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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**BEACON ARMORY LLC**

**TRANSCRIPT OF PROCEEDINGS**

**BENTLEY LOFTS PROJECT**

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**CLOSING DATE: DECEMBER 22, 2021**

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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**BEACON ARMORY LLC – BENTLEY LOFTS PROJECT**

**INDEX OF CLOSING DOCUMENTS**

<b>Tab No.</b>	<b>Basic Documents</b>
1	Application for Financial Assistance
2	Project Agreement
3	Company Lease Agreement
4	Memorandum of Company Lease Agreement with TP-584
5	Bill of Sale
6	Agency Lease Agreement
7	Memorandum of Agency Lease Agreement with Form TP-584
8	Company Certification re: Local Labor Policy
9	Certificates of casualty, liability, workers' compensation and other required insurance
10	Environmental Compliance and Indemnification Agreement
11	Closing Receipt
12	Sales Tax Exemption Letter
13	Form ST-60 indicating appointment of the Company to act as the agent of the Agency
14	Mortgage
15	Assignment of Leases and Rents
16	UCC-1 Financing Statement(s)
17	Survey

**Items To Be Delivered By The Agency**

- 18 General Certificate of the Agency relating to incumbency and signatures of officers, execution and delivery of Agency Documents to which it is a party, no litigation and continued existence, with the following items included as exhibits:

Exhibit "A" - Chapter 641 of the Laws of 1979 of the State of New York, as amended

Exhibit "B" - Certificate of Establishment of the Agency and Certificates of appointment of current members

Exhibit "C" - By-laws

Exhibit "D" - Public Hearing Resolution

Exhibit "E" - Notice of Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions

Exhibit "F" - SEQRA Resolution

Exhibit "G" - Inducement Resolution

Exhibit "H" - Final Approving Resolution

- 19 Mortgage Recording Tax Affidavit

**Items To Be Delivered By Beacon Armory LLC**

- 20 General Certificate of Beacon Armory LLC relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits:

Exhibit "A" - Articles of Organization

Exhibit "B" - Operating Agreement

Exhibit "C" - Certificate of Good Standing

Exhibit "D" - Resolution

Exhibit "E" - Local Access Agreement

**Items To Be Delivered By Spilco Properties, LLC**

- 21 General Certificate of Spilco Properties, LLC relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits:

Exhibit “A” - Articles of Organization

Exhibit “B” - Operating Agreement

Exhibit “C” - Certificate of Good Standing

Exhibit “D” – Resolution

Exhibit “E” - Local Access Agreement

**Opinions of Counsel**

- 22 Opinion of Bousquet Holstein PLLC, counsel to the Agency, addressed to the Company and the Agency
- 23 Opinion of Newman & Lickstein, counsel to the Company, addressed to the Agency and the Company
- 24 Closing Memorandum



## City of Syracuse Syracuse Industrial Development Agency Application

### I. APPLICANT DATA

#### A. Contact Information

Company Name:	(Proposed Grantee of Armory Boys LLC (current owner): Beacon Armory LLC & Spilco Properties			
Mailing Address:	325 S Salina Street 3rd Floor			
City:	Syracuse	State:	NY	Zip: 13202
Phone:	9178480152	Fax:	N/A	
Contact Person:	Jeffrey Appel, Spiro Spiliotis			
Email Address:	spiro.spiliotis@gmail.com			
Industry Sector:	Real Estate Development and Leasing			
NAICS Code:	53EIN1110	Federal Employer Identification Number:	BEACON 86-2735708 Spilco 46-18	

#### B. Will the Applicant be the Project Beneficiary (i.e. Project tenant or owner/operator)

Yes  No  If No, Who will:

#### C. Principal Stakeholders

List principal owners/officers/directors owning 5% or more in equity holdings with percentage ownership. Public companies should list corporate officers.

Name	% Ownership	Business Address	Phone	Email
Spiro Spiliotis	32	96 Locust Ave New Rochelle NY 10801	9174946042	spiro.spiliotis@gmail.com
Jeffrey Appel	25	325 Salina St 3rd Floor Syracuse NY 13202	9178480152	jeff@armoryboys.com
John Caraccioli	25	460 West 141st Street New York NY 10031	9179914950	jcaraccioli@halstead.com
Pano Spiliotis	18	1762 Caulkins Road Pittsford PA 14534	5853054183	spiro.spiliotis@gmail.com

#### D. Corporate Structure: Attach a schematic if Applicant is a subsidiary or otherwise affiliated with another entity.

