers, uni comig
	Y OF ALBANY INDUSTRIAL /ELOPMENT AGENCY
BY:	Chair
HAI	RMONY MILLS SOUTH LLC
BY:	Uri Kaufman, Manager
perjury, that the Company is in substantial compl protection and environmental laws, rules and regulati	Act, the Company hereby certifies, under penalty of iance with all local, state and federal tax, worker

IN WITNESS WHEREOF, the Agency and the Company have caused this Uniform Agency Project Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL	,
DEVELOPMENT AGENCY	

BY: (Vice) Chair

HARMONY MILLS SOUTH LLC

Uri Kaufman, Manager

SPECIAL PROJECT CERTIFICATION

As required under Section 859-a(6) of the Act, the Company hereby certifies, under penalty of perjury, that the Company is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

HARMONY MILLS SOUTH LLC

 $RV \cdot$

Uri Kaufman, Manager

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

On the 28th day of August, in the year 2019, before me, the undersigned, personally appeared TRACY L. METZGER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Meredith L. Malark
Notary Public, State of New York
Qualified in Albany County
No. 01MA6212870
Commission Expires October 26, 2021

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

On the day of August, in the year 2019, before me, the undersigned, personally appeared URI KAUFMAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

ANDREW N WILLIAMS
Notary Public - State of New York
NO. 01WI6395683
Qualified in New York County
My Commission Expires Jul 29, 2023

SCHEDULE A

NYS-45 QUARTERLY REPORT

NYS-45 _(1/19)	Quarterly Combined With And Unemploymer			B, 🐠			10445
Reference these numbers in all correspondence:	Mark an	X in o	nly one box to indicate the qu			413	7194713
UI Employer registration number	Jan 1 -	1 		4 11-11	ear. YY	For office u	
Withholding identification number	Mar 31		un 30 Sep 30 De nt health insurance benefit	na 31 : Year -			
Employer legal name:	availab	le to a	ny employee?	Yes N	lo i s	Received	i riate
	if seaso	onal e	mployer, mark an X in the	box			
Number of employees Enter the number of full-time and part-time cover employees who worked during or received pay for the week that includes the 12th day of each mon	or		b. Second month	c. Third month	9k DI	Al Si	WT SK
Part A - Unemployment insurance	(UI) information	Pai	t B - Withholding ta	x (WT) inf	ormation		
1. Total remuneration paid this	. 00		New York State				
quarter 2. Remuneration paid this quarter in excess of the UI wage base sinca January 1 (see instr.)	.00	13.	tax withheld New York City tax withheld			• .	
Wages subject to contribution (subtrect line 2 from line 1)	• 00		Yonkers tax withheld	•			
4. UI contributions due Enter your UI rate %			Total tax withheld (add lines 12, 13, and 14)				
5. Re-employment service fund (multiply line 3 × .00075)	A CONTRACTOR OF THE CONTRACTOR		WT credit from previous quarter's return (see instr.)			andri Allingi Line all Mag	
UI previously underpaid with Interest		17.	Form NYS-1 payments made for quarter			•	
7. Total of lines 4, 5, and 6	en e	18.	Total payments (add lines 16 and 17)				
8. Enter UI previously overpaid	•	19.	Total WT amount due (If line 15 is greater than line 18, enter difference)			•	
9. Total UI amounts due (# line 7 is groater than line 8, anter difference)	i de la companya de l		Total WT overpaid (If line 18 is greater than line 15, enter difference here and mark an X in 20e or 20b)*				
10. Total UI overpaid (# line 8 is greater than line 7, enter difference and mark box 11 below)*	en el giorni el marcoli de la compania de la compa Compania de la compania de la compa	20a.	Apply to outstanding liabilities and/or refund	or	20b. Credit to s withholdir	ext quarter	
11. Apply to outstanding liabilities and/or refund			dd lines 9 and 19; make one				
	· ·		S Employment Contribution			• .	
* An overpayment of either L		-			mount due	for the	other.
	Complete Parts D and E			····			
Que	Part C – Employee wage arterly employee/payee wage						
	es or if reporting other wages, a	to no			te Form NYS	S-45-ATT.	•
a Social Security number b Last	name, first name, middle initial	c	Fotal Ul remuneration paid this quarter	d Gross te	Seral wages or (see msinidions)	e Totali	MYS.NYC. a erstax withhe
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Part D - Form NYS-1 corrections/additions

Use Part D **only** for corrections/additions for the quarter being reported in Part B of **this** return. To correct original withholding information reported on Form(s) NYS-1, complete columns a, b, c, and d. To report additional withholding information not previously submitted on Form(s) NYS-1, complete **only** columns c and d. Lines 12 through 15 on the front of this return **must reflect these corrections/additions**.

a Original last payroll date reported on Form NYS-1, line A (mmdd)	b Original total withheld reported on Form NYS-1, line 4	c Correct last payroll date (mmdd)	d Correct lotal withheld
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This line is not in use for thi	Part E - Change of but s quarter. I paying wages, enter the date (mmddyy) o		
If you sold or transferred a	all or part of your business:		
	ether in whole or in part		
	below about the acquiring entity		
Legal name			EIN
Address		······································	
			at 518-485-6654; for your unemployment insur oll service, the section below must be complete
Preparer's signature	Date	Preparer's NYTPRIN	Preparer's SSN or PTIN NYTPRIN

preparer's	Preparer's signature		Date	Preparer's NYTPRIN	Preparer's SSN or PTIN	NYTPRIN excl. code
	Preparer's firm name (or yours, if self-employed)	Address		F	irm's ElN	Telephone number
Payroll service's name					Pawoll celling Service's EIN	27.1.

Checklist for mailing:

- File original return and keep a copy for your records.
 Complete lines 9 and 19 to ensure proper credit of payment.
- Enter your withholding ID number on your remittance.
 Make remittance payable to NYS Employment Contributions and Taxes.
 Enter your telephone number in boxes below your signature.
 See Need help? on Form NYS-45-I if you need forms or assistance.

Mail to:

NYS EMPLOYMENT CONTRIBUTIONS AND TAXES PO BOX 4119 **BINGHAMTON NY 13902-4119**

NYS-45 (1/19) (back)

SCHEDULE B

RECAPTURE BENEFITS POLICY

PART 25

POLICY RESPECTING RECAPTURE OF PROJECT BENEFITS

SECTION 2501. PURPOSE AND JUSTIFICATION. (A) The purpose of this Policy is to outline the procedures utilized by City of Albany Industrial Development Agency (the "Agency") to review compliance with (1) the requirements of the Agency relating to job creation and/or retention, other expected public benefits and reporting and (2) the requirements of the State of New York (the "State") relating to sales tax exemptions and reporting.

- (B) The Agency was created pursuant to Section 903-a of Title 2 of Article 18-A of the General Municipal Law and Title 1 of Article 18-A the General Municipal Law (collectively, the "Act") for the purpose of promoting employment opportunities for, and the general prosperity and economic welfare of, residents of the City of Albany and the State. Under the Act, the Agency was created in order to advance the job opportunities, health, general prosperity, and economic welfare of the residents of the City of Albany, New York (the "City") and of the State.
- (C) The Agency has been advised that a number of other industrial development agencies have adopted policies that (1) contain provisions allowing the industrial development agency to recapture certain financial benefits provided by said agency to a project applicant if said project applicant does not fulfill certain job creation promises contained in its application or fails to fulfill certain other promises made to said agency and (2) allow said agency to take into account exigent circumstances in deciding whether to exercise these provisions respecting the recapture of said financial benefits.
- (D) Chapter 59 of the Laws of 2013 (Part J), effective March 28, 2013 (the "2013 Budget Law"), enacted March 28, 2013, established new recordkeeping, reporting, and recapture requirements for industrial development agency projects that receive sales tax exemptions.
- (E) The new sales tax recording and reporting requirements required by the 2013 Budget Law include the following: (1) a requirement to keep records of the amount of sales tax benefits provided to each project and make those records available to the State upon request; (2) a requirement to report to the State, within 30 days after providing financial assistance, the amount of sales tax benefits intended to be provided to a project; and (3) a requirement that the Agency post on the internet and make available without charge copies of its resolutions and agreements appointing an agent or project operator or otherwise related to any project it establishes. A project operator ("Project Operator") is appointed by the Agency through the filing of form ST-60 with the New York State Department of Taxation and Finance.
- (F) The 2013 Budget Law requires that the Agency recapture State sales tax benefits where: (1) the project is not entitled to receive those benefits; (2) the exemptions exceed the amount authorized or are claimed for unauthorized property or services; or (3) the Project Operator failed to use property or services in the manner required by its agreements with the Agency.
- (G) For purposes of this Policy, with respect to a particular calendar year and a particular project, the term "financial assistance" shall include the following:

- (1) Proceeds of debt obligations issued by the Agency with respect to said project have been disbursed during the calendar year in question.
- (2) Any tax exemption or abatement (a) which may have directly or indirectly benefitted the project or Project Operator shall during such calendar year and (b) which resulted from (i) the Agency's title to, possession of or, control of or other interest in said project, or (ii) the designation by the Agency of said project occupant (or any sublessee, contractor, supplier or other operator of the project) as an agent of the Agency.
- (3) Any grant made by the Agency with respect to said project or Project Operator shall during such calendar year.
- (4) Any loan made by the Agency with respect to said project or Project Operator shall during such calendar year.
- (H) For purposes of this Policy, with respect to a particular project, the term "Project Agreements" shall mean the project documents between the Agency and an applicant with respect to the applicant's project. In addition to a lease agreement or installment sale agreement between the Agency and the applicant, the Project Agreements may also include a payment in lieu of tax agreement, a project agreement, and one or more recapture agreements, as well as security agreements intended to ensure compliance by the applicant with the requirements of the Project Agreements.

SECTION 2502. REQUIREMENTS FOR APPLICANTS. (A) Under the Act, the Agency is required to submit certain annual reports relating to Agency projects to the New York State Office of the Comptroller. In order to satisfy its annual reporting requirements and other requirements under the Act and certain other requirements imposed by the Act, as well as the new requirements imposed upon the Agency by the 2013 Budget Law, the Agency will require each applicant for financial assistance from the Agency agree to satisfy the following requirements as a condition to the receipt of such financial assistance:

- (1) Any applicant requesting a sales tax exemption from the Agency must include in the application a realistic estimate of the value of the savings anticipated to be received by the applicant. Each applicant is hereby warned to provide a realistic estimate in the application, as the 2013 Budget Law and the regulations expected to be enacted thereunder are expected to require that the Agency recapture any benefit that exceeds the greater of (a) the amount listed in said application or (b) authorized by the Agency in a separate resolution.
- (2) Any applicant requesting a sales tax exemption from the Agency must agree to annually file (and cause any sublessee, contractor, supplier or other operator of the project to file annually) with the State, on a form and in such manner as is prescribed by the State, a statement of the value of all sales and use tax exemptions claimed by the applicant and all contractors, subcontractors, consultants and other agents of the applicant under the authority granted to the applicant by the Agency.
- (3) Any applicant requesting a sales tax exemption from the Agency must agree to furnish to the Agency a copy of each such annual report submitted to the State by the applicant or any sublessee, contractor, supplier or other operator of the project.
- (4) As required by the 2013 Budget Law, the Project Agreements will provide that any sales tax benefits determined by the Agency to be subject to recapture pursuant to the 2013

Budget Law must be remitted by the applicant to the Agency within 20 days of a request therefor by the Agency.

- (5) The applicant agrees that, as required by the 2013 Budget Law, the resolutions of the Agency with respect to the project and the Project Agreements will now be publicly available on the Agency's website. As provided in the New York Freedom of Information Law ("FOIL"), the applicant may request that certain information contained therein be redacted and, if the applicant can demonstrate to the satisfaction of the Agency that release of said information would result in substantial harm to the applicant's competitive position, the Agency may comply with such request.
- (6) Except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOC") and with the administrative entity (collectively with the DOC, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA"), as replaced by the Workforce Investment Act of 1998 (Public Law 105-220), in which the Project is located.
- (7) Except as otherwise provided by collective bargaining agreements, where practicable, the applicant will first consider persons eligible to participate in JTPA programs who shall be referred by JTPA Entities for new employment opportunities created as a result of the Project.
- (8) The applicant agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Applicant, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.
- (9) Within sixty (60) days after the end of each calendar year, the applicant shall furnish to the Agency a certificate of an Authorized Representative of the applicant stating that no event of default under the Project Agreements has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the applicant has taken or proposes to take with respect thereto, and setting forth the unpaid principal balance of the Bonds and accrued but unpaid interest thereon and that no defenses, offsets or counterclaims exist with respect to the indebtedness evidenced thereby.
- (10) The applicant shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.
- (11) The applicant agrees to file with the Agency, no later than sixty (60) days after the end of each calendar year, reports regarding the number of people employed at the project and certain other matters.
- (B) In order to ensure that the project will create the public benefits anticipated by the Agency accruing to the residents and taxpayers of the City, the Project Agreements will require that each Agency Project Operator agree that, annually, within 60 days of the end of each calendar year during which a project has received any financial assistance from the Agency, such Agency Project Operator will complete and file with the Agency an annual report (the "Operator Annual Report") describing the status of the project during the calendar year just completed, including such information as: jobs projected to be created/retained; estimated salary of jobs to be created/retained; current number of jobs; construction jobs

created through the year; exemptions from taxes and payments in lieu of tax made; status of local labor; and status of bond financing related to the project.

SECTION 2503. ENFORCEMENT.(A) The Agency will use the information contained in the Operator Annual Report, and may use site visits and follow-ups, to gauge the status of a project in relation to the original commitment of the applicant as stated in the project application.

- (B) Should the staff or board members of the Agency find significant deficiencies in any area; the project will be further reviewed. Examples of situations that may trigger review and/or action by the Agency include:
 - (1) If the Project Operator shifts production activity to a facility outside of the City and, as a result, fails to achieve the economic benefits projected;
 - (2) If the Project Operator moves all operations outside the City, neglects to move operations to the City, or the project does not otherwise conform to the project described in the Project Agreements;
 - (3) If a significant shortfall in economic benefits is identified, as compared with the application, such as a significant shortfall in new job creation/retention and/or expected major investments in the business;
 - (4) Failure to comply with annual reporting requirements or provide the Agency with requested information; or
 - (5) Closure of a project within the time period the applicant receives Agency financial assistance.
- (C) Should the staff or board members of the Agency find significant deficiencies in the achievement of the economic benefits promised as described in the application and the Project Agreements, the Project Operator will be asked to provide justification for said shortfalls. The board members of the Agency will compare these statements against industry standards, as well as the current market and economic conditions, to determine whether the Project Operator did all that it could to meet its obligations as outlined in the application and the Project Agreements.
- (D) The board members of the Agency will determine on a case by case basis whether a hearing is appropriate to allow a Project Operator to be heard on the issue regarding said Project Operator's failure to achieve the projected economic benefits.
- (E) Should the board members of the Agency find that (1) significant deficiencies in the achievement of the economic benefits promised as described in the application and the Project Agreements have occurred and (2) there appears to be no justification satisfactory to the Agency to explain these deficiencies, the Agency may determine to undertake any enforcement action available to the Agency under the Agency Agreements to seek redress for these deficiencies.
- (F) Enforcement action taken by the Agency under the Agency Documents may include, but shall not be limited to, the following:
 - (1) Requesting cure of the deficiency by a final notice letter.
 - (2) Forwarding an event of default notice under the Project Agreements.

