

CLOSING ITEM NO.: A-6

CITY OF COHOES INDUSTRIAL DEVELOPMENT AGENCY

AND

HARMONY MILLS WEST LLC

PAYMENT IN LIEU OF TAX AGREEMENT

DATED AS OF NOVEMBER 1, 2012

RELATING TO THE PREMISES LOCATED AT 50 NORTH
MOHAWK STREET AND 100 NORTH MOHAWK STREET IN
THE CITY OF COHOES, ALBANY COUNTY, NEW YORK.

TABLE OF CONTENTS

(This Table of Contents is not part of the Payment in Lieu of Tax Agreement
and is for convenience of reference only)

ARTICLE I

REPRESENTATIONS AND WARRANTIES

Section 1.01. Representations of and Warranties by the Agency4
Section 1.02. Representations of and Warranties by the Company4

ARTICLE II

COVENANTS AND AGREEMENTS

Section 2.01. Tax-Exempt Status of the Project Facility6
Section 2.02. Payments in Lieu of Taxes6
Section 2.03. Credit for Taxes Paid8
Section 2.04. Late Payment9

ARTICLE III

LIMITED OBLIGATION

Section 3.01. No Recourse; Limited Obligation of the Agency11

ARTICLE IV

EVENTS OF DEFAULT

Section 4.01. Events of Default13
Section 4.02. Remedies on Default13
Section 4.03. Payment of Attorney s Fees and Expenses14
Section 4.04. Remedies, Waiver and Notice14

ARTICLE V

MISCELLANEOUS

Section 5.01. Term16
Section 5.02. Form of Payments16
Section 5.03. Company Acts16

Section 5.04. Amendments17
Section 5.05. Notices17
Section 5.06. Binding Effect18
Section 5.07. Severability19
Section 5.08. Counterparts19
Section 5.09. Applicable Law19

SIGNATURES.....20
ACKNOWLEDGMENTS21

EXHIBIT A - Description of the Land A-1

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of November 1, 2012 (the "Payment in Lieu of Tax Agreement") by and between CITY OF COHOES 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 97 Mohawk Street, Cohoes, New York 12047 (the "Agency") and HARMONY MILLS WEST 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 100 North Mohawk Street, Cohoes, New York 12047 (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 to lease or sell any or all of its facilities and to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof to secure the payment of such bonds and interest thereon; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions the Enabling Act, by Chapter 313 of the Laws of 1972 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, by resolution adopted by the members of the Agency on September 17, 2012 (the "Preliminary inducement Resolution"), the Agency agreed to accept an application (the "Application") from the Company which is a combination of two projects previously approved by the Agency for the Company and Harmony Mills South, LLC, and further agreed, subject to numerous conditions, to consider undertaking a project (the "Project") consisting of the following:

(A) (1) the acquisition of a parcel of real estate located at 50 North Mohawk Street and 100 North Mohawk Street and an adjoining parking lot adjacent to such properties in the City of Cohoes, Albany County, New York (the "Land") and the existing facilities aggregating approximately 162,400 square feet located thereon (the "Existing Facilities"), (2) the rehabilitation of the Existing Facilities into approximately 104 residential rental units, interior storage for the residents, a new gym and parking facilities (the "Facility"); and (3) the acquisition and installation therein and thereon of various machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); (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 taxes, real estate transfer taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the sale (with an obligation to purchase) or lease 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, the requirements of 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 being 6 NYCRR Part 617, as amended (the "Regulations collectively with the SEQR Act, "SEQRA") applicable to the Project have been complied with; and

WHEREAS, pursuant to the authorization contained in the Preliminary Inducement Resolution, the Chairman of the Agency (A) caused notice of a public hearing of the Agency 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 (the "Public Hearing") to be mailed on September 19, 2012 to the chief executive officer 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 published on September 21, 2012 in the Troy Record, a newspaper of general circulation available to residents of the City of Cohoes, (C) conducted the Public Hearing on October 4, 2012 at 8:00 o'clock a.m., local time at City Hall, 97 Mohawk Street in the City of Cohoes, Albany County, New York, and (D) prepared a report of the Public Hearing (the "Report") which fairly summarized the views presented at said public hearing and distributed same to the members of the Agency; and