Corporation

Private

Public

Date and Location of  
Incorporation/Organization

Partnership

General

Limited

If a foreign corporation, is the  
Applicant authorized to do  
business in the State of New  
York?

Other

Sole Proprietorship

Limited Liability Company/Partnership

E. Applicant's Counsel:

Name:	Scott Lickstein				
Firm:	Newman and Lickstein				
Mailing Address:	109 S Warren Street #404				
City:	Syracuse	State:	NY	Zip:	13202
Phone:	3153525304	Fax:	3154221400		
Email Address:	scottlickstein@newmanlickstein.com				

F. Applicant's Accountant:

Name:	Gregory Crasto				
Firm:	Crasto and Associates PLLC				
Mailing Address:	161-10A Crossbay Boulevard				
City:	Howard Beach	State:	NY	Zip:	11414
Phone:	9179681830	Fax:			
Email Address:	Gregorycrasto5@gmail.com				

G. Applicant History: If the answer to any of the following is "Yes", please explain below. If necessary, attach additional information.

1. Is the Applicant, its management, or its principal owners now a plaintiff or defendant in any civil or criminal litigation?  Yes  No
2. Has any person listed in Section 1(c) ever been convicted of a criminal offense (other than a minor traffic violation)?  Yes  No
3. Has any person listed in Section 1 (C) or any concern with whom such person has been connected ever been in receivership or been adjudicated a bankrupt?  Yes  No

H. Has the Applicant, or any entity in which the Applicant or any of its members or officers are members or officers, received assistance from SIDA in the past? If yes, please give year, Project name, description of benefits, and address of Project.

Yes  No

2018 - The Piper Phillips building - Sales tax, Mortgage Recording tax waiver

**II. PROJECT INFORMATION**

**A. Project Location**

Address:	120 -124 Walton Street	Legal Address (if different)	
City:	Syracuse		
Zip Code:	13202		
Tax Map Parcel ID(s):	101.-04-09.0		
Current Assessment:	2,281,879	Square Footage /Acerage of Existing Site:	.16
Square Footage of Existing Building, if any	41,000	Census Tract: (Please See Appendix E for Census Tracts)	

**B. Type (Check all that apply):**

- New Construction
- Expansion/Addition to Current Facility
- Manufacturing
- Warehouse/Distribution
- Other
- Commercial
- Brownfield/Remediated Brownfield
- Residential/Mixed Use

**C. Description of Project:** Please provide a detailed narrative of the proposed Project. This narrative should include, but not be limited to: (i) the size of the Project in square feet and a breakdown of square footage per each intended use; (ii) the size of the lot upon which the Project sits or is to be constructed; (iii) the current use of the site and the intended use of the site upon completion of the Project; (iv) the principal products to be produced and/or the principal activities that will occur on the Project site; and (v) an indication as to why the Applicant is undertaking the Project and the need for the requested benefits (Attach additional sheets if necessary). Attach copies of any site plans, sketches or maps.

SEE APPLICANT EXHIBIT #1

**D. Is the Applicant the owner of the property?**

- Yes
- No

If not, who is the owner and by what means will the site be acquired? if leasing, when does the lease end?

**E. Infrastructure:** Please indicate whether the following are onsite, need to be constructed, or need to be renovated/expanded:

Water	Onsite	Electric	Onsite
Sanitary/Storm Sewer	Onsite	Private Roads	
Gas	Onsite	Telecommunication	Onsite