- (3) Notifying appropriate New York State agencies of the Project Operator's failure to comply with such requirements.
 - (4) Terminating any or all of the Project Agreements early.
 - (5) Reducing the value of financial assistance moving forward.
 - (6) Terminating any future financial assistance.
- (7) Requiring that the value of all the financial assistance utilized to date to be repaid in full or in part.
- (G) In connection with the undertaking of a Project and/or the preparation of Project Agreements, the Agency also reserves the right to negotiate the terms and conditions of these recapture provisions.

SECTION 2504. EFFECTIVE DATE. This policy shall be effective with respect to any project undertaken by the Agency where receipt of the application for the project occurs after the date of approval of this Policy.

SCHEDULE C

COPY OF PAYMENT IN LIEU OF TAX AGREEMENT

CLOSING ITEM NO.	: A-7
Cl	TY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY
	AND
	HARMONY MILLS SOUTH LLC
	PAYMENT IN LIEU OF TAX AGREEMENT
	DATED AS OF AUGUST 1, 2019
	TING TO THE PREMISES LOCATED AT 90 STATE STREET IN ITY OF ALBANY, ALBANY COUNTY, NEW YORK.

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PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of August 1, 2019 (the "Payment in Lieu of Tax Agreement") by and between CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 21 Lodge Street, Albany, New York (the "Agency"), and HARMONY MILLS SOUTH LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 90 State Street, Albany, New York (the "Company");

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; 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, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 325 of the Laws of 1974 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in June, 2019, Harmony Mills South LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of New York, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a 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 0.38 acre parcel of land located at 90 State Street in the City of Albany, Albany County, New York (tax map no. 76.42-1-5) (the "Land"), together with the existing 15 story building located thereon containing approximately 233,753 square feet of space (the "Facility"), (2) the renovation and reconstruction of portions of the Facility and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (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 and to constitute a mixed use residential/commercial/retail facility, containing approximately one hundred fifty-four (154) residential apartment units, 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

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foregoing, including potential exemptions from certain sales and use taxes, real property 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, by resolution adopted by the members of the Agency on July 18, 2019 (the "Public Hearing Resolution"), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the "Public Hearing") pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on July 26, 2019 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted (1) on July 26, 2019 at Albany City Hall located at 24 Eagle Street in the City of Albany, Albany County, New York, as well as on the Agency's website, (C) caused notice of the Public Hearing to be published on July 30, 2019 in the Albany Times Union, a newspaper of general circulation available to the residents of the City of Albany, New York, (D) conducted the Public Hearing on August 14, 2019 at 12:00 o'clock p.m., local time at the offices of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York, and (E) prepared a report of the Public Hearing (the "Public Hearing Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; 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 (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on August 22, 2019 (the "SEQR Resolution"), the Agency (A) concurred in the determination that the City of Albany Planning Board (the "Planning Board") is the "lead agency" with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Planning Board issued on November 16, 2017 (the "Negative Declaration"), in which the Planning Board determined that the Project would not have a significant adverse environmental impact on the environment, and therefore, that an environmental statement need not be prepared with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on August 22, 2019 (the "Commercial/Retail Finding Resolution"), the Agency (A) determined that the Project constituted a "commercial project" within the meaning of the Act, (B) found that although the Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act because the Project Facility is located in census tract 11 which is contiguous to census tract 1, 8 and 25 which are in a highly distressed area, (C) determined, following a review of the Public Hearing Report, that the Project would serve the public purposes of the Act by preserving permanent private sector jobs in the State of New York, and (D) determined that the Agency would proceed with the Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Project by the Agency unless and until the Mayor of the City of Albany, as chief executive officer of the City of Albany, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Project; and

* " *

WHEREAS, by resolution adopted by the members of the Agency on August 22, 2019 (the "Pilot Deviation Approval Resolution"), the members of the Agency determined to deviate from the Agency's uniform tax exemption policy with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on August 22, 2019 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of August 1, 2019 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, by certificate dated August 27, 2019 (the "Public Approval"), the Mayor, as chief executive officer of the City of Albany, New York, approved the proposed action to be taken by the Agency with respect to the Project for purposes of Section 862(2)(c) of the Act; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of August 1, 2019 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease 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 August 1, 2019 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (a) a license to enter 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 August 1, 2019 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment. (B) the Company and the Agency will execute and deliver (1) a certain payment in lieu of tax agreement dated as of August 1, 2019 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree 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 August 1, 2019 (the "Uniform Agency Project Agreement") relating to the granting of the Financial Assistance by the Agency to the Company, (D) the Agency will file with the assessor and mail 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 will execute and deliver 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 will file 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"); and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "Real Property Tax Law"), upon the filing by the Agency of the Real

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Property Tax Exemption Form, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to normal taxes, provided that, so long as this Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to that portion of the Project Facility which is covered by this Payment in Lieu of Tax Agreement; and

WHEREAS, all things necessary to constitute this Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

ARTICLE I

REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

- (A) <u>Power.</u> The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement hereunder.
- (B) <u>Authorization</u>. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.
- (C) <u>Conflicts</u>. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

- (A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement, and by proper action of its members has been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.
- (B) <u>Authorization</u>. The Company is authorized and has the power under its Articles of Organization, Operating Agreement and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper action of its members, the Company has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.
- (C) <u>Conflicts</u>. The Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not

conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its Articles of Organization or Operating Agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) <u>Governmental Consent</u>. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.

ARTICLE II

COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF THE PROJECT FACILITY. (A) Assessment of the Project Facility. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of the Project Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility, and for so long thereafter as the Agency shall own the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease and the filing of the Real Property Tax Exemption Forms. The Company shall, promptly following acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall own such leasehold interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency becomes the owner of record of such leasehold interest in the Project Facility and the Real Property Tax Exemption Forms are filed with the Assessors. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Project Facility.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES. (A) <u>Agreement to Make Payments</u>. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the "Receivers of Taxes") for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof.

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- (B) Valuation of the Project Facility. (1) The value of the Project Facility for purposes of determining payments in lieu of taxes due hereunder (hereinafter referred to as the "Assessed Value") shall be determined in accordance with the terms of Exhibit B attached hereto and this Section 2.02(B). The Company agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The parties hereto agree that the Assessors shall (a) appraise the Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law (collectively with the Facility, the "Improvements") in the same manner as other similar properties in the general area of the Improvements, and (b) place an Assessed Value upon the Improvements, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial determination of the Assessed Value of the Improvements and of any change in the Assessed Value of the Land or the Improvements.
 - (2) If the Company is dissatisfied with the amount of the Assessed Value of the Project Facility as initially established or as changed by the Assessors, the Company shall be entitled to challenge the Assessed Value in accordance with the terms and conditions contained in Article 7 of the Real Property Tax Law. The Company shall be entitled to take any actions under Article 7 of the Real Property Tax Law notwithstanding the fact that the Agency has an interest in the Land pursuant to the Lease to Agency.
- (C) Amount of Payments in Lieu of Taxes. The payments in lieu of taxes to be paid by the Company to the Receivers of Taxes annually on behalf of each Taxing Entity pursuant to the terms of this Payment in Lieu of Tax Agreement shall be the amount computed separately for each Taxing Entity as set forth in Exhibit B attached hereto.
- (D) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities") the Company agrees to make additional annual payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as "Additional Payments") to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:
 - (1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Additional Normal Tax") which would be payable to each Taxing Entity with respect to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (E) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency.
 - (2) In each fiscal tax year during the term of this Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity) if such Additional Facilities were owned by the Company and not the Agency, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for

such fiscal tax year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

- (E) <u>Valuation of Additional Facilities</u>. (1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due under Section 2.02(D) hereof shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the "Additional Assessed Value") upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.
 - (2) If the Company is dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, the Company shall be entitled to challenge the Additional Assessed Value in accordance with the terms and conditions contained in Article 7 of the Real Property Tax Law. The Company shall be entitled to take any actions under Article 7 of the Real Property Tax Law notwithstanding the fact that the Agency has an interest in the Land pursuant to the Lease to Agency.
- (F) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.
- (G) <u>Time of Payments</u>. The Company agrees to pay the amounts due hereunder to the Receivers of Taxes for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments.
- (H) <u>Method of Payment</u>. All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.
- SECTION 2.03. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which

the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall meet the qualifications set forth in Section 2.02(B) hereof, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.04. LATE PAYMENTS. (A) <u>First Month</u>. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

ARTICLE III

LIMITED OBLIGATION

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. (A) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants, and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Agency.

- (B) <u>Limited Obligation</u>. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or City of Albany, New York, and neither the State of New York nor City of Albany, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).
- (C) <u>Further Limitation</u>. Notwithstanding any provision of this Payment in Lieu of Tax Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

ARTICLE IV

EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

- (A) Failure of the Company to pay when due any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;
- (B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or
- (C) Any warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.
- SECTION 4.02. REMEDIES ON DEFAULT. (A) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Payment in Lieu of Tax Agreement.
- (B) <u>Cross-Default</u>. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.
- (C) <u>Separate Suits</u>. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

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(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) <u>No Remedy Exclusive</u>. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

- (B) <u>Delay.</u> No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.
- (C) <u>Notice Not Required</u>. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Payment in Lieu of Tax Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Payment in Lieu of Tax Agreement.
- (D) No Waiver. In the event any provision contained in this Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) December 31, 2042 or (2) the date on which the Project Facility is reconveyed by the Agency to the Company pursuant to Article X or Article XI of the Lease Agreement.

(B) Extended Term. In the event that (1) the Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining title to the Agency's interest in the Project Facility shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Payment in Lieu of Tax Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company to the respective Taxing Entities if the Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, properly addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) <u>Notices Given by Taxing Entities</u>. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by a Taxing Entity under Article II hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

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(C) <u>Addresses</u>. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Harmony Mills South LLC 90 State Street Albany, New York 12207 Attention: Uri Kaufman, Manager

WITH A COPY TO:

Law Office of Nadine F. Shadlock 12 Van Rensselaer Boulevard Albany, New York 12204 Attention: Nadine F. Shadlock, Esq.

IF TO THE AGENCY:

City of Albany Industrial Development Agency 21 Lodge Street Albany, New York 12207 Attention: Chair

WITH A COPY TO:

Office of the Corporation Counsel City Hall, Eagle Street - Room 106 Albany, New York 12207 Attention: William G. Kelly, Jr., Esq.

and

Hodgson Russ LLP 677 Broadway, Suite 301 Albany, New York 12207 Attention: A. Joseph Scott, III. Esq.

- (D) <u>Copies</u>. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.
- (E) <u>Change of Address</u>. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

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SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in Lieu of Tax Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

BY: Tem Eses

HARMONY MILLS SOUTH LLC

BY: Uri Kaufman, Manager

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IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

BY: (Vice) Chair

HARMONY MILLS SOUTH LLC

Uri Kaufman, Manager

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

On the 28th day of August, in the year 2019, before me, the undersigned, personally appeared TRACY L. METZGER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Moredith & Malant Notary Public

Meredith L. Malark Notary Public, State of New York Qualified in Albany County No. 01MA6212870 Commission Expires October 26, 2021 STATE OF NEW YORK))ss:
COUNTY OF ALBANY)

On the day of August, in the year 2019, before me, the undersigned, personally appeared URI KAUFMAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

ANDREW N WILLIAMS
Notary Public - State of New York
NO. 01Wi6395683
Qualified in New York County
My Commission Expires Jul 29, 2023

EXHIBIT A

DESCRIPTION OF THE LEASED LAND

A leasehold interest created by a certain lease to agency dated as of August 1, 2019 (the "Lease to Agency") between Harmony Mills South LLC (the "Company"), as landlord, and City of Albany Industrial Development Agency (the "Agency"), as tenant, in an approximately 0.38 acre parcel of land (the "Leased Land") located at 90 State Street in the City of Albany, Albany County, New York, said Leased Land being more particularly described below), together with any improvements now or hereafter located on the Leased Land (the Leased Land and all such improvements being sometimes collectively referred to as the "Leased Premises"):

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND situate, lying and being in the City of Albany, Albany County, New York, bounded and described as follows:

- SEE ATTACHED -

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SCHEDULE A (Description)

Tille Number: LAA3120

All that tract, piece or parcel of land, situate, lying and being in the Fifth Ward in the City of Albany, County of Albany and State of New York, more particularly bounded and described as follows:

BEGINNING at the intersection of the Southerly line of State Street with the Westerly line of South Pearl

RUNNING THENCE Southerly along the Westerly line of South Pearl Street 128.95 feet (actual 129.20 feet) to the intersection of said line with the Northerly line of Howard Street;

THENCE along said Northerly line of Howard Street Westerly 124.43 feet (actual 124.49 feet) to the corner of the lot now α r formerly owned by the City and County Savings Bank;

THENCE Northerly along the Easterly boundary line of the property now or formerly of the said City and County Savings Bank 164.22 feet (actual 164.98 feet) to the Southerly line of State Street;

THENCE Easterly along the Southerly line of State Street 108.06 feet (actual 108.10 feet) to the point or place of BEGINNING.

The premises are also described as all that parcel of fand situated in the City of Albany, County of Albany and State of New York bounded and described as follows:

BEGINNING at the intersection of the Southerly bounds of State Street with the Westerly bounds of South Pearl Street;

THENCE Southerly along said Westerly bounds a distance of 129.20 feet to the intersection with the Northerly bounds of Howard Street;

THENCE Westerly along said Northerly bounds, making an interior angle of 101 degrees 33 minutes 38 seconds, a distance of 124.49 feet to a point;

THENCE Northerly along the common bounds with the lands now or formerly of the City of Albany Industrial Development Agency as described in Book 2311 of Deeds at Page 779, making an interior angle of 73 degrees 27 minutes 08 seconds a distance of 164.98 feat to a point in the Southerly bounds of State Street;

THENCE Easterly along said Southerly bounds, making an interior angle of 89 degrees 34 initutes 09 seconds with the last described course, a distance of 108.10 feet to the point of beginning,

the last course making an interior angle of 95 degrees 25 minutes 05 seconds with the first course herein described.