WHEREAS, the Agency (A) caused a letter dated September 21, 2012 (the "PILOT Deviation Letter") to be mailed to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is or will be located (each an "Affected Tax Jurisdiction"), informing said individuals that the Agency would, at its meeting to be held on October 4, 2012, consider a proposed deviation from the Agency's uniform tax exemption policy with respect to the payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility; and (B) conducted such meeting on October 4, 2012 at 8:00 o'clock a.m., local time City Hall, 97 Mohawk Street in the city of Cohoes, Albany County, New York; and

WHEREAS, by resolution adopted by the members of the Agency on October 4, 2012 (the "Approving Resolution"), the Agency determined, to grant the Financial Assistance and to enter into a lease agreement dated as of November 1, 2012 (the "Lease Agreement") by and between the

Agency and the Company and certain other documents related thereto, to the Financial Assistance and to the Project (collectively with the Lease Agreement, the "Basic Documents");

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"), 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;

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) Power. 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) Authorization. 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) Conflicts. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on 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, is duly authorized to do business in the State, 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) Authorization. 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) Conflicts. 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) Governmental Consent. 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) Agreement to Make Payments. 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.

(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 an amount equal to:

<u>Year</u>	<u>PILOT PAYMENT</u>
2013	\$ 15,000
2014	15,000
2015	15,000
2016	15,000
2017	15,000
2018	15,000
2019	15,000
2020	15,000
2021	15,000
2022	15,000
2023	15,000
2024	15,000
2025	15,000
2026	15,000
2027	15,000
2028	15,000
2029	15,000
2030	15,000
2031	15,000
2032	15,000

(D) Valuation of Additional Facilities. (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, and if the Company shall have given written notice of such dissatisfaction to the appropriate Assessor and the Agency within thirty (30) days of receipt by the Company of written notice of the initial establishment of such Additional Assessed Value, or of a change in such Additional Assessed Value, then the Company shall be entitled to protest before, and to be heard by, the appropriate Assessor and the Agency. If the Agency, the Company and any Assessor shall fail to reach agreement as to the proper Additional Assessed Value of the Additional Facilities for purposes of determining payments in lieu of taxes due under this Payment in Lieu of Tax Agreement, then such Assessor, the Company and the Agency shall each select one arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general area of the Project Facility, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Additional Assessed Value of the Additional Facilities has been properly established by the Assessor. It is understood that the arbitrator are empowered to confirm the Additional Assessed Value or to determine a higher or lower Additional Assessed Value. Any payments in lieu of taxes due upon such Additional Facilities pursuant to Section 2.02(D) hereof may not be withheld by the Company pending determination of the Additional Assessed Value by the arbitrators.

(E) 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) Time of Payments. The Company agrees to pay the amounts due hereunder to the Receivers of Taxes for the City of Cohoes 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) Method of Payment. 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 proper taxes due to such Taxing Entity in any other fiscal tax year.

(B) 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) First Month. 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) Limited Obligation. 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 the City of Cohoes, New York, and neither the State of New York nor the City of Cohoes, 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) Further Limitation. 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 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, the Bank, any Successor Mortgagee or any other Successor (as the previous three terms are defined in the Lease Agreement) 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, the Bank, any Successor Mortgagee or any other Successor 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, the Bank, any Successor Mortgagee or any other Successor 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, the Bank, any Successor Mortgagee or any other Successor 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) Cross-Default. 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 specified in subsections (A) or (B) of section 4.01 hereof, 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) Separate Suits. 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. 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.

(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 an 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) No Remedy Exclusive. 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) Delay. 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) Notice Not Required. 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 date on which the Lease Agreement is terminated pursuant to Article X or Article XI thereof.

(B) Notwithstanding anything herein to the contrary, the Agreement shall terminate and the Project Facility shall be conveyed to the Company immediately upon (1) the sale, lease (other than the Master Lease between the Company as lessor and Harmony Mills West Master Tenant, LP as lessee dated contemporaneously with the execution of this Payment in Lieu of Tax Agreement and the lease of units in the Project Facility in the ordinary course of business), transfer, conveyance or other disposition by the Company of the Project Facility except to the Bank, any Successor Mortgagee or any other Successor or (2) the sale, transfer or other disposition of the respective ownership interests in the Company of the HM Trust, the West Trust or the Mohawk Trust except to the Bank, any Successor Mortgagee or any other Successor. The Company shall, upon termination of this Agreement in accordance with the provisions of this paragraph (B) of this Section 5.01 execute and deliver such documents as may be necessary to effect the transfer of the Project Facility to the Company, including, but not limited to, the Assignment to Company and Bill of Sale to Company, forms of which are attached as Exhibit C and Exhibit D, respectively, to the Lease Agreement.