## Applicant Attachment #1

### Beacon Armory LLC - Project Description

Beacon Armory LLC will re-purpose to mixed use of the Bentley Settle Building (Basement commercial tenant space formerly Empire Brewing Company, first floor commercial spaces and 5 floors residential on 2-6) a contributing building in the Armory Square Historic District recognized on the National Register of Historic Places. The project scope consists of 35,900 square feet above grade and an additional 7000 sq feet at the lower level. Approximately 25,000 sq feet will be divided into 30 residences. 5 2-bedroom residences of approximately 850 sq ft each and 25 1-bedroom residences ranging from 575 - 650 will occupy the upper 5 floors. These loft style apartments will be smartly finished and will incorporate the latest advances in urban style living but will leave intact the entirety of the historic fabric of the tallest building in the Armory. This development comes at a critical time for the property. The unfortunate demise of the buildings former anchor tenant, combine with a glut of office space inventory in the marketplace created a need to re evaluate the highest and best use for the building. With the onset of the Covid 19 Pandemic ownership arrived at an unenviable foicrum. With only one commecial tenant occupying the entirety of the building a rededication to the redevelopment of this historic site was necessary. Work has begun on upgrading all building systems, preventitive mesasures are being taken to insure the commercial spaces and facade do not suffer from deferred maintenance. Through a significant new round of cash investment by the principals along with traditonal bank financing, Beacon Armory will deploy A nearly 4.5 million dollar program with local contractors and vendors to repair and needed facde work, Reconfiguartlon of the commercial spaces will present fresh and exciting floorplans that will attract the most sought after tenants in the marketplace. At least 50 new jobs should be generated through the new businesses that will find what they desire at the base of the Armory's most recognizable building. We ask SIDA to assist us in this endeavor. The funds we may receive will allow us to create a product we know both commercial and residential tenants will find vauable. Bewteen the rising cost of matreials (some of which have doubled and or tripled in recent months) labor shortages in the area and essential no active cash-flow from existing tenants, ownership humbly seeks SIDA's establiished benefits to insure that the beacon of the Armory can accomodate new business owners and uraban dwellers .

The following is additonal historic background on the Bentley Settle building. During World War II Bentley Settle and Co would be among those responsible for the oversight and distribution of rationed goods for the City of Syracuse. In more recent history, the Bentley Settle Building served as home to a group of artists and early pioneers of Armory Square A group of free spirits, they created studios and lofts incubating a true artist colony. The artists of the Armory existed on the upper floors of the building until they accidentally set fire to their space. The artists went on to open Eureka Studios just a block away.

For the Bentley Settle Building it could have been the end of the road. The building remained empty and unprotected from the elements for years until a local Architect, Ed Riley, set his sights on his most aggressive project to date. In 1987 Riley secured funding from the State of New York and the National Historic Trust to completely renovate both buildings. Riley would go to save many other historic buildings in Syracuse and beyond including the seventy-five million dollar restoration of the Hotel Syracuse completed in 2018. The 1987 renovation of the Bentley Settle and Piper Phillips remains a significant advantage for ownership in its plans for the Bentley Lofts. The condition of the building, its sidewalk vaults and other major systems will spare significant "unseen" costs and allocate more of the budget to amenities.

At the core of Syracuse nightlife and entertainment, The Bentley Settle building rises 6 floors at the center of the square. The landmark building demands glances upward along its fine brick work and verticality stressed by grouping windows under arches. A beautifully renovated lobby

and common corridor connects Walton Street to W Fayette Street. Here, another landmark, The Piper Phillips building, holds the fully leased result of the projects first phase, the Piper Phillips Residences and its eight unique urban homes. The Bentley Lofts, phase two of the project, will offer a mix of one and two bedroom homes with a distinctly urban edge. Massive hand hewn timbers support soaring ceilings and great windows that offer a variety of views that will never be taken for granted. But it is its enviable location that makes the Bentley Settle building and its thirty new loft residences a natural first choice for sophisticated yet affordable downtown living.

F. Zoning Classification: Please list the current zoning:

Current Zoning

CBD

G. Are variances needed to complete the Project?

Yes

No

If yes, please describe nature of variances and if municipal approvals have been granted:

H. Will the Project generate sales tax for the community?

Yes

No

If yes, what is the company's average annual sales or estimated annual sales?

TBD at the end of the renovation of the former Empire Brewing Company Space and other storefront

I. In accordance with N.Y. GML Sec. 862(1):

1. Will any other companies or related facilities within the state close or be subjected to reduced activity as a result of this Project? If so please list the town and county of the location(s):

Yes

No

2. Will the completion of the Project result in the removal of a plant or facility of the Applicant from one area of the State New York to another area of the State of New York?

Yes

No

3. Will the completion of the Project result in the abandonment of one or more plants or facilities of the Applicant located in the State of New York?