FOR INFORMATION ONLY: Property Address: 90 State Street, Albany, NY Sec: 76.42 Block: 1 Lot: 5

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EXHIBIT B

PILOT PAYMENT TERMS

I. Defined Terms:

"Applicable Fiscal Year" means the fiscal year of the Company ending no later than one hundred and twenty (120) days prior to the January 1 payment date in question. For example, assuming that the Company uses the calendar year for its fiscal year, and the payment date in question is January 1, 2030, the Applicable Fiscal Year for the Company for the January 1, 2030 payment date is the fiscal year of the Company ending December 31, 2028.

"Gross Revenue" means the total amount of income generated at the Project Facility, including tenant rent, unreturned security deposits (to the extent applied to rental payments due and owing and not to damages to a rental unit), lease cancellation/termination payments (net of damage), parking fees, any payments in kind, and other miscellaneous revenue generated at the site (e.g., vending machines, washing machines and other landlord services paid by the tenant); provided, however, that Gross Revenue shall not include any Pass Through Revenue.

"Person" means an individual, partnership, corporation, trust, or unincorporated organization.

"Pass Through Revenue" means revenue generated at the Project Facility relating to parking fees for tenant parking at a parking facility or parking lot not included in or on the Land. Revenue for such activities shall be considered Pass Through Revenue only if (1) the Company serves as a pass-through for such revenues between the tenant and the actual vendor, (2) the payee or recipient of the fees is not a Related Person to the Company, and (3) there is no "mark-up" or "profit" accruing to the Company relating to such fees (except as hereinafter provided). In connection with the determination of Pass Through Revenue, Gross Revenue will be subject to further adjustment as described as follows: if there is any "mark-up" or "profit" accruing to the Company, the amount of such "mark-up" or "profit" shall be included in the determination of Gross Revenue.

"Related Person" means, with respect to the Company, (1) a group of entities subject to "direct control" or "indirect control" by the same entity or group of entities, determined on the basis of all relevant facts and circumstances, (2) any organization under common management or control with the Company, (3) a Person which is a related person as defined in Section 144(a)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), by reference to Sections 267, 707(b) and 1563(a) of the Code, except that (a) one percent (1%) is substituted for fifty percent (50%) for purposes of applying Sections 267 and 707(b), and (b) one percent (1%) is substituted for eighty percent (80%) for purposes of applying Section 1563(a).

II. Assessed Value:

- (A) The Assessed Value of the Project Facility shall consist of two components, the base Assessed Value (the "Project Base Assessed Value") and the additional Assessed Value (the "Project Improvements Assessed Value").
- (B) The Project Base Assessed Value shall equal the value of the Land and Facility prior to the undertaking of the Project. The Project Base Assessed Value shall be established pursuant to the terms of Section 2.02(B) of this Payment in Lieu of Tax Agreement.

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- (C) The Project Improvements Assessed Value shall equal the value of the Facility improved pursuant to the undertaking and completion of the Project (the "Improvements"). The Project Improvements Assessed Value shall be established pursuant to the terms of Section 2.02(B) of this Payment in Lieu of Tax Agreement.
- (D) The parties hereto understand and agree that the Project Based Assessed Value and the Project Improvements Assessed Value shall change during the term of this Payment in Lieu of Tax Agreement as the Assessors appraise and re-appraise, as the case may be, the Project Facility during the term of this Payment in Lieu of Tax Agreement, as provided in Section 2.02(B) of this Payment in Lieu of Tax Agreement.

III. Amount of Payments in Lieu of Taxes:

- (A) The amount of payments in lieu of taxes shall be the sum of the following: (1) the amount of payments in lieu of taxes payable with respect to the Land and Facility based on the Project Base Assessed Value, and (2) the amount of payments in lieu of taxes payable with respect to the Improvements based on the Project Improvements Assessed Value.
 - (1) <u>Payments Project Base Assessed Value.</u> (a) First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if the Land and the Facility were owned by the Company and not the Agency by multiplying (i) the Project Base Assessed Value (as set forth in II(B) above) by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Land and the Facility if the Land and the Facility were owned by the Company and not the Agency.
 - (b) Then, in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Land and the Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Land and the Facility shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to the Land and the Existing Facility for such tax year.
 - (2) <u>Payments Project Improvements Assessed Value.</u> (a) First, determine the Normal Tax which would be payable to each Taxing Entity if the Improvements were owned by the Company and not the Agency by multiplying (i) the Project Improvements Assessed Value determined pursuant to Section 2.02(B) of this Payment in Lieu of Tax Agreement, by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Improvements if the Improvements were owned by the Company and not the Agency.
 - Agreement, commencing on the first tax year following the date on which the Improvements shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Improvements shall be the product of: (i) the amount set forth in Section III(A)(2)(a) above and (ii) the applicable percentage of the Normal Tax due each Taxing Entity with respect to the Improvements for such tax year, as shown in the following table:

Tax Year	County/ City	School
Commencing in	Percentage of Normal Tax	Percentage of Normal Tax
<u>Calendar Year</u>	on Assessed Value of	on Assessed Value of
	the Improvements	the Improvements
2019	100%	100%
2020	100%	100%
2021	100%	100%
2022	100%	100%
2023	0%	0%
2024	0%	0%
2025	0%	0%
2026	0%	0%
2027	0%	0%
2028	0%	0%
2029	0%	0%
2030	0%	0%
2031	10%	10%
2032	10%	10%
2033	15%	15%
2034	25%	25%
2035	35%	35%
2036	40%	40%
2037	50%	50%
2038	60%	60%
2039	70%	70%
2040	30%	80%
2041	30%	80%
2042	80%	80%
2043 and thereafter	100%	100%
during the term of		
this Payment in		
Lieu of Tax		To the state of th
Agreement		

- (c) The parties acknowledge that the tax years shown in the table above do not reflect assessment roll years. For example, the 2019 assessment roll will be used to generate the 2019-20 School payment in lieu of tax bill and the 2020 City/County payment in lieu of tax bill.
- (B) Except as otherwise provided in Section IV below, in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which any portion of the Project Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Project Facility shall be the sum of (1) the amount due each Taxing Entity with respect to the Land and the Existing Facility for such tax year, as determined pursuant to subsection (A)(1) hereof, plus (2) the amount due each Taxing Entity with respect to the Improvements for such tax year, as determined pursuant to subsection (A)(2) hereof.

IV. Alternative Determination of Amount of Payments in Lieu of Taxes:

- (A) Beginning on January 1, 2035, the Company will pay payments in lieu of taxes in an amount equal to the greater of (1) the amount determined pursuant to Section III above, or (2) 11.5% of the Gross Revenue for the Applicable Fiscal Year of the Project Facility.
- (B) On each September 1, beginning on September 1, 2034, the Company will provide the Treasurer of the City of Albany with a complete and executed copy of the Company Affidavit, a form of which is attached as Exhibit C.
- (C) The Company agrees to provide to the Treasurer of the City of Albany and the CEO of the Agency, within thirty (30) days of their written request, with a copy of the Company's unaudited financial statement verified by the Company or such other person as may be authorized by the Company to verify said statement supporting the Company's calculation of the Gross Revenue. In the event that the Company's unaudited financial statement is not prepared in accordance with GAAP, the Company agrees to provide such additional information regarding the Company's calculation of Gross Revenue as reasonably requested by the Agency.
- (D) Notwithstanding the foregoing, the Company agrees to provide financial statements audited in accordance with GAAP if the Company prepares audited statements for delivery to its lender.

EXHIBIT C

COMPANY AFFIDAVIT REGARDING GROSS REVENUE

STATE OF NEW YORK)
COUNTY OF ALBANY)Ss:)
I, the undersigned, an Authorized Of and state as follows:	ficer of Harmony Mills South LLC (the "Company"), do hereby depose
	Industrial Development Agency (the "Agency") and the City of Albany idavit in determining the amount of payments in lieu of taxes payable encing January 1, 20
	words used in this Affidavit shall have the meanings ascribed to such agreement dated as of August 1, 2019 (the "Payment in Lieu of Tax gency and the Company.
3. The Applicable Fisc	cal Year of the Company is the fiscal year of the Company ending on
4. Attached hereto as Revenue of the Company for the Ap	Schedule A is a summary memorandum/report describing the Gross oplicable Fiscal Year.
5. The Gross Revenue accordance with the terms of the Pag	e of the Company for the Applicable Year has been determined in yment in Lieu of Tax Agreement.
6. 11.5% of the Gross	Revenue equals \$
IN WITNESS WHEREOF	R, the undersigned has set forth their hand as of the day of
	HARMONY MILLS SOUTH LLC
	BY:Authorized Officer
Sworn to before me thisday	
of, 20	
Notary Public	
	("-
012001,00179 thismass 18770483v4	

SCHEDULE A

SUMMARY MEMORANDUM/REPORT DESCRIBING GROSS REVENUE

[To Be Completed By The Company]

