

**AUTHORIZING MODIFICATION TO BASIC DOCUMENTS  
FOR THE EXTENSION OF DEADLINE TO SALES TAX EXEMPTION  
HARMONY MILLS SOUTH LLC PROJECT**

A regular meeting of City of Albany Industrial Development Agency (the “Agency”) was convened in public session at the office of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York on December 15, 2022 at 12:15 p.m., local time.

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

PRESENT:

Elizabeth Staubach	Chair
Lee E. Eck, Jr	Vice Chair
Hon. Darius Shahinfar	Treasurer
Anthony Gaddy	Secretary
Joseph Better	Member
Christopher Betts	Member
John F. Maxwell, Esq.	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Sarah Reginelli	Chief Executive Officer
Thomas Conoscenti	Chief Operating Officer/Interim CFO
Andrew Corcione	Project Services Director
Ashley Mohl	Vice President, Capitalize Albany Corporation
Renee McFarlin	Senior Economic Developer, Capitalize Albany Corporation
Michael Bohne	Communications & Marketing Manager, Capitalize Albany Corporation
Emma Fullem	Economic Development Specialist, Capitalize Albany Corporation
Marisa Franchini, Esq.	Agency Counsel
A. Joseph Scott, III, Esq.	Special Agency Counsel

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

RESOLUTION AUTHORIZING THE EXECUTION BY CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN MODIFICATION AGREEMENT IN CONNECTION WITH THE HARMONY MILLS SOUTH LLC PROJECT

WHEREAS, City of Albany Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 325 of the 1974 Laws of New York, as amended, constituting Section 903-a of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on September 19, 2019 (the “Closing”), the Agency granted certain financial assistance to Harmony Mills South LLC (the “Company”), in connection with a project (the “Project”), said Project consisting of 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, simultaneously upon the execution and delivery of the Lease Agreement (the “Closing”), (A) the Company executed and delivered 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 leased to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”); (2) a certain license agreement dated as of August 1, 2019 (the “License to Agency”) by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company granted to the Agency (a) a license entered upon the balance of the Land (the “Licensed Premises”) for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an

additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a certain bill of sale dated as of August 1, 2019 (the “Bill of Sale to Agency”), which conveyed to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency executed and delivered (1) a certain payment in lieu of tax agreement dated as of August 1, 2019 (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement (the “Section 875 GML Recapture Agreement”) by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; and (3) a certain uniform agency project agreement dated as of August 1, 2019 (the “Uniform Agency Project Agreement”) related to the granted Financial Assistance by the Agency to the Company, (D) the Agency filed with the assessor and mailed to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement, (E) the Agency executed and delivered to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (F) the Agency filed with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”) (together with the Lease Agreement, the above-enumerated documents being collectively referred to as the “Basic Documents”); and

WHEREAS, the Company has requested, pursuant to the correspondence attached hereto as Exhibit A, that the Agency modify the terms of the Basic Documents in order to extend the Sales Tax Exemption (as defined in the Basic Documents) from December 31, 2022 to December 31, 2024 (the “Modification”); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), it appears that the Modification constitutes a Type II action under SEQRA;

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

Section 1. Based upon an examination of the Modification, the Agency hereby makes the following determinations:

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

(B) That since compliance by the Agency with the Modification will not result in the Agency providing more than \$100,000 of “financial assistance” (as such quoted term is defined in the Act) to the Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Modification.

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

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

Section 4. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chair (or Vice Chair) of the Agency is hereby authorized to execute and deliver the Modification Agreement to the Company, and, where appropriate, the Secretary of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chair (or Vice Chair) shall approve, the execution thereof by the Chair (or Vice Chair) to constitute conclusive evidence of such approval.

Section 5. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Modification Agreement, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Modification Agreement binding upon the Agency.

Section 6. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Elizabeth Staubach	VOTING	_____
Lee E. Eck, Jr	VOTING	_____
Hon. Darius Shahinfar	VOTING	_____
Anthony Gaddy	VOTING	_____
Joseph Better	VOTING	_____
Christopher Betts	VOTING	_____
John F. Maxwell, Esq.	VOTING	_____

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned Secretary of City of Albany Industrial Development Agency (the “Agency”), DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the resolution contained therein, held on December 15, 2022, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Agency and of such resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this \_\_\_\_\_ day of December, 2022.

\_\_\_\_\_  
Secretary

(SEAL)

EXHIBIT A

REQUEST

- SEE ATTACHED -

**LAW OFFICE OF NADINE F. SHADLOCK**

12 Van Rensselaer Blvd.  
Albany, New York 12204-1609  
518-281-6977

[nadine@nadineshadlock.com](mailto:nadine@nadineshadlock.com)  
[nadineshadlock.com](http://nadineshadlock.com)

*NYS Certified Women Owned Business Enterprise  
NYC Certified WBE - NYSUCP DBE - SBA WOSB  
SBA HUB Zone Certified SBC*

Nadine Feiden Shadlock, Esq.

November 29, 2022

**VIA ELECTRONIC MAIL**

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

RE: Request for IDA Assistance for 90 State Street

Dear Chairman Staubach,

Please accept this note as my request on behalf of my client, Harmony Mills South LLC, for the City of Albany IDA's (the "IDA") assistance by modifying a deadline for Financial Assistance awarded to the 90 State Street Project.

As you may recall, at the IDA closing on September 19, 2019, the IDA granted certain Financial Assistance to the Project, including a Sales and Use Tax Exemption in amount of \$925,400 ("Sales Tax Exemption"). As will be explained in the attached materials, due to extenuating circumstances arising out of the COVID 19 Pandemic, as well as unforeseeable circumstances associated with the Project, my client respectfully requests that this matter be placed on the December 15, 2022 IDA Agenda for the IDA's consideration of following assistance from the IDA:

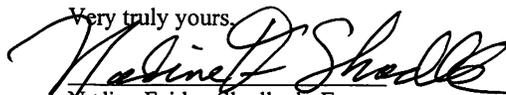
- o Sales Tax Exemption. A Two (2) year extension in the expiration of the Sales Tax Exemption from December 31, 2022 to until December 31 2024.

The following additional information is included in this submission:

- Attachment A- Sales Tax Exemption Used.

We are most grateful to the IDA for its ongoing support, in the absence of which we would not have a project. The IDA support has allowed us to both undertake and move this project toward completion.

Thank you.

Very truly yours,  
  
Nadine Feiden Shadlock, Esq.

CC: Uri Kaufman (Via Email)

**Attachment A**

Sales Tax Exemption Used

Harmony Mills South LLC

90 State Street

September 17, 2019: Sales Tax Exemption Granted \$925,400.00

Sales Tax Exemption Used:

2019: \$10,822.05

2020: None

2021: None

2022 YTD: \$210,000.00

Total Sales Tax Exemption Used: \$220,822.05

Remaining Available Sales Tax Exemption: \$704,577.95