Yes

No

i. If any answer to questions 1, 2 or 3 above is yes, is the Project reasonably necessary to discourage the Applicant from removing such other plant or facility to a location outside the State of New York?

Yes

No

ii. If any answer to questions 1, 2 or 3 above is yes, is the Project reasonably necessary to preserve the competitive position of the Applicant in its respective industry?

Yes

No

4. Will the Project primarily consist of retail facilities?

Yes

No

Yes

No

i. If yes, will the cost of these facilities exceed one-third of the total Project cost?

Yes

No

J. Is the Project located in a distressed Census Tract?

Yes

No

Please see Appendix E for the map of distressed census tracts in the city of Syracuse.

K. Is the Project site designated as an Empire Zone?

Yes

No

L. Construction

1. Project Timeline (approximate):

Construction Commencement

09/01/2021

Construction Completion

08/31/2022

Date of Occupancy

09/01/2022

2. Please list any other key Project milestones:

3. Has work begun?

Yes

No

If so, indicate the amount of funds expended in the past 3 years?

250,000

**III. PROJECT COSTS & FINANCING**

**A. Estimated Project Costs**

i. State the costs reasonably necessary for the acquisition, construction, and/or renovation of the Project:

Description of Cost Type	Total Budget Amount
Land Acquisition *	*3,250,000
Site Work/Demo	200,000
Building Construction & Renovation	2,800,000
Furniture & Fixtures	300,000
Equipment	500,000
Equipment Subject to NYS Production Sales Tax Exemption (Manufacturing)	n/a
Engineering/Architects Fees	300,000
Financial Charges	100,000
Legal Fees	50,000
Other	
Management /Developer Fee	n/a
<b>Total Project Cost</b>	<b>4,250,000</b>

\*Refinancing of acquisition debt as part of the 7.5M Solvay Bank mortgage.

ii. State the sources reasonably anticipated for the acquisition, construction, and/or renovation of the Project:

Amount of capital the Applicant has invested to date:	5,000,000
Amount of capital Applicant intends to invest in the Project through completion:	4,250,000
Total amount of public sector source funds allocated to the Project:	n/a
Identify each public sector source of funding	n/a
Percentage of the Project to be financed from private sector sources:	100%
<b>Total Project Cost</b>	<b>9,250,000</b>

**B. Financial Assistance sought (estimated values):**

Applicants requesting exemptions and/or abatements from SIDA must provide the estimated value of the savings they anticipate receiving. **New York State regulations require SIDA to recapture any benefit that exceeds the amount listed in this application.**

i. Is the Applicant expecting that the financing of the Project will be secured by one or mortgages?  Yes  No

If yes, amount requested and name of lender: 7,500,000 - Solvay Bank

ii. Is the Applicant expecting to be appointed agent of the Agency for purposes of abating payments of NYS Sales and Use Tax?  Yes  No

If yes, what is the TOTAL amount of purchases subject to exemption based on taxable Project costs? 2,500,000

iii. Is the Applicant requesting a payment in lieu of tax agreement (PILOT) for the purpose of a real property tax abatement? Yes  No

If yes, Category of PILOT requested:

iv. Is the Applicant requesting any real property tax abatement that is **inconsistent** with the Agency's UTEP?  
 Yes  No

*If yes, please contact the Executive Director prior to submission of this Application.*

v. Upon acceptance of this Application, the Agency staff will create a PILOT schedule and indicate the estimated amount of PILOT Benefit based on anticipated tax rates and assessed valuation and attach such information as Exhibit A hereto. At such time, the Applicant will certify that it accepts the proposed PILOT schedule and requests such benefit be granted by the Agency.