C-2

SCHEDULE D

COPY OF APPLICATION

CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

<u>APPLICATION</u>

answers accurate affairs of by the	m's eligibility for financing a will also be used in the prepayed and completely by an offi-	and other assistance from the paration of papers in this tran eer or other employee of you toroughly familiar with the pro-	contained in this application are necessar City of Albany Industrial Development A saction. Accordingly, all questions should r firm who is thoroughly familiar with the oposed project. This application is subject	Agency. These I be answered business and
то:	CITY OF ALBANY I c/o Department of Eco 21 Lodge Street Albany, New York 12	Α.	OPMENT AGENCY	
This a	pplication by applicant	respectfully states:		
APPI.	ICANT: Harmony Mil	ls South LLC		
APPL	ICANT'S ADDRESS:	90 State Street		
CITY	Albany	STATE: New York	ZIP CODE: <u>12207</u>	· · · · · · · · · · · · · · · · · · ·
PHON	IE NO.: <u>917-453-3384</u>	E-MAIL: <u>urika</u>	ufman50@gmail.com	
	E OF PERSON(S) AU APPLICATION: Uri K		K FOR APPLICANT WITH RE- lock, Esq.	SPECT TO
IF AP	PLICANT IS REPRESI	ENTED BY AN ATTO	RNEY, COMPLETE THE FOLL	.OWING:
NAM	E OF ATTORNEY: <u>Na</u>	dine F. Shadlock, Esq	·	***************************************
ATTO	DRNEY'S ADDRESS:	12 Van Rensselaer Bly	<u>/d.</u>	
CITY	Albany	STATE: <u>New York</u>	ZIP CODE: <u>12204-1609</u>	
PHON	WE NO.: <u>518-432-3310</u>	E-MAIL: <u>nadi</u>	ne @nadineshadlock.com	
~~~~	E: PLEASE READ THE	INSTRUCTIONS ON	PAGE 2 HEREOF BEFORE FIL	LING OUT

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#### INSTRUCTIONS

- 1. The Agency will not approve any application unless, in the judgment of the Agency, said application and the summary contains sufficient information upon which to base a decision whether to approve or tentatively approve an action.
- Fill in all blanks, using "none" or "not applicable" or "N/A" where the question is not appropriate to the project which is the subject of this application (the "Project").
- If an estimate is given as the answer to a question, put "(est)" after the figure or answer
  which is estimated.
- 4. If more space is needed to answer any specific question, attach a separate sheet.
- 5. When completed, return one (1) copy of this application to the Agency at the address indicated on the first page of this application.
- The Agency will not give final approval to this application until the Agency receives a
  completed environmental assessment form concerning the Project which is the subject
  of this application.
- 7. Please note that Article 6 of the Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the applicant feels that there are elements of the Project which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the applicant's competitive position, the applicant may identify such elements in writing and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law.
- 8. The applicant will be required to pay to the Agency all actual costs incurred in connection with this application and the Project contemplated herein (to the extent such expenses are not paid out of the proceeds of the Agency's bonds issued to finance the Project). The applicant will also be expected to pay all costs incurred by general counsel and bond counsel/special counsel to the Agency. The costs incurred by the Agency, including the Agency's general counsel and bond counsel, may be considered as a part of the Project and included as a part of the resultant bond issue.
- 9. The Agency has established an application fee of One Thousand Five Hundred Dollars (\$1,500) to cover the anticipated costs of the Agency in processing this application. A check or money order made payable to the Agency must accompany each application. THIS APPLICATION WILL NOT BE ACCEPTED BY THE AGENCY UNLESS ACCOMPANIED BY THE APPLICATION FEE.
- 10. The Agency has also established an administrative fee equal to (A) one percent (1%) of the cost of the Project in the case of an Agency Straight Lease Transaction, and (B) one percent (1%) of the aggregate principal amount of the bonds to be issued by the Agency in the case of an Agency Bond Transaction. The Agency has also established

- 2 -

an administrative fee for the issuance of refunding bonds for Agency Bond Transactions. The formula for the calculation of the administrative fee for the issuance of refunding bonds is outlined in the Agency's Policy Manual. THESE FEES ARE PAYABLE ON THE CLOSING DATE.

- 3 -

# FOR AGENCY USE ONLY

l,	Project Number	
2.	Date application Received by Agency	. 20
3.	Date application referred to attorney for review	, 20
-1,	Date copy of application mailed to members	, 20)
5.	Date notice of Agency meeting on application posted	, 20
6,	Date notice of Agency meeting on application mailed	. 20
7,	Date of Agency meeting on application	.26
8.	Date Agency conditionally approved application	, 20
9,	Date scheduled for public hearing	. 20
10,	Date Environmental Assessment Form ("EAF") received	.20
11,	Date Agency completed environmental review	. 20
12.	Date of final approval of application	

# SUMMARY OF PROJECT

Applicant: <b>Harmony</b>	Mills South LLC, Uri Ka	ufman, Manage	r	
Contact Person: Nadi	ne Shadlock, Esq.			
Phone Number: 518-4	132-3310			
Occupant: Harmony	Mills South LLC and ten	ants		
Project Location (incl	ude Tax Map ID): 76.42-1-	5		
Approximate Size of	Project Site: <b>16,728 square</b>	feet, which is th	ne footprint of the project site.	
Description of Project	t: See Attachment "A": "I	Description of Pr	roject".	
Type of Project:	☐ Manufacturing		☐ Warehouse/Distribution	
	☐ Commercial X Other-Specify Residential Central Business District C		☐ Not-For-Profit  148,489 square feet of existing	
Employment Impact:	act: Existing Jobs See Attachment "B": "Summary of Employment Impact".  New Jobs			
Project Cost: <b>\$23,135,0</b>	00			
Type of Financing:	☐ Tax-Exempt	☐ Taxable	X Straight Lease	
Amount of Bonds Requ	ested; \$ <u>N/A</u>			
Estimated Value of Tax	-Exemptions:			
N.Y.S. Sales and Compensating Use Tax: \$ 925,400  Mortgage Recording Taxes: \$ 173,512  Real Property Tax Exemptions: \$ 6,930,175  Other (please specify): \$ N/A.				
Provide estimates for the following: Please see Attachment "B".				
Number of Full Time Employees at the Project Site before IDA Status:  Estimate of Jobs to be Created:  Estimate of Jobs to be Retained:  Average Estimated Annual Salary of Jobs to be Created:  \$\frac{4}{534,800}\$				
	Ψ;	5 -		

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## Attachment "A"

## Description of Project

This Project proposes to convert the upper 11 stories of this 15-story structure into 154 residential dwelling units. This property is presently primarily used for office space, with commercial/retail space at the street level floors. Post conversion, a portion of the office space as well as the existing commercial uses will remain. The residential units will be a mix of 22 two (2) bedroom, 88 one (1) bedroom and 44 studio units of between 450 and 1,295 square feet. Each floor of residential units will be substantially identical to the other in layout. The conversion will be phased, and will occur on a floor by floor basis, working around existing lease expirations, with the conversion to be substantially complete by not later than December 31, 2022.

This Project represents the first high rise residential conversion in the City of Albany and first substantial conversion of downtown office space into residential. This transformative Project will not only bring the residents of these 154 units into the very center of the Central Business District, it will also remove 148.489 square feet of office space from the Downtown market, which presently has vacancy rate in excess of 20%.

This concentration of residents, at the center of Downtown, will provide the necessary numbers to support the establishment of new retail, as well as goods and services Downtown. With such a substantial enhancement in amenity, a live/ work environment will at last exist, thereby encouraging a thriving and vibrant 24/7 Downtown Albany.

This Project's conversion of 148.489 square feet of office space to residential dwellings will shift the Downtown office space equilibrium and enhance the opportunity for competing office space to be rented. This will create an impetus for landlords to make improvements to existing space, both vacant and occupied. By reducing office space vacancy, the value of these office properties will be enhanced, benefitting the property owners as well as enhancing the City of Albany tax hase.

This Project will change everything Downtown, and will place Albany on the trajectory to be a vibrant and thriving Capital of the State of New York.

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#### Attachment "B"

## Summary of Employment Impact

This Project will create direct new jobs at 90 State Street in construction activities, and thereafter positions in property management, leasing, facilities and maintenance support. Numerous construction and project development related positions have been, and will continue to be, directly generated by this residential conversion, as well as not less than 4 permanent positions.

Additionally, we anticipate the strongest employment impact will result from bringing the residents of these 154 units into the heart of Downtown, plus this Project's removal of nearly 150,000 square feet of downtown office space from the market, which presently has a vacancy rate in excess of 20%.

This Project, and its residents, will be fundamentally transformative in for Downtown, and will drive the need for retail including, for example: grocery stores, specialty shops, wine and liquor stores, restaurants, including breakfast, and access to goods and personal services. This population will support the strong need for retail, causing retail establishments to open and expand, with the result being stable and permanent job creation.

Likewise, this Project's impact on existing office space, removing 148,489 square feet of office space from the market, will facilitate a re-population of long vacant office space in other Downtown buildings. Increases in rent will be supported by a reduction in supply, competition for tenants will encourage landlord investment in their properties. Such investment will enhance values and City tax base. Jobs will be created in support of these efforts as well as the employment of individuals in these formerly vacant offices.

This Project will spark these fundamental changes, all of which will make the difference driving the evolution of Downtown Albany.

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Annualized Salary Range of Jobs to be Created: Estimated Average Annual Salary of Jobs to be Retained:

\$22,000-\$50,000 \$ 40,000.

- 6 -

913001 00025 Business 13038590v10

Α,	ldenti 1.	t <u>v of Company;</u> Company Name <b>: Harmony Mills South LLC</b>
		Present Address: 90 State Street, Albany, New York
		Zip Code: <b>1220</b> 7
		Employer's ID No.: 43-1964982
	2.	If the Company differs from the Applicant, give details of relationship:
		The Company is the applicant
	3.	Indicate type of business organization of Company:
		a. Corporation (If so, incorporated in what country?  What State? Date Incorporated? Type of Corporation? Authorized to do business in New York?  Yes; No).
		b. Partnership (if so, indicate type of partnership, Number of general partners, Number of limited partners).
		c. NY Limited liability company, Date created? June 20, 2002
		d. Sole proprietorship
	4. organiz	Is the Company a subsidiary or direct or indirect affiliate of any other ation(s)? If so, indicate name of related organization(s) and relationship: $\underline{No}$
3.	Manage	ement of Company:
	l. for each	List all owners, officers, members, directors and partners (complete all columns person):

NAME (First, Middle, Last) HOME ADDRESS	OFFICE HELD	OTHER PRINCIPAL BUSINESS
Uri Kaufman	Manager	Developer of Historic Residential Multifamily properties.

2.	lS	the Con	npany or	manage	ment (	of the	Compa	any now	a plaintiff	or a	defendan	t in
any civil	or	criminal	Litigatic	m*? Yes	X	: N	э.					

## * The response is Yes, but no criminal litigation, only civil litigation, as per Attachment "C".

- 3. Has any person listed above ever been convicted of a criminal offense (other than a minor traffic violation)? Yes  $\underline{\hspace{1cm}}$ : No  $\underline{X}$ .
- 4. Has any person listed above or any concern with whom such person has been connected ever been in receivership or been adjudicated a bankrupt? Yes  $\underline{\phantom{A}}$ ; No  $\underline{\mathbf{X}}$ . (If yes to any of the foregoing, furnish details in a separate attachment).
- 5. If the answer to any of questions 2 through 4 is yes, please, furnish details in a separate attachment. See Attachment "C": "Notes on Pending Litigation".

## C. Principal Owners of Company:

- 1. Principal owners of Company: Is Company publicly held? Yes  $\underline{\phantom{a}}$ ; No  $\underline{\mathbf{X}}$ . If yes, list exchanges where stock traded:
- 2. If no, list all stockholders having a 5% or more interest in the Company:

191 Harbor View South Lawrence, NY 11559	50%
220-46 73 rd Avenue Queens, NY 11364	50%
	Lawrence, NY 11559 220-46 73 rd Avenue

#### Attachment "C"

### Notes on Pending Litigation

#### **NOTES ON PENDING LITIGATION**

Uri Kaufman is being sued in two actions:

- 1. Grant McKay Uri Kaufman represented, Evergreen Power LLC and Asnat Realty LLC ("E&A"), the owners of a former power plant called English Station, located in New Haven, Connecticut. E&A hired the Grant McKay Demolition Company ("GM") to demolish the buildings on the site. The GM remediation job was shut down by the Connecticut Department of Energy and Environmental Protection ("DEEP") for various alleged regulatory violations. The GM job was insured with a payment and performance bond. To date, the bonding company has paid over \$750,000 to satisfy a subcontractor. E&A brought action against GM and its bonding company for breach of contract and negligence in the remediation of the English Station site. The bonding company and GM have counterclaimed against E&A as well as Uri Kaufman personally for various causes of action sounding in fraud. It is the position of E&A and Uri Kaufman that the counterclaims are frivolous. Recently, the parties arrived verbally at a settlement. The papers are being finalized at the present time. GM has agreed to issue a general release in favor of Uri Kaufman and to pay an undisclosed sum E&A. There is almost no chance that Uri Kaufman will be found liable.
- 2. Rockaway ASC Uri Kaufman has been sued together with the sponsor entity of the Courthouse project, Harmony Rockaway LLC ("HR"), by a group of doctors for various causes of action related to the termination of a lease. HR in turn is suing the doctors to enforce the lease. Following a trial held in the summer of 2017, a decision was handed down in favor of the doctors against HR, but not Kaufman. HR is appealing the decision. The entire judgment amount together with projected statutory interest, has been filed with the Court.

I hereby certify that the above is true to best of my knowledge.

URI KAUFMAN

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D. Company's Principal Bank(s) of account:

TD Bank

## II. DATA REGARDING PROPOSED PROJECT

A. Summary: (Please provide a brief narrative description of the Project.)

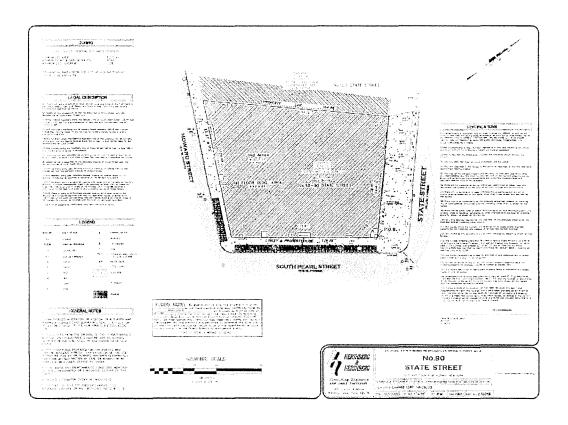
This Project convert the upper 11 stories of this 15 story concrete and masonry structure, presently used as office space into 154 residential dwelling units. This phased conversion would occur on a floor by floor basis, working around existing leases expirations, with conversion to be substantially complete by 2022.

1.	Street Address 90 State Street
2.	
3	City of Albany Town of N/A
4.	Village of N/A
5.	County of Albany
6,	Tax Map ID(s): 76.42-1-5
Pro	ject Site:
1.	Approximate size (in acres or square feet) of Project site:
	map, survey, or sketch of the project site attached? Yes X: No
``	
2.	Are there existing buildings on project site? Yes X: No
	Attachment "D": Survey & Legal Description.
	Attachment "D": Survey & Legal Description.  a. If yes, indicate number and approximate size (in square feet) of each
	Attachment "D": Survey & Legal Description.  a. If yes, indicate number and approximate size (in square feet) of each existing building: 90 State Street is the sole existing building and is a 15 story.
	Attachment "D": Survey & Legal Description.  a. If yes, indicate number and approximate size (in square feet) of each
	Attachment "D": Survey & Legal Description.  a. If yes, indicate number and approximate size (in square feet) of each existing building: 90 State Street is the sole existing building and is a 15 story concrete and masonry structure of 233,753 gross square feet.
	Attachment "D": Survey & Legal Description.  a. If yes, indicate number and approximate size (in square feet) of each existing building: 90 State Street is the sole existing building and is a 15 story concrete and masonry structure of 233,753 gross square feet.  b. Are existing buildings in operation? Yes X; No
	Attachment "D": Survey & Legal Description.  a. If yes, indicate number and approximate size (in square feet) of each existing building: 90 State Street is the sole existing building and is a 15 story concrete and masonry structure of 233,753 gross square feet.  b. Are existing buildings in operation? Yes X ; No  If yes, describe present use of present buildings:
	Attachment "D": Survey & Legal Description.  a. If yes, indicate number and approximate size (in square feet) of each existing building: 90 State Street is the sole existing building and is a 15 story concrete and masonry structure of 233,753 gross square feet.  b. Are existing buildings in operation? Yes X; No
	Attachment "D": Survey & Legal Description.  a. If yes, indicate number and approximate size (in square feet) of each existing building: 90 State Street is the sole existing building and is a 15 story concrete and masonry structure of 233,753 gross square feet.  b. Are existing buildings in operation? Yes X ; No  If yes, describe present use of present buildings:  Office: 196,848 gross square feet  Retail: 36,905 gross square feet
	Attachment "D": Survey & Legal Description.  a. If yes, indicate number and approximate size (in square feet) of each existing building: 90 State Street is the sole existing building and is a 15 story concrete and masonry structure of 233,753 gross square feet.  b. Are existing buildings in operation? Yes X ; No  If yes, describe present use of present buildings:  Office: 196,848 gross square feet
	Attachment "D": Survey & Legal Description.  a. If yes, indicate number and approximate size (in square feet) of each existing building: 90 State Street is the sole existing building and is a 15 story concrete and masonry structure of 233,753 gross square feet.  b. Are existing buildings in operation? Yes X ; No  If yes, describe present use of present buildings:  Office: 196,848 gross square feet  Retail: 36,905 gross square feet  c. Are existing buildings abandoned? Yes: No X About to b

Attachment "D"

Survey and Legal Description

+ (200) 00025 Business 13638594v10



## 90 State Street

#### Legal Description

## LEGAL DESCRIPTION

ALL that tract, piece or parcel of land, situate, lying and being in the Fifth Ward in the City of Albany, County of Albany and State of New York, more particularly bounded and described as follows:

RECINNING at the intersection of the Southerly line of State Street with the Westerly line of South Pearl Street, and

RUNNING THENCE Southerly along the Wasterly line of South Pearl Street 128.95 feet (actual 129.20 feet) to the intersection of said line with the Northerly line of Howard Street:

THENCE along sold Northerly line of Howard Street Westerly 124.43 feet (actual 124.49 feet) to the corner of the lat now or farmerly owned by the City and County Savings Bank;

THENCE Northerly along the Easterly boundary line of the property now or formerly of the said City and County Savings Bank 164.22 feet (actual 164.98 feet) to the Southerly line of State Street:

THENCE Easterly along the Southerly line of State Street 106,00 feet (actual 108.10 feet) to the point or place of BEGINNIAG.

The premises are also described as all that parcel of land stauted in the City of Albany, County of Albany and State of New York bounded and described as follows:

BECINNING at the intersection of the Scutherly bounds of State Street with the Westerly bounds of South Pearl Street.

THENCE Southerly along said Westerly bounds a distance of 120-26 feet to the intersection with the Northerly bounds of Howard Street;

THENCE Westerly along said Kortherly bounds, making an interior angle of 101 degrees 33 minutes 38 seconds, a distance of 124.49 feet to a point:

PHENCE Northerly along the common bounds with lands now or formerly of the City of Albany Industrial Development Agency as described in Book  $2311\,$  of Deeds at the Top 779, making an interiar angle of 73 degrees  $27\,$  minutes  $68\,$  seconds a distance of  $164.96\,$  feet to a point in the boutherly bounds of State Street:

THEFICE Easterly along soid Southerly bounds, making an interior angle of 89 degrees 34 minutes 00 seconds with the last described course, a distance of 198.10 feet to the point of beginning, the last course haking in interior angle of 35 degrees 25 minutes 05 seconds with the first course hardin described.

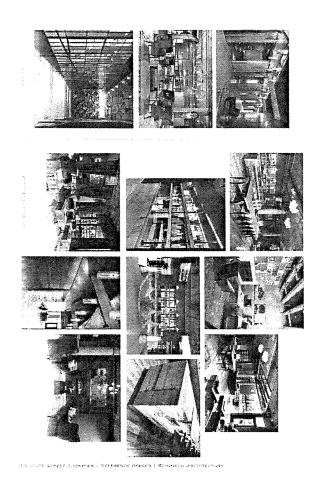
Cubinet to all easements, restrictions and rights— $e^{t}$ —way of record

Attachment "E"

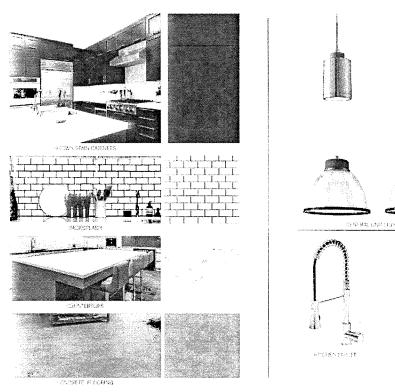
Photographs

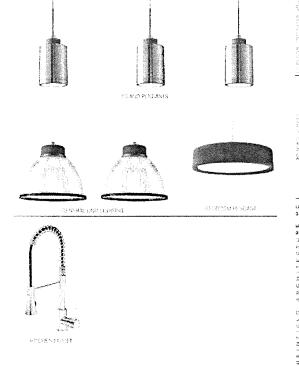
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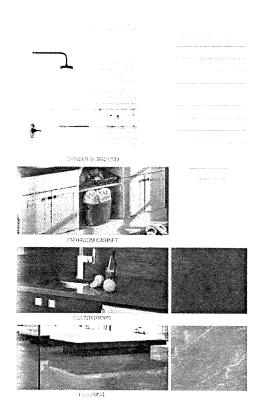


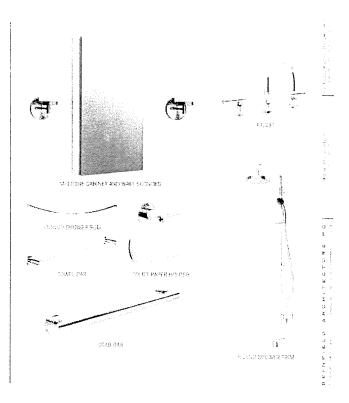


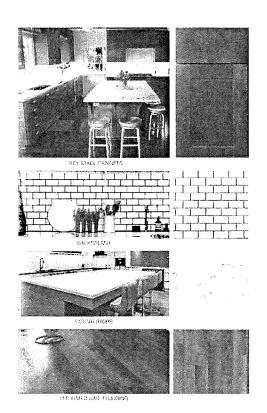
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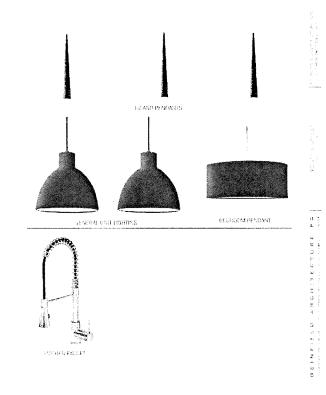


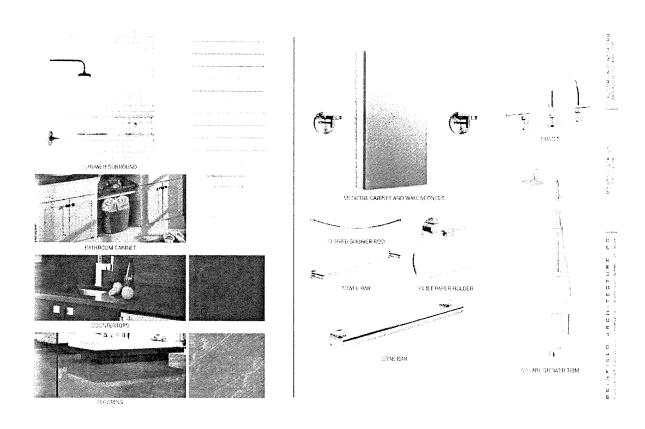




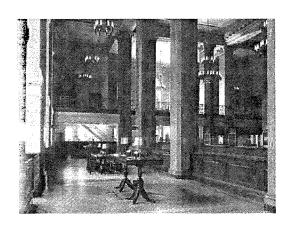












	3.	Utilities serving project site:  Water-Municipal: Yes  Other (describe)
		Sewer-Municipal: Yes Other (describe)
		Electric-Utility: Yes
		Other (describe) Heat-Utility: Yes
	4.	Other (describe) Present legal owner of project site: Harmony Mills South LLC
		a. If the Company owns project site, indicate date of purchase:  January 24, 2007; Purchase price: \$9,750,000.
		b. If Company does not own the Project site, does Company have option signed with owner to purchase the Project site? Yes; No N/A. If yes, indicate date option signed with owner:, 20; and the date the option expires:, 20
		c. If the Company does not own the project site, is there a relationship legally or by common control between the Company and the present owners of the project site? Yes; No N/A. If yes, describe:
	5.	a. Zoning District in which the project site is located:  MU-DT: Mixed Use Downtown
		c. Are there any variances or special permits affecting the site? Yes X; No If yes, fist below and attach copies of all such variances or special permits:
		See Attachment "F": Use Variances for: Child Day Care and Adult Day Care.
D.	<u>Buildi</u> 1. <u>X</u>	ngs:  Does part of the Project consist of a new building or buildings? Yes; No If yes, indicate number and size of new buildings:
	the siz	Does part of the Project consist of additions and/or renovations to the existing ngs? Yes X : No
	conve	Describe the principal uses to be made by the Company of the building or buildings acquired, constructed, or expanded: The upper 11 floors of 90 State Street will be reed into 154 multifamily residential dwelling units, with this conversion to on a phased floor by floor basis, working around existing leases expirations.

## Attachment "F"

## Use Variances for: Child Day Care & Adult Day Care

• Use Variance Child Day Care; July 25, 2012

• Use Variance Adult Day Care: January 8, 2014

- See Attached -

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# NOTIFICATION OF LOCAL ACTION DECISION OF THE CITY OF ALBANY BOARD OF ZONING APPEALS

▶ Important Note: This is not a building permit. All building permits must be approved and issued by the Division of Building & Codes prior to the start of any construction.

ADDRESS OF SUBJECT PROPERTY: 90 State St.

IN THE MATTER OF: Use Variance to allow for the establishment of a day care center.

APPLICANT: Harmony Mills, LLC c/o Kurzou Architects

ADDRESS: 90 State St., Albany, NY 12207

CASE NUMBER: 7-12, 3076

DATE APPLICATION RECEIVED: 6/13/12

DATE OF HEARING: 7/11/12

DATE OF DECISION: 7/25/12

WARD: 3

DECISION: Approved

N.A.: N/A

HISTORIC/ SPECIAL DISTRICT(S): Downtown Albany Historic District; Downtown Albany

**Business Improvement District** 

The request is **Approved**, by the following vote:

For: 4 Apostol: Y Ray: Y Against: 0 Cronin: NIA Tucker-Ross: Y Abstain: 0 Moran: Y Viele: NIA

#### Site Description

The site is question is located at the southwest corner of State and North Pearl Streets in a C-3 Central Business zoning district, the Downtown Albany Historic District and the Downtown Albany Business Improvement District. The 114' x 147' lot is improved with a fifteen-story, 212,528 square foot commercial office structure.

### Relevant Considerations

The applicant is proposing to operate a day care center in a former bank located on the first and second floor of the subject building. The building is currently occupied by offices, personal and business service outlets and a restaurant/tavern. The City Zoning Ordinance permits day-care centers as an accessory use in the applicable C-3 zoning district. However, an accessory use is defined in the ordinance as follows:

ACCESSORY USE OR STRUCTURE -- A structure or use which:

- (1) Is subordinate to and serves a principal building or principal use;
- (2) Is subordinate in area, extent and purpose to the principal structure or principal use served;
- (3) Contributes to the comfort, convenience and/or necessity of the occupants; and
- (4) Is located on the same lot as the principal structure or principal use served, except as otherwise expressly authorized by provisions stated herein.

The proposed day care center is proposed to be open to the public and therefore will not be operating as a defined accessory use. Being that day care centers are not a principal or special permit use in the C-3 district, a Use Variance is required in order to permit the use.

The applicant indicates that the building was constructed in 1929 for National Savings Bank and features a

magnificent, 12,142 square foot, bank space with abundant natural light and high ceilings on the ground floor. The space is no longer utilized as a bank, having been last occupied by the New York State Comptroller's Office. It has since been vacant for over two years. The applicant has aggressively marketed the space through Weichert Realtors along with 3,728 square feet of additional space on the second floor, which has been vacant for 5 ½ years. The applicant has received only a single offer to lease the ground floor space since it was vacated in February 2010. That offer was for a banquet facility that did not come to fruition. The applicant purchased the property for \$9,570,000 in January of 2007.

The applicant is currently evaluating an offer to lease the aforementioned floor space for use as a day care center. The applicant believes that despite the zoning prohibition of the day care center operating as an independent use, it will fulfill a need within the central business district. There are currently no children's day care centers located within the downtown area that are open to the public. Given the existing circumstances relating to the banking sector, the applicant does not foresee the space being reoccupied by a bank branch in the near future.

The proposed day care center would operate from 7AM - 6PM, Monday – Friday. The day care is to be licensed by the New York State Office of Child and Family Services (NYSOCFS) and will accommodate 22 infants and toddlers (6 wks – 2 ½ yrs) as well as 24 children (2 ½ - 5 yrs), with an option of an additional 32 children. The latter would occupy the second floor space and be subject to additional demand. The facility would be staffed at levels mandated by NYSOCFS. The applicant believes that the proposed use will provide a desirable service for downtown workers in the adjacent vicinity and will enhance the appeal of surrounding properties. He states that prepaid parking meter spaces will be reserved for parents wishing to drop off children directly rather than walk from their parking spaces.

The building at 90 State Street currently has a vacancy rate of 22.5% and operates at a negative rate of return. The day care center would occupy approximately 9% of the space within the building thereby decreasing the vacancy rate to a more fiscally manageable 13.5%. The applicant cites a loss of \$526,984 related to the space in question since his purchase of the building in 2007. The tenant fit-up is expected to cost \$22,000.

#### Findings

When considering a request for a use variance, the Board shall require a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board that for each and every permitted use under the zoning regulations for the particular district where the property is located:

[1] The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

The applicant is contending with an unreasonable high vacancy rate at the property in question that is at least partially related to the historic configuration of the ground level building space. Being unable to find a suitable tenant to occupy the space, the property owner is subject to a hardship of being unable to achieve revenue for a significant area of the floor area within the building.

[2] The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or the neighborhood.

The hardship in question is unique as it relates to a portion of the floor area within the building at the premise that is uniquely designed for a particular use that no longer demands the location of the space or level of ornate detail contained within it. The former bank space is historically significant and relatively

unique in the context of the district in question.

[3] The requested use variance, if granted, will not alter the essential character of the neighborhood.

The proposed use will not alter the character of the neighborhood in a negative way. To a certain degree the use is prohibited only as a result of a certain technical specificity of the language contained within the City Zoning Ordinance.

[4] The alleged hardship has not been self-created.

The hardship is not self-created and is a result of unique circumstances relating to this particular property.

The Board, when granting a use variance, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant and that also will preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The variance granted is the minimum variance and will preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The Board finds that, in accordance with §375-26(B)(2)(a), the variance granted is the minimum necessary, and that:

- a. The applicant has demonstrated an unnecessary hardship, in that they cannot realize a reasonable return with a permitted use of the building.
- b. This hardship is unique to this property.
- c. Granting the variance will not alter the essential character of the neighborhood.
- d. The hardship was not self-created.

The Board hereby issues a <u>negative</u> declaration under SEQR for this <u>unlisted</u> action, as the proposed construction will not result in any significant adverse environmental impacts.

I, G. Michael Apostol, representing the Board of Zoning Appeals of the City of Albany, hereby certify that the foregoing is a true copy of a decision of the Board made at a meeting thereof duly called and held on July 25, 2012.

Signed:	C. Cerogram Harry	Date:	7/25/12
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Important Note: Unless otherwise specified by the Board, this decision shall expire and become null and void if the applicant fails to obtain any necessary zoning, building, or other permits or comply with the conditions of such decision within six (6) months of the date of signature.

#### NOTIFICATION OF LOCAL ACTION DECISION OF THE CITY OF ALBANY BOARD OF ZONING APPEALS

▶ Important Note: This is not a building permit. All building permits must be approved and issued by the Division of Building & Codes prior to the start of any construction.

ADDRESS OF SUBJECT PROPERTY: 90 State St.

IN THE MATTER OF: Special Use Permit to allow an adult day care center to occupy +/- 2,100

HISTORIC/ SPECIAL DISTRICT(S): Downtown Albany Historic District; Downtown Albany

square feet of floor space of the 11th floor of the building at the premises.

APPLICANT: Harmony Mills South, LLC c/o Nadine Feiden Shadlock, Esq.

ADDRESS: 12 Van Rensselaer Blvd., Albany, NY 12204

CASE NUMBER: 11-13, 4148

DATE APPLICATION RECEIVED: 10/18/13

DATE OF HEARING: 11/13/13

DATE OF DECISION: 1/8/14

WARD: 3

**DECISION: Approved** 

N.A.: <u>N/A</u>

**Business Improvement District** 

The request is **Approved**, by the following vote:

For: 5 Apostol: Rav: Against: 0 Cronin: Tucker-Ross: Y

Abstain: 1 Moran: AB Viele: Y

#### Site Description

The property in question is located on the southwest corner of State and South Pearl Streets in a C-3 Central Business zoning district, the Downtown Albany Historic District and the Downtown Albany Business Improvement District. The 114' x 147' lot is improved with a 14-story, 212,528 square foot commercial structure

#### Relevant Considerations

The applicant is seeking to operate an adult day care facility at the subject property. It is proposed that the adult day care would occupy +/- 2,100 square feet within the building, either on the ground level or the 11th floor of the building. The Administrator has determined that the proposed use requires a Special Use Permit in the applicable C-3 zoning district.

The applicant states that the "purpose of this use is to provide peer interaction and engagement for seniors, with stimulating daily activities to enhance their quality of life." Activities will include a "book club, fitness / exercise, crafts, painting, knitting / needlework, speakers on nutrition or current events, or storytelling." The intent is to begin by enrolling forty individuals in the program and thereafter increase to as a many as sixty individuals. The program will be staffed by an Adult Care Director and five additional employees. Hours of operation will be 7AM - 6AM, Monday - Friday, identical to those of a children's day care center recently established within the building. The practice of having clients walk from adjacent parking garages or drop off in designated areas will continue, as is currently practiced with the day care.

The applicant feels that the use will provide an added service to the downtown area and will be wholly compatible with surrounding uses and not more objectionable that permitted uses. It states: "It is believed that adult care would likely be included as a principal permitted use, were the Zoning Law revised in consideration of the realities of the present day, including not just the aging population, but also that both working age adults in a family now work."