(C) Extended Term. In the event that (1) the Project Facility shall be conveyed 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 for the City of Cohoes 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 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, 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) Notices Given by Taxing Entities. 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.

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

IF TO THE AGENCY:

City of Cohoes Industrial Development Agency
97 Mohawk Street
Cohoes, New York 12047
Attention: Executive Director

WITH A COPY TO:

M. Cornelia Cahill, Esq.
Hiscock & Barclay, LLP
80 State Street, 6th Floor
Albany, New York 12207

IF TO THE COMPANY:

Harmony Mills West LLC
100 North Mohawk Street

Cohoes, New York 12047

WITH A COPY TO:

Robert Wakeman, Esq.
Lombardi, Walsh, Wakeman, Harrison,
Amodeo & Davenport, P.C.
3 Winners Circle
Albany, New York 12205

IF TO THE BANK:

Wells Fargo Bank, National Association
Commercial Real Estate (AU #55224)
200 Public Square, 32nd Floor
Suite 3200
Cleveland, Ohio 44114
Attention: Gregory W. Ward, Senior Vice President
Loan #: 1006307 and 1007116

AND

Wells Fargo Bank, National Association
Winston-Salem Loan Center
One West Fourth Street, 3rd Floor
Winston Salem, North Carolina 27101
Attention: Cheryl Stephenson
Loan #: 1006307 and 1007116

WITH A COPY TO:

Edward J. Trombly, Esq.
Hiscock & Barclay, LLP
80 State Street
Albany, New York 12207

(D) Copies. 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) Change of Address. 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.


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 COHOES INDUSTRIAL
DEVELOPMENT AGENCY

By: 

Chairman

HARMONY MILLS WEST LLC

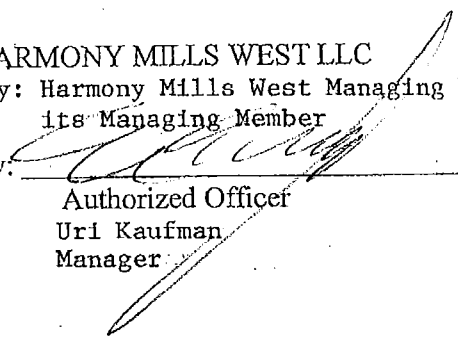
By: _____
Authorized Officer

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 COHOES INDUSTRIAL
DEVELOPMENT AGENCY

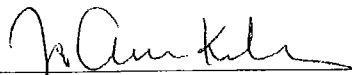
By: _____
Chairman

HARMONY MILLS WEST LLC
By: Harmony Mills West Managing Member, LLC,
its Managing Member

By:  _____
Authorized Officer
Uri Kaufman
Manager

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

On the 5th day of November in the year 2012 before me, the undersigned, a notary public in and for the State of New York, personally appeared John T. McDonald III, 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 the which the individual acted, executed the instrument.

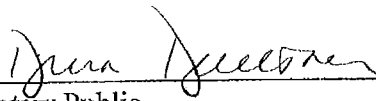


Notary Public

JO-ANN KILMER
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01KI 052588
QUALIFIED IN SARATOGA COUNTY
COMMISSION EXPIRES NOV. 20, 20 13

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

On the 24th day of October in the year 2012 before me, the undersigned, a notary public in and for the State of New York, 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 the which the individual acted, executed the instrument.



Notary Public

DINA DEUTSCHER
NOTARY PUBLIC, State of New York
No. 01DE6011135
Qualified in Queens County
Commission Expires August 3, 2014

EXHIBIT A
DESCRIPTION OF THE LAND

Old Republic National Title Insurance Company

SCHEDULE A

PROPERTY DESCRIPTION

All that piece or parcel of land situate in the City of Cohoes, County of Albany and the State of New York, bounded and described as follows:

Beginning at a capped iron rod located at the intersection formed by the northerly line of Vliet Street with the westerly line of North Mohawk Street; thence in a southwesterly direction and along the aforesaid northerly line of Vliet Street, the following two courses: 1) South $16^{\circ}25'32''$ West, 69.78 feet to a point and 2) South $59^{\circ}36'34''$ West, 196.94 feet to a point located at the intersection formed by said northerly line of Vliet Street with the division line between the lands of the City of Cohoes on the west and the lands of Harmony Mills West, LLC (Book 2713, Page 862) on the east; thence continuing in a westerly direction and along the aforesaid northerly line of Vliet Street, South $22^{\circ}08'52''$ West, 109.05 feet to a point; thence in a northerly direction and through the lands of the City of Cohoes, the following eleven courses: 1) North $43^{\circ}15'11''$ West, 14.34 feet to a point; 2) North $39^{\circ}59'09''$ West, 79.69 feet to a point; 3) North $40^{\circ}01'58''$ West, 112.10 feet to a point; 4) North $31^{\circ}21'58''$ West, 171.67 feet to a point; 5) North $24^{\circ}30'27''$ West, 75.30 feet to a point; 6) North $18^{\circ}26'06''$ West, 51.17 feet to a point; 7) North $11^{\circ}18'36''$ West, 82.35 feet to a point; 8) North $01^{\circ}00'18''$ West, 171.33 feet to a point; 9) North $04^{\circ}16'22''$ West, 166.08 feet to a point; 10) North $57^{\circ}01'33''$ East, 131.90 feet to a point and 11) being along the face of an existing building, South $32^{\circ}09'10''$ East, 118.05 feet to a point; thence along the aforesaid lands of Harmony Mills West, LLC (Book 2713, Page 862), the following three courses: North $56^{\circ}00'00''$ East, 2.13 feet to a point; 2) South $33^{\circ}59'50''$ East, 120.77 feet to a point and 3) North $57^{\circ}25'13''$ East, 30.96 feet to a point; thence in a southerly direction and along the aforesaid westerly line of North Mohawk street, the following three courses: 1) South $31^{\circ}13'01''$ East, 4.79 feet to a point; 2) South $00^{\circ}31'21''$ East, 6.67 feet to a point and 3) South $30^{\circ}05'48''$ East, 520.00 feet to a point; thence through the aforesaid lands of Harmony Mills West, LLC, the following seven courses: 1) South $58^{\circ}44'49''$ West, 93.57 feet to a point; 2) South $31^{\circ}04'45''$ East, 26.81 feet to a point; 3) South $58^{\circ}42'59''$ West, 36.98 feet to a point; 4) South $31^{\circ}13'15''$ East, 78.10 feet to a point; 5) North $58^{\circ}43'15''$ East, 21.85 feet to a point; 6) South $31^{\circ}16'45''$ East, 19.71 feet to a point and 7) North $58^{\circ}58'00''$ East, 106.29 feet to a point; thence in a southerly direction and along the aforesaid westerly line of North Mohawk Street, South $30^{\circ}05'48''$ East, 47.21 feet to the point or place of beginning.

Old Republic National Title Insurance Company

SCHEDULE A

PROPERTY DESCRIPTION

All that piece or parcel of land, in the City of Cohoes, County of Albany, State of New York, described as follows:

Beginning at a point in the westerly line of North Mohawk Street at the northeast corner of Mill No.4 (Bag Mill); thence South 26 degrees 47 minutes 21 seconds east and along the easterly face of Mill No. 4 and a continuation thereof, a distance of 272.76 feet to a point; thence South 63 degrees 11 minutes 14 seconds West, a distance of 52 feet to a point; thence North 26 degrees 48 minutes 46 seconds West, a distance 3 feet to a point; thence South 63 degrees 11 minutes 14 seconds West, a distance of 43.1 feet to a point; thence South 26 degrees 48 minutes 46 seconds East, a distance of 3.7 feet; thence South 63 degrees 11 minutes 14 seconds West, a distance of 46.35 feet to a point in the easterly face of a stone retaining wall; thence northerly and along the easterly face of said wall as it curves to the left, a distance of 297 feet more or less to a point, said last two points being subtended by a chord having a bearing of North 24 degrees 36 minutes 10 seconds West and a length of 294.24 feet; thence North 59 degrees 27 minutes 05 seconds East, a distance of 110.83 feet to a point; thence North 30 degrees 42 minutes 25 seconds West, a distance of 31.00 feet to a point; thence North 59 degrees 17 minutes and 41 seconds East, 30.35 feet to a point; thence along the westerly line of Mohawk Street, the following two courses: 1) South 19 degrees 13 minutes 23 seconds East, a distance of 46.38 feet and 2) South 17 degrees 28 minutes 17 seconds East, a distance of 15.00 feet to the point of beginning.