#### **Findings**

The Board finds that the special use is in accordance with the following standards set forth in §375-27(B)(1):

- a. Is as a permitted special use in the appropriate zoning district., as determined by the administrator.
- b. Will conform to the standards and conditions specified in §375 for that use.
- c. Will not have an undue adverse affect upon adjacent property, the character of the neighborhood and surrounding areas, traffic conditions, parking, utility facilities or other matters affecting the public health, safety, welfare or convenience,
- d. Operations in connection with the proposed use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, illumination, etc., than the operations of any permitted use not requiring a special use permit.
- e. Will be served adequately by essential public facilities and services such as highways, streets, parking spaces, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use will provide adequately for such additional services as the board deems appropriate.
- f. Complies with all additional requirements imposed on it by the provisions of §375.
- Will be in harmony with the applicable zoning district and will not adversely affect the neighborhood and the surrounding areas.

The Board hereby issues a negative declaration under SEQR for this unlisted action, as the proposed construction will not result in any significant adverse environmental impacts.

I, G. Michael Apostol, representing the Board of Zoning Appeals of the City of Albany, hereby certify that the foregoing is a true copy of a decision of the Board made at a meeting thereof duly called and held on January 8, 2014.

▶ Important Note: Unless otherwise specified by the Board, this decision shall expire and become null and void if the applie	m
fails to obtain any necessary zoning building or other permits or comply with the conditions of such decision within six	161

months of the date of signature.

E,	Desc	ription of the Equipment:
	e d I	Does a part of the Project consist of the acquisition or installation of machinery quipment or other personal property (the "Equipment")? Yes $\mathbf{X}$ ; No, If yes escribe the Equipment; Diesel fire pump for sprinkler system, heating and cooling system infrastructure apgrade and replacement/redesign, expansion of sprinkler system, expansion and apgrade of fire and building security/access systems and elevator upgrades.
	2.	With respect to the Equipment to be acquired, will any of the Equipment be Equipment which has previously been used? Yes $\underline{\hspace{0.1cm}}$ ; No $\underline{X}$ . If yes, please provide detail:
	3.	Describe the principal uses to be made by the Company of the Equipment to be acquired or installed:
		Supportive of the use of the property for residential multifamily dwelling units.
F.	Proje	rct Use:
		What are the principal products to be produced at the Project? ducts to be produced will be the conversion of established office space in the ral Business District into residential dwelling units.
	resid Co-V	What are the principal activities to be conducted at the Project? The 15-lential dwelling units will be home to the tenants residing there. In addition to lential dwelling units, 90 State Street will include state of the art exercise facilities Vork space, and gathering areas, with this in addition to the remaining office and obished retail uses presently in place.
		Does the Project include facilities or property that are primarily used in making sales of goods or services to customers who personally visit such facilities? Yes $\underline{\mathbf{X}}$ . If yes, please provide detail:
		If the answer to question 3 is yes, what percentage of the cost of the Project will spended on such facilities or property primarily used in making retail sales of good evices to customers who personally visit the Project? 100_%
	5. 33.33	If the answer to question 3 is yes, and the answer to question 4 is more than 3%, indicate whether any of the following apply to the Project:
		a. Will the Project be operated by a not-for-profit corporation? Yes: No If yes, please explain:

- b. Is the Project likely to attract a significant number of visitors from outside the economic development region in which the Project will be located? Yes  $\underline{X}$ : No ..., If yes, please explain: This is the first high rise residential conversion in the Region. We expect that 90 State's intrinsic beauty, panoramic views and high-end finishes will attract visitors from outside the area. Such visitors will include developers, to see an example of what can be achieved with an aging office tower, with vision and commitment, as well as tenant prospects considering moving to the NYS Capital. Quality high end, market rate housing is essential to support the housing needs of this growing City.
  - d. Would the Project occupant, but for the contemplated financial assistance from the Agency, locate the related jobs outside the State of New York?
     Yes X ; No ... If yes, please explain:

Absent IDA assistance, this building will not be converted from office space to high end residential. Key to this is the fact 90 State is the only residential conversion or housing project proposed in the City which will remove 148,489 SF of existing office space from the market due. This very significant elimination of office space from the City office rental market will drive upgrades and re-occupancy of now vacant and under-utilized offices, thereby bringing jobs and employees to the City's revitalized office accommodations. This will enhance office rental values per SF, and, in so doing, increase assessments and City tax base. Additionally, live/ work will take root.

- e. Will the Project be located in one of the following: (i) an area designed as an economic development zone pursuant to Article 18-B of the General Municipal Law; or (ii) a census tract or block numbering area (or census tract or block numbering area contiguous thereto) which, according to the most recent census data, has (x) a poverty rate of at least 20% for the year in which the data relates, or at least 20% of households receiving public assistance, and (y) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates? Yes X __; No ____. If yes, please explain:
- 6. If the answers to any of subdivisions c, through e, of question 5 is yes, will the Project preserve permanent, private sector jobs or increase the overall number of permanent, private sector jobs in the State of New York? Yes  $\underline{\mathbf{X}}$ : No_____. If yes, please explain:

This is the first high rise residential conversion in Albany as well as the very first substantial residential conversion of existing office space. To climinate 148,489 SF of existing Downtown office space, creating a stimulus to Downtown office vacancy and jobs, plus bringing the residents of these 154 apartments to downtown to live, shop and work, thereby driving retail. The synergies and impact of this Project will be significant.

	7. Will the completion of the Project result in the removal of a plant or facility of the Company or another proposed occupant of the Project (a "Project Occupant") from one area of the State of New York to another area of the State of New York? Yes; No X If yes, please explain:
	8. Will the completion of the Project result in the abandonment of one or more plants or facilities of the Company located in the State of New York? Yes; No_X, If yes, please provide detail:
	9. If the answer to either question 7 or question 8 is yes, indicate whether any of the following apply to the Project:
	<ul> <li>a. Is the Project reasonably necessary to preserve the competitive position of the Company or such Project Occupant in its industry? Yes; No N/A If yes, please provide detail:</li> </ul>
	h. Is the Project reasonably necessary to discourage the Company or such Project Occupant from removing such other plant or facility to a location outside the State of New York? Yes; No_N/A If yes, please provide detail:
Çi.	Other Involved Agencies:
	Please indicate all other local agencies, boards, authorities, districts, commissions or governing bodies (including any city, county and other political subdivision of the State of New York and all state departments, agencies, boards, public benefit corporations, public authorities or commissions) involved in approving or funding or directly undertaking action with respect to the Project. For example, do you need a municipal building permit to undertake the Project? Do you need a zoning approval to undertake the Project? If so, you would list the appropriate municipal building department or planning or zoning commission which would give said approvals.  City of Albany Planning Board (Major Development Plan Approval granted November 16, 2017): City Buildings and Regulatory Compliance: City Water & Water Supply.
	2. Describe the nature of the involvement of the federal, state, or local agencies described above: City Planning Board: Major Development Plan Review and Approval of this project renovation and change in use. City Building Department: Building Permits. City Water Department approved the Project Sewer Engineer's Report and the Project Stormwater Management Report.
and the same of th	Construction Status:
	1. Has construction work on this Project begun? Yes $\underline{\mathbf{X}}$ ; No, If yes, please discuss in detail the approximate extent of construction and the extent of completion Indicate in your answer whether such specific steps have been completed as site clearance and preparation; completion of foundations: installation of footings; etc.:
	- 13 -
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Demolition activities on the 11th floor, which is the first floor to be converted to residential dwelling commenced in early January 2018, with the City Building Department's issuance of a demolition permit. The building permit for the 11th Floor was issued on April 18, 2018, with preliminary work and MEP drawings in process.

- 2. Please indicate amount of funds expended on this Project by the Company in the past three (3) years and the purposes of such expenditures: This Project secured its Major Development Plan Approval on November 16, 2017 from the City Planning Board. Therefore, expenditures commenced in 2017 in connection with the approval process for the residential conversion, including preparation of all documents and materials for the approvals and this IDA Application, as well as preliminary infrastructure and construction activities, \$253,800 (including architect, engineer, consultants, demolition, legal, materials).
- 3. Please indicate the date the applicant estimates the Project will be completed: The applicant anticipates this 154 unit residential conversion will be substantially completed by December 31, 2022.
- Method of Construction After Agency Approval:
  - 1. If the Agency approves the Project which is the subject of this application, there are two methods that may be used to construct the Project. The applicant can construct the Project privately and sell the Project to the Agency upon completion. Alternatively, the applicant can request to be appointed as "agent" of the Agency, in which case certain laws applicable to public construction may apply to the Project. Does the applicant wish to be designated as "agent" of the Agency for purposes of constructing the Project? Yes _X___; No _____.
  - 2. If the answer to question 1 is yes, does the applicant desire such "agent" status prior to the closing date of the financing? Yes  $X_{-}$ ; No____.
- III. INFORMATION CONCERNING LEASES OR SUBLEASES OF THE PROJECT. (PLEASE COMPLETE THE FOLLOWING SECTION IF THE COMPANY INTENDS TO LEASE OR SUBLEASE ANY PORTION OF THE PROJECT).
  - A. Does the Company intend to lease or sublease more than 10% (by area or fair market value) of the Project? Yes X ; No . . If yes, please complete the following for each existing or proposed tenant or subtenant: The Company intends to lease 100% of the 154 residential dwelling units which comprise this Project. The tenants will be identified at completion and rent-up of the dwelling units.

Sublessee nam								
Present Addres	551							
City:	State:	:	Zip:					
Employer's ID								
Sublessee is:	Corporation:	Partnership:	Sole Proprietorship					
Relationship to								
Percentage of	Project to be leased	or subleased:						
Use of Project	Use of Project intended by Sublessee:							
Date of lease of	Date of lease or sublease to Sublessee:							
Term of lease	or sublease to Suble	ssee:						
Will any porti	on of the space leas	ed by this suble	ssee he primarily used in m					
	Will any portion of the space leased by this sublessee be primarily used in making retail sales of goods or services to customers who personally visit the Project							

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		Yes; No If yes, please provide on a separate attachment (a) details and (b) the answers to questions II(F)(4) through (6) with respect to such sublessee.
	3,	Sublessee name: Please see above explanation. Present Address:
		City: State: Zip; Employer's ID No.; Sublessee is:
		Corporation: Partnership: Sole Proprietorship Relationship to Company: Percentage of Project to be leased or subleased:
		Use of Project intended by Sublessee: Date of lease or sublease to Sublessee: Ferm of lease or sublease to Sublessee: Will any portion of the space leased by this sublessee be primarily used in making retail
		sales of goods or services to customers who personally visit the Project? Yes :: No :: If yes, please provide on a separate attachment (a) details and (b) the answers to questions II(F)(4) through (6) with respect to such sublessee.
	3.	Sublessee name: Please see above explanation. Present Address:
		City:State:Zip: Employer's ID No.: Sublessee is:Corporation:Partnership:Sole Proprietorship
		Relationship to Company: Percentage of Project to be leased or subleased; Use of Project intended by Sublessee:
		Date of lease or sublease to Sublessee: Ferm of lease or sublease to Sublessee:
		Will any portion of the space leased by this sublessee be primarily used in making retail sales of goods or services to customers who personally visit the Project? Yes; No \(\Delta\) If yes, please provide on a separate attachment (a) details and (b) the answers to questions II(F)(4) through (6) with respect to such sublessee.
13.	lease	percentage of the space intended to be leased or subleased is now subject to a binding written or sublease? The residential conversion from office will be completed in a phased manner floor by floor basis, working around the natural expiration of existing office leases.
IV E	mployment I	mpact
A	will t comp and () beloy	ate the number of people presently employed at the Project site and the <u>additional</u> number that be employed at the Project site at the end of the first and second years after the Project has been deted, using the tables below for (1) employees of the Applicant, (2) independent contractors, (3) employees of independent contractors. (Do not include construction workers). Also indicate with number of workers employed at the Project site representing newly created positions as sed to positions relocated from other project sites of the applicant. Such information regarding
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relocated positions should also indicate whether such positions are relocated from other project sites financed by obligations previously issued by the Agency.

		EMPLOYN ees of Applic			
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	Totals
Present Full Time	1	L	1	1	4
Present Part Time					
Present Seasonal					
First Year Full Time	1	1.	1	2	5
First Year Part Time					
First Year Seasonal					
Second Year Full Time	1	1	1	2	5
Second Year Part Time					
Second Year Seasonal					

TOTAL THE THE PROPERTY OF THE	TYPE OF F Independe			**************************************	INTERNETION OF THE STATE OF THE
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	Totals

Present Full Time	900000000000000000000000000000000000000	0			0
Present Part Time				111111111111111111111111111111111111111	
Present Seasonal					
First Year Full Time					
First Year Part Time		2			2
First Year Seasonal					
Second Year Full Time					
Second Year Part Time		2			2
Second Year Seasonal					
	TYPE OF Employees of h	EMPLOYM idependent C			to the second se
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	Totals
Present Full Time					
Present Part Time					
Present Seasonal					
First Year Full Time					
First Year Part Time		and the state of t			
First Year Seasonal					
Second Year Full Time					Control of the appropriate of the
				<del> </del>	<del></del>

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Second Year Seasonal					94 44444 PAGE 1966 PAGE 1966

B. Indicate below (1) the estimated salary and fringe benefit averages or ranges and (2) the estimated number of employees residing in the Capital Region Economic Development Region for all the jobs at the Project site, both retained and created, listed in the tables described in subsection A above for each of the categories of positions listed in the chart below.

***************************************	Professional or	LOYMENT INFO		
	M anagerial	Skilled	Semi-Skilled	Un-Skilled
Estimated Salary and Fringe Benefit Averages or Ranges	\$47,500	\$38,333	\$25,000	\$22,000
Estimated Number of Employees Residing in the Capital Region Economic Development Region ¹	All	All	All	All

C. Please describe the projected timeframe for the creation of any new jobs with respect to the undertaking of the Project:

The jobs will be created on an ongoing basis from the time of commencement of issuance of the project approvals, with design work and planning commencing in Fall of 2017, with job creation to be ongoing and stabilize as the conversion and renovations continue floor by floor, with additional jobs to be created with unit rent up and management thereafter.

D. Please prepare a separate attachment describing in detail the types of employment at the Project site. Such attachment should describe the activities or work performed for each type of employment.

The Capital Region Economic Development Region consists of the following counties: Albany, Schenectady, Rensselaer, Greene, Columbia, Saratoga, Warren and Washington,

## V. Project Cost and Financing Sources

A. Anticipated Project Costs. State the costs reasonably necessary for the acquisition of the Project site, the construction of the proposed buildings and the acquisition and installation of any machinery and equipment necessary or convenient in connection therewith, and including any utilities, access roads or appurtenant facilities, using the following categories:

Description of Cost	Amount
Land	\$177,600
Buildings	\$20,822,400
Machinery and equipment costs	<u>\$</u>
Utilities, roads and appurtenant costs	\$20,000
Architects and engineering fees	\$400,000
Costs of Bond Issue (legal, financial and printing)	<u>\$</u>
Construction loan fees and interest (if applicable)	\$800,000
Other (specify)	
FF&E	\$365,000
Permit Fees and Related Costs	\$300,000
Other Soft Costs	<u>\$200,000</u>
Accounting/Legal	\$50,000
TOTAL PROJECT COSTS	\$23,135,000

B. Anticipated Project Financing Sources. State the sources reasonably necessary for the financing of the Project site, the construction of the proposed buildings and the acquisition and installation of any machinery and equipment necessary or convenient in connection therewith, and including any utilities, access roads or appurtenant facilities, using the following categories:

Description of Source	
Private Sector Financing	\$17,351,250
Public Sector	
Federal Programs	\$
State Programs	\$

		Local Programs	\$
		Applicant Equity	\$5,783,750
		Other (specify, e.g., tax credits)	
			S
		TOTAL AMOUNT OF PROJECT FINANCING SOURCES	\$23,135,000
	C.	Have any of the above expenditures alread Yes_X; No, If yes, indicate particulars.	ly been made by the applicant?
		Architects: both design architects and landscape electrical and mechanical, attorneys, constructionmental consultants, plus extensive MEP vesystems and general construction on the 11th floor.	ruction consultants and estimators, work regarding building infrastructure/
	D.	Amount of loan requested: \$17.351.250 attempting to procure financing. As this will be financing to be obtained by applicant at this time is not to lenders.	a phased project, the exact amount of
		Maturity requested: 30 years.	
	F1.	Has a commitment for financing been received as of this	s application date, and if so, from whom?
		Yes : No X . Institution Name:	
		Provide name and telephone number of the person we m	ay contact.
		Name: Phone:	and the state of t
	F.	The percentage of Project costs to be financed from put following: $\underline{0}\%$	olic sector sources is estimated to equal the
	G.	The total amount estimated to be borrowed to finan $\underline{\$17,351,250}$	see the Project is equal to the following
VI.	BENEI	TTS EXPECTED FROM THE AGENCY	
	Α.	Financing	
		1. Is the applicant requesting that the Agency issumes Yes ; No X	me bonds to assist in financing the Project?
0.136.1	an var ta	- 20 -	
10.000	onter MISPIES	s (3638594v10	

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	а. b,	Amount of loan requested: Dollars;  Maturity requested: Years.	
2.	Is the	interest on such bonds intended to be exempt f Yes; No $\underline{N/A}$	rom federal income taxation?
3,		answer to question 2 is yes, will any portion of the ving purposes: $\underline{N/A}$	Project be used for any of the
	a.	retail food and beverage services: Yes ; No	
	b.	automobile sales or service: Yes : No	1468/2010 1 E
	e.	recreation or entertainment: Yes ; No	
	d.	golf course: Yes; No	
	c.	country club: Yes; No	
	f.	massage parlor: Yes; No	
	2.	tennis club: Yes: No	
	h.	skating facility (including roller	
	•	skating, skateboard and ice skating): Yes;	No
	i.	racquet sports facility (including	
		handball and racquetball court): Yes; No_	
	j.	hot tub facility: Yes; No	
	k.	suntan facility: Yes; No	
	Ι,	racetrack: Yes; No	
4.		answer to any of the above questions contained the details on a separate attachment. $\frac{N/\Lambda}{}$	d in question 3 is yes, please
5.	ls the No <u>X</u>	Project located in the City's federally designated	d Enterprise Zone? Yes;
6.	Is the	applicant requesting the Agency to issue federall $9.4  \mathrm{Yes} = 1.0  \mathrm{No}  \mathrm{M}$	y tax-exempt Enterprise Zone
	lenefits	applicant requesting any real property by evening	on that would not be available
1.	Is the	applicant requesting any real property tax exempti at did not involve the Agency? Yes:: No X	
1. to a pr 2. more	Is the roject the Is the mortgag		ject will be secured by one or
1. to a process of the second	Is the roject the first the mortgag secured Is the ent of N approxi	at did not involve the Agency? Yes $\underline{\hspace{1cm}}$ ; No $\underline{\hspace{1cm}}$ applicant expecting that the financing of the Proes? Yes $\underline{\hspace{1cm}}$ ; No $\underline{\hspace{1cm}}$ . If yes, what is the app	ject will be secured by one or proximate amount of financing gency for purposes of avoiding X; No, If yes, what
1. to a property of the second	Is the roject that Is the mortgag secured Is the ent of N approxi 5. Sales a What	and did not involve the Agency? Yes : No X : applicant expecting that the financing of the Proces? Yes X : No : If yes, what is the applicant expecting to be appointed agent of the Agency : Sales Tax or Compensating Use Tax? Yes : mate amount of purchases which the applicant expecting to be appointed agent of the Agency : Yes : which the applicant expecting to be appointed agent of the Agency : Yes : which the applicant expectation is the applicant expectation of the process of the	ject will be secured by one or proximate amount of financing gency for purposes of avoiding Y : No If yes, what xpects to be exempt from the on being sought in connection
1. to a property of the second	Is the roject that Is the mortgag secured Is the ent of N approxi 5. Sales a What	applicant expecting that the financing of the Proes? Yes X No. If yes, what is the apply mortgages? \$17,351,250.  applicant expecting to be appointed agent of the Agent of th	ject will be secured by one or proximate amount of financing agency for purposes of avoiding a part of the property in the property of the property in the property of the exempt from the con being sought in connection the of the exemption.
1. to a property of the second	Is the roject three Is the mortgag secured Is the ent of N approxi 5. Sales a What he Proje	and did not involve the Agency? Yes : No X applicant expecting that the financing of the Project Yes X : No If yes, what is the apply mortgages? \$17,351,250.  applicant expecting to be appointed agent of the Agency Sales Tax or Compensating Use Tax? Yes 2 mate amount of purchases which the applicant end Compensating Use Taxes? \$11,567,500.  is the estimated value of each type of tax-exemption? Please detail the type of tax-exemption and value of	ject will be secured by one or proximate amount of financing gency for purposes of avoiding X; No If yes, what xpects to be exempt from the on being sought in connection the of the exemption.  \$925,400
1. to a property of the second	Is the roject three for the mortgag secured in the last the ent of N approxist Sales and What he Project	applicant expecting that the financing of the Proes? Yes X No. If yes, what is the apply mortgages? \$17,351,250.  applicant expecting to be appointed agent of the Agent of th	ject will be secured by one or proximate amount of financing agency for purposes of avoiding a party in the control of the exempt from the control of the exemption.

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В.

- 5. Are any of the tax-exemptions being sought in connection with the Project inconsistent with the Agency's Uniform Tax Exemption Policy? Yes ; No  $\underline{X}$ . If yes, please explain. This Project is requesting relief consistent with the Uniform Tax Exemption Policy.
- 6. Does the project involve a minimum investment of \$25 million dollars, a minimum of fifteen (15) acres or a full service hotel? Yes ____; No _X ___. If yes, please provide Detail and whether the applicant is seeking a real property tax abatement outside of the Agency's Project Evaluation and Assistance Framework.
- Is the Project located in the City's state designated Empire Zone? Yes____; No X.
- C. <u>Project Cost/Benefit Information.</u> Complete the attached Cost/Benefit Analysis so that the Agency can perform a cost/benefit analysis of undertaking the Project. Such information should consist of a list and detailed description of the benefits of the Agency undertaking the Project (e.g., number of jobs created, types of jobs created, economic development in the area, community benefits (including community commitment as described in the Agency's Project Evaluation and Assistance Framework), etc.), Such information should also consist of a list and detailed description of the costs of the Agency undertaking the Project (e.g., tax revenues lost, buildings abandoned, etc.).
- VII. <u>REPRESENTATIONS BY THE APPLICANT</u>. The applicant understands and agrees with the Agency as follows:
  - A. <u>Job Listings</u>. Except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOC") and with the administrative entity (collectively with the DOC, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA"), as replaced by the Workforce Investment Act of 1998 (Public Law 105-220), in which the Project is located.
  - B. <u>First Consideration for Employment</u>. In accordance with Section 858-b(2) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, where practicable, the applicant will first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the Project.
  - C. <u>City Human Rights Law.</u> The applicant has reviewed the provisions of Chapter 48, Article III of the City Code, entitled "The Omnibus Human Rights Law" and agrees to comply with such provisions to the extent that such provisions are applicable to the applicant and the Project.
  - D. <u>Annual Sales Tax Filings.</u> In accordance with Section 874(8) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of

Taxation and Finance, describing the value of all sales tax exemptions claimed by the applicant and all consultants or subcontractors retained by the applicant.

- E. <u>Annual Employment Reports.</u> The applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the applicant agrees to file, or cause to be filed, with the Agency, on an annual basis, reports regarding the number of people employed at the Project site, including (1) the NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return—for the quarter ending December 31 (the "NYS-45"), and (2) the US Dept. of Labor BLS 3020 Multiple Worksite report if applicable. The applicant also agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the participation of individuals from minority groups as employees or applicants for employment with regard to the project.
- Coal Labor Information. The applicant is aware of and understands the provisions of Part 24 of the Policy Manual of the Agency, the applicant agrees to provide information, in form and substance satisfactory to the Agency, relating to construction activities for projects; specifically: (i) the Company's contact person responsible and accountable for providing information about the bidding for and awarding of construction contracts relative to this Application and the Project, (ii) the nature of construction jobs created by the Project, including the number, type, and duration of construction positions; and (iii) submit to the Agency a "Construction Completion Report" listing the names and business locations of prime contractors, subcontractors, and vendors who were engaged in the construction phase of the Project.
- G. Additional Fee for Low Income Housing/Tax Credit (9% only) Projects. An annual administrative fee equal to \$10,000 shall be payable annually by the applicant on each January 1 for a term equal to ten (10) years. This annual administrative fee is in addition to the standard administrative fee for Agency Straight Lease Transactions and Agency Bond Transactions and is applicable to Projects which provide for low income housing/tax credit (9% only) projects.
- II. <u>Project Benefits Agreement.</u> The applicant agrees to enter into a project benefits agreement with the Agency where the applicant agrees that (1) the amount of Financial Assistance to be received shall be contingent upon, and shall bear a direct relationship to the success or lack of success of such project in delivering certain described public benefits (the "Public Benefits") and (2) the Agency will be entitled to recapture some or all of the Financial Assistance granted to the applicant if the project is unsuccessful in whole or in part in delivering the promised Public Benefits.
- I. <u>Assignment of Agency Abatements</u>. In connection with any Agency Straight Lease Transaction or Agency Bond Transaction, the Agency may grant to the applicant certain exemptions from mortgage recording taxes, sales and use taxes and real property taxes. The applicant understands that the grant of such exemptions by the Agency is intended to benefit the applicant. Subsequently, if the applicant determines to convey the Project and, in connection with such conveyance to assign such exemptions to the purchaser, the applicant understand that any such assignment is subject to review and consent by the Agency, together with the satisfaction of any conditions that may be imposed by the Agency.
- J. <u>Post Closing Cost Verification</u>. The applicant agrees (1) the scope of the Project will not vary significantly from the description in the public hearing resolution for the project and (2) to deliver to the Agency within sixty (60) days following the completion date of a project an affidavit providing the total costs of the project. In the event that the amount of the total project costs

described in the affidavit at the completion date exceeds the amount described in an affidavit provided by the applicant on the closing date of the project, the applicant agrees to adjust the amounts payable by the applicant to the Agency by such larger amount and to pay to the Agency such additional amounts. In the event that the amount described is less, there shall not be any adjustment to the Agency fees.

- K. <u>Representation of Financial Information</u>. Neither this Application nor any other agreement, document, certificate, project financials, or written statement furnished to the Agency or by or on behalf of the applicant in connection with the project contemplated by this Application contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading. There is no fact within the special knowledge of any of the officers of the applicant which has not been disclosed herein or in writing by them to the Agency and which materially adversely affects or in the future in their opinion may, insofar as they can now reasonably foresee, materially adversely affect the business, properties, assets or condition, financial or otherwise, of the applicant.
- L. Agency Financial Assistance Required for Project. The Project would not be undertaken but for the Financial Assistance provided by the Agency or, if the Project could be undertaken without the Financial Assistance provided by the Agency, then the Project should be undertaken by the Agency for the following reasons: This Project is a fundamentally transformative project for the City of Albany. It not only removes 148,489 SF of office space from the Central Business District, which presently has a combined office vacancy rate in excess of 20%, but also brings 154 sets of tenants to the first substantial office conversion and first high rise residential conversion in the City. The combination of these factors will not only drive the upgrade and rent up of the remaining downtown office space, but also bring a substantial population of individuals into the Central Business District providing the impetus for reestablishment of retail there by creating a 24/7 livable downtown. With retail back in place, supported by the population living downtown a vibrant community will evolve, property values and tax base will increase, to the benefit of the entire City of Albany and surrounding region.
- M. Compliance with Article 18-A of the General Municipal Law: The Project, as of the date of this Application, is in substantial compliance with all provisions of article 18-A of the General Municipal including, but not limited to, the provisions of Section 859-a and subdivision one of Section 862; and the provisions of subdivision one of Section 862 of the General Municipal Law will not be violated if Financial Assistance is provided for the Project.
- N. <u>Compliance with Federal, State, and Local Laws</u>. The applicant is in substantial compliance with applicable local, state, and federal tax, worker protection, and environmental laws, rules, and regulations.
- O. <u>False or Misleading Information</u>. The applicant understands that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any Financial Assistance and the reimbursement of an amount equal to all or part of any tax exemptions claimed by reason of Agency involvement in the Project.
- P. <u>Absence of Conflicts of Interest</u>. The applicant acknowledges that the members, officers and employees of the Agency are listed on the Agency's website. No member, officer or employee of the Agency has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as hereinafter described; Not applicable.

Q. Additional Information. Additional information regarding the requirements noted in this Application and other requirements of the Agency is included the Agency's Policy Manual which can be accessed at <a href="https://www.albanyida.com">www.albanyida.com</a>.

I affirm under penalty of perjury that all statements made on this application are true, accurate and complete to the best of my knowledge.

Applicant: Harmony Mills South LLC

By:

Title:

Uri Kaufman, Manager

NOTE: APPLICANT MUST ALSO COMPLETE THE APPROPRIATE VERIFICATION APPEARING ON PAGES 27 THROUGH 30 HEREOF BEFORE A NOTARY PUBLIC <u>AND</u> MUST SIGN AND ACKNOWLEDGE THE HOLD HARMLESS AGREEMENT APPEARING ON PAGE 31.

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#### **VERIFICATION**

(If applicant is limited liability company)

STATE OF NEW YORK)
COUNTY OF <u>Madall</u>) SS.:

Uri Kaufman

_ deposes and says

(Name of Individual)

that he is the manager of the firm of Harmony Mills South LLC, the limited liability company named in the attached application; that he has read the foregoing application and knows the contents thereof; and that the same is true and complete and accurate to the best of his knowledge. The grounds of deponent's belief relative to all matters in the said application which are not stated upon his own personal knowledge are investigations which deponent has caused to be made concerning the subject matter of this application as well as information acquired by deponent in the course of his duties as a member of and from the books and papers of said limited liability company.

Uri Kaufman

Swom to before me this Object day of June, 2019

Notary Public, State of New York

Gisela M. Agullar Notary Public - State of New York Reg. # 01AG6076533 Qualified in Nassau County My Commission Expires 06/24/2022

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#### HOLD HARMLESS AGREEMENT

Applicant hereby releases City of Albany Industrial Development Agency and the members, officers, servants, agents and employees thereof (hereinafter collectively referred to as the "Agency") from, agrees that the Agency shall not be liable for and agrees to indemnify, defend and hold the Agency harmless from and against any and all liability arising from or expense incurred by (i) the Agency's examination and processing of, and action pursuant to or upon, the attached Application, regardless of whether or not the application or the project described therein or the issue of bonds requested therein are favorably acted upon by the Agency, and (ii) the Agency's financing of the Project described therein; including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. If, for any reason, the Applicant fails to conclude or consummate necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable, proper or requested action, or withdraws, abandons, cancels or neglects the Application, or if the Agency or the Applicant are unable to find buyers willing to purchase the total bond issue requested, then, and in that event, upon presentation of an invoice itemizing the same, the Applicant shall pay to the Agency, its agents or assigns, all actual costs incurred by the Agency in the processing of the Application, including attorneys' fees, if any.

(Applicant)

Harmony Mills South LLC

BY:____

Uri Kaufman, Manager

Sworn to before me this

25 day of June, 2019.

Notary Public, State of New York

Gisela M. Aguillar Notary Public - State of New York Reg. # 01AG6076533

Qualified in Nassau County

My Commission Expires 06/24/2022

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TO: FROM: RE:	Project Applicants City of Albany Industrial Development A Cost/Benefit Analysis	gency
Cost/Bene contained Questionn	order for the City of Albany Industrial Deve fit Analysis for a proposed project (the "Proj in this Project Questionnaire (the "Questionna aire and the attached Schedule will provide info sts and benefits associated therewith.	ect"), the Applicant must answer the question ire") and complete the attached Schedules. This
	his Questionnaire must be completed before withis Questionnaire and forward it to us at your e	
	PROJECT QUESTI	<u>ONNAIRE</u>
1. Nar	ne of Project Beneficiary ("Company"):	Harmony Mills South LLC
2. Brie	ef Identification of the Project:	90 State Street-Residential Conversion
A. B. C. D.	imated Amount of Project Benefits Sought: Amount of Bonds Sought: Value of Sales Tax Exemption Sought Value of Real Property Tax Exemption Sought Value of Mortgage Recording Tax Exemption Sought elihood of accomplishing the Project in a ely fashion (please explain):	\$0 \$925,400 \$6,930,175 \$173,512 Yes X No
	PROJECTED PROJECT	INVESTMENT
2. 3. 4.	Land-Related Costs Land acquisition Site preparation Landscaping Utilities and infrastructure development Access roads and parking development Other land-related costs (describe)	\$177,600 \$

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	** ** ** ** ** ** ** ** ** **	
В.	Building-Related Costs	07.477.400
1.	Acquisition of existing structures	<u>\$5,422,400</u>
	Renovation of existing structures	\$7,700,000
3.	New construction costs	S
4.	Electrical systems	\$2,002,000
5.	Heating, ventilation and air conditioning	\$2,618,000
6,	Plumbing	\$3,080,000
7.	Other building-related costs (describe)	<u> </u>
C	Machinery and Equipment Costs	
1.	Production and process equipment	. S
2.	Packaging equipment	\$
3.	Warehousing equipment	\$
4.	Installation costs for various equipment	\$
5.	Other equipment-related costs (describe)	S
D.	Furniture and Fixture Costs	
1.	Office furniture	<u>\$100,000</u>
2.	Office equipment	\$100,000
3,		<u>\$15,000</u>
-4,		\$150,000
	grades: Elevator, HVAC, boiler, diesel fire pump, sprinkler.	
Ε.	Working Capital Costs	
1.	Operation costs	S 158,100
2,	Production costs	\$
.3.	Raw materials	\$
4.	Debt service	S <u>455,000</u>
5.	Relocation costs	<u>\$ 106,000</u>
6,		<u> </u>
. 7.	Other working capital-related costs (describe) insurance	S_80,900
	Bur C. 12 1.10	
F	Professional Service Costs	6 400 600
1.		\$400.000
2.		<u>\$50,000</u>
3.	Other service-related costs (describe)	S
G.	Other Costs	
(), ],	Permits, Fees and Related Costs	\$300,000
2.		\$200,000
<i>i</i>	Soft Costs	5200,000
H.	Summary of Expenditures	
11,	Total Land-Related Costs	\$197.600
3	Total Building-Related Costs	\$20,822,400
3.	Total Machinery and Equipment Costs	520,022,400 S
3. 4.	Total Furniture and Fixture Costs	\$365,000
5.		
5. 6.	Total Working Capital Costs Total Professional Service Costs	\$800,000
		\$450,000
7.	Total Other Costs	\$500,000

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#### PROJECTED PROFIT

I. Please provide projected profit as defined by earnings after income tax but before depreciation and amortization:

	YEAR	Without IDA benefits	With IDA benefits
2023	**	(\$214,844)	\$198,918
2024	2	(\$190,485)	\$231,552
2025	3	(\$165,643)	\$264,835
2026	4	(\$140,301)	\$298,786
2027	5	(\$114.453)	\$333,416

### PROJECTED CONSTRUCTION EMPLOYMENT IMPACT

 Please provide estimates of total construction jobs and the total annual wages and benefits of construction jobs at the Project;

Year	Number of Construction Jobs	Ţ	otal Annual Wages and Benefits		Estimated Additional NYS Income Tax
Current Year	30	\$	TBD	\$	TBD
Year I	20	\$	TBD	\$	TBD
Year 2	20	\$	TBD	8	TBD
Year 3	19	8	TBD	\$	TBD
Year 4	0	\$	TBD	\$	TBD
Year 5	0	S	TBD	<u>S</u>	TBD
Total:	89				

## PROJECTED PERMANENT EMPLOYMENT IMPACT

- Estimates of the total number of existing permanent jobs to be preserved or retained as a result of the Project are described in the tables in Section IV of the Application.
- II. Estimates of the total new permanent jobs to be created at the Project are described in the tables in Section IV of the Application.
- III. Please provide estimates for the following:
  - A. Creation of New Job Skills relating to permanent jobs. Please complete Schedule A.

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- IV. Provide the projected percentage of employment that would be filled by City of Albany residents:

  Applicant will use best efforts to full all available positions with as many City of Albany residents as possible.
  - A. Provide a brief description of how the project expects to meet this percentage:

## PROJECTED OPERATING IMPACT

1.	Please provide	estimates I	for the impact	of Project	operating	purchases and	sales:
----	----------------	-------------	----------------	------------	-----------	---------------	--------

Additional Purchases (1st year following project completion)	STBD
Additional Sales Tax Paid on Additional Purchases	S TBD
Estimated Additional Sales (1st full year following project completion)	S TBD
Estimated Additional Sales Tax to be collected on additional sales (1st full year following project completion)	S TBD

II. Please provide estimates for the impact of Project on existing real property taxes and new payments in lieu of taxes ("Pilot Payments"):

#### See Attachment "G"

Year	Existing Real Property Taxes (Without IDA involvement)	New Pilot Payments (With IDA)	Total (Difference)
Current Year			
Year I			
Year 2			
Year 3			
Year 4			
Year 5			
Year 6			
Year 7			
Year 8			
Year 9			
Year 10			

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Attachment "G"

06.05.19

Comparison of Taxes without IDA PILOT and with IDA PILOT PILOT COMMENCING 1/1/23 Difference Estimate Total Taxes W/O PILOT New PILOT Payments with IDA 413,761 422,036 758,562 344,801 773,733 789,208 351,697 358,731  $439,\!477$ 804,992 365,905 439,086 821,092 373,223 447,868\$37,513 380.688 456,826 854,264 388,302 465,962 871.349 396,068 475,281 888,776 452,468 436.308 906,552 445,034 461,517924,683 495,966 428,716 943,176 557,331 385,845 962.040 620,953 341,087 981,281 660,134 321.146 1.000.906 727,932 272,974 1,020,924 798,177 222,747 L041,343 170,402 \$70.941 946,297 1,062.170115,873 1.083,413 965,222 118.1911,105.081 984,527 120,554 1,127,183 1.127,183 18,431,036 11,500,880 6,930,175

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- III. Please indicate which of the below described community commitments (as defined in the Agency's Project Evaluation and Assistance Framework) will be provided as a result of the Project, and please provide a detailed description of such commitments, together with any other economic benefits and community benefits expected to be produced as a result of the Project (attach additional pages as needed for a complete and detailed response):
  - X MWBE/DBE Participation
  - X Regional Labor
  - X City of Albany Labor

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#### CERTIFICATION

I certify that I have prepared the responses provided in this Questionnaire and that, to the best of my knowledge; such responses are true, correct, and complete.

I understand that the foregoing information and attached documentation will be relied upon, and constitute inducement for, the Agency in providing financial assistance to the Project. I certify that I am familiar with the Project and am authorized by the Company to provide the foregoing information, and such information is true and complete to the best of my knowledge. I further agree that I will advise the Agency of any changes in such information, and will answer any further questions regarding the Project prior to the closing.

I affirm under penalty of perjury that all statements made on this application are true, accurate and complete to the best of my knowledge.

Date Signed: June 5, 2019

Name of Person Completing Project Questionnaire on behalf of the Company.

Name: Nadine F. Shadlock, Esq.

Title: Attorney for the Project

Phone Number: 518-432-3310
Address: 12 Van Rensselaer Blvd., Albany, NY 12204-

1609

Signature:

Nadine F. Shadlock, Esq.

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## SCHEDULE A

## CREATION OF NEW JOB SKILLS

Please list the projected new job skills for the new permanent jobs to be created at the Project as a result of the undertaking of the Project by the Company.

New Job Skills Real estate management, leasing agent, amenity coordinator, cleaning, facility management.	Number of Positions Created 1	Range of Salary and Benefits \$22,000-47,500					

Should you need additional space, please attach a separate sheet.

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#### SCHEDULE E

#### ANNUAL EMPLOYMENT VERIFICATION/COMPLIANCE REPORT

This Annual Employment Verification/Compliance Report and all applicable attachments must be completed and provided to the Agency by (INSERT DATE). Kindly provide the following information for calendar year YEAR (January 1, YEAR - December 31, YEAR). Project Closing Date: Project or Company Name: 1. Original Estimate of Jobs to be Created and Retained (from the project Application or Initial Employment Plan)..... 2. Number of Current Full Time Employees (as of 12/31/xx)...... 3. Number of Full Time Construction Jobs During Fiscal Year (20xx)...... 4. If "Original Estimate of Jobs to be Created and Retained" does not equal "Number of Current Full Time Employees (as of 12/31/xx)," please explain: 5. Did the Company receive a mortgage recording tax exemption in 20xx (Y/N)? ...... If yes, indicate the amount (\$) of mortgage recording tax exemption received in 20xx ...... 6. Did the Company receive a real property tax exemption in 20xx (Y/N)? ....... If yes, indicate if the Company has paid its annual PILOT payments in 20xx (Y/N) .......... If outstanding 20xx PILOT payments remain due, please explain: If yes, please attach a copy of a filed NYS Dept. of Taxation and Finance Form ST-340 Annual

Report of Sales and Use Tax Exemptions for 20xx (applicable to projects with sales tax exemption

letters for construction phase).

8.	Does the Company have a Uniform Agency Project Agreement (Y/N)?
	If yes, <i>please attach</i> a copy of a filed 20xx NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return for the last payroll date in the month of December 20xx (applicable to project applicants that submitted a project application after March 19, 2015 and that have a Uniform Agency Project Agreement).
9.	<b>Attach</b> an updated Certificate of Insurance naming the Agency as "Additional Insured." Please refer to your Project Documents for information about required insurance.
10.	Has an event of default under the Project Documents occurred or is continuing during FY 20xx?  (Y/N) If yes, please explain:
11.	Did the Company agree to provide "Community Commitments" in connection with the undertaking of the Project? (Y/N) If yes, please describe how the Company has provided the Community Commitments:
	<u>CERTIFICATION</u>
I h	ereby certify that I am the owner of the project site or am the duly authorized representative and may
sign	n this data submission on behalf of the owner(s) of said project site. I have read and understand all of
the	requirements contained within the Project Documents and I have read the foregoing Annual
Em	ployment Verification/Compliance Report and know the contents thereof; and that the same is true and
	applete and accurate to the best of my knowledge.
	Name (Print)
	TVI
	Title
	Signature
	Phone Number
	Email Address
	Company Address
	Company reactess

**NOTE**: The following must be completed for all Projects <u>closed</u> on or after **June 15, 2016**:

# **RETAINED JOBS**

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent					
Contractors					
Contract					
Employees					

## **CREATED JOBS**

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent					
Contractors					
Contract					
Employees					

## SALARY AND FRINGE BENEFITS

Is the	salary	and	fringe	benefit	averages	or	ranges	for	categories	of jobs	retained	and	jobs	created
descri	bed in th	he Ap	oplication	on or the	e Initial E	mp	loyment	Plan	n still comp	lete, tru	e, and acc	urate	:	
Yes: _			N	lo:										
If not	nlease	nrovi	de the i	revised a	mounts i	isin	o the tab	ile h	elow and at	tach an	explanatio	on of	the cl	ianges.

RELATED EMPLOYMENT INFORMATION					
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	
Estimated Salary and Fringe Benefit Averages or Ranges					
Estimated Number of Employees Residing in the Capital Region					

Economic Development		
Region ¹		

### Officer's Certification

I further certify that to the best of my knowledge and belief all of the information under the headings "Retained Jobs," "Created Jobs," and "Salary and Fringe Benefits" above is complete, true, and accurate. I also understand that failure to report completely and accurately may result in enforcement of provisions of the Uniform Agency Project Agreement dated as of August 1, 2019 by and between the Company and City of Albany Industrial Development Agency (the "Project Agreement"), including but not limited to the suspension, discontinuance, and potential claw back of financial assistance provided for the project.

Signed	:
	(Authorized Company Representative)
Date:	

¹ The Capital Region Economic Development Region consists of the following counties: Albany, Schenectady, Rensselaer, Greene, Columbia, Saratoga, Warren, and Washington.

## SCHEDULE F

## COMMUNITY COMMITMENTS

# Regional Labor:

The Company commits to 90% of Regional Labor for construction jobs.

# City of Albany Labor:

The Company commits to 15% of City of Albany labor for construction jobs.

# MWBE:

The Company commits to at least 20% of the value of awarded construction of the Project is performed by minority or woman owned operations.