**" This Application will not be deemed complete and final until Exhibit A hereto has been completed and executed"**

C. Type of Exemption/Abatement Requested:		Amount of Exemption/Abatement Requested:
<input type="checkbox"/>	Real Property Tax Abatement (PILOT)	
<input checked="" type="checkbox"/>	Mortgage Recording Tax Exemption (.75% of amount mortgaged)	56,250
<input checked="" type="checkbox"/>	Sales and Use Tax Exemption (\$4% Local, 4% State)	200,000
<input type="checkbox"/>	Tax Exempt Bond Financing (Amount Requested)	
<input type="checkbox"/>	Taxable Bond Financing (Amount Requested)	

D. Company's average yearly purchases or anticipated yearly purchases from vendors within Onondaga County, subject to sales tax:

250,000

E. Estimated capital investment over the next 5 years, beyond this Project, if available:

9,000,000+

#### IV. EMPLOYMENT AND PAYROLL INFORMATION

**\* Full Time Equivalent (FTE) Is defined as one employee working no less than 40 hours per week or two or more employees together working a total of 40 hours per week.**

A. Are there people currently employed at the Project site?

Yes  No If yes, provide number of full time equivalent (FTE) jobs at the facility:

B. Complete the following:

Estimate the number of full time equivalent (FTE) jobs to be retained as a result of this Project:	2
Estimate the number of construction jobs to be created by this Project:	40
Estimate the average length of construction jobs to be created (months):	3
Current annual payroll at facility:	0.00
Average annual growth rate of wages:	n/a
Please list, if any, benefits that will be available to either full and/or part time employees:	n/a
Average annual benefit paid by the company (\$ or % salary) per FTE job:	n/a
Average growth rate of benefit cost:	n/a
Amount or percent of wage employees pay for benefits:	n/a
Provide an estimate of the number of residents in the Economic Development Region (Onondaga, Madison, Cayuga, Oneida, Oswego, and Cortland Counties) to fill new FTE jobs:	2 fulltime building maintenance/operations positions will be created to service the tenants and carryout the maintenance program.

C. Complete the following chart indicating the number of FTE jobs presently employed at the Project and the number of FTE jobs that will be created at the Project site at the end of the first, second, third, fourth, and fifth years after the Project is completed. Jobs should be listed by title or category (see below), including FTE independent contractors or employees of independent contractors that work at the Project location. **Do not include construction workers.**

Current & Planned Full Time Occupations (Job Titles)	Current Number of FTEs	Annual Salary	Estimated Number of FTE Jobs After Project Completion					
			End of Year 1	End of Year 2	End of Year 3	End of Year 4	Total New Jobs After 5 Years	Total Retained Jobs After 5 Years
Building maintenance lead - Skilled	0	55,000	1					1
Building maintenance representative - Semi - Skilled	0	38,000	1					1

For purposes of completing the chart, refer to the following definitions, in lieu of current titles:

- **Professional/Managerial/Technical** - includes jobs which involve skill or competence of extraordinary degree and may include supervisory responsibilities (examples: architect, engineer, accountant, scientist, medical doctor, financial manager, programmer).
- **Skilled** - includes jobs that require specific skill sets, education, training, and experience and are generally characterized by high education or expertise levels (examples: electrician, computer operator, administrative assistant, carpenter, sales representative).
- **Unskilled or Semi-Skilled** - includes jobs that require little or no prior acquired skills and involve the performance of simple duties that require the exercise of little or no independent judgment (examples: general cleaner, truck driver, typist, gardener, parking lot attendant, line operator, messenger, information desk clerk, crop harvester, retail salesperson, security guard, telephone solicitor, file clerk).

D. Are the employees of your company currently covered by a collective bargaining agreement?

Yes  No If yes, provide the Name and Local:

**V. Environmental Information**

**\*An Environmental Assessment Form (EAF) MUST be completed and submitted along with this application. Please visit <https://www.dec.ny.gov/permits/6191.html> for the online EAF Mapper Application and EAF Forms.**

A. Have any environmental issues been identified on the property?

Yes  No

If yes, please explain:

B. Has any public body issued a State Environmental Quality Review Act determination for this Project?

Yes  No

If yes, please attach to this application.

## VI. REPRESENTATIONS & AFFIRMATIONS BY THE APPLICANT

I hereby represent and warrant that I am [the CEO of the company/applicant] or [a person authorized to bind the company/applicant] and make the following representations and/or warranties and understand and agrees with the Agency as follows:

**A. Jobs Listings:** 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 "DOL") and with the administrative entity of the service delivery area created by the Workforce Investment Act ("WIA") in which the Project is located.

ja

**B. First Consideration for Employment:** In accordance with §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 WIA programs who shall be referred by the WIA for new employment opportunities created as a result of the Project.

ja

**C. Other NYS Facilities:** In accordance with §862 (1) of the New York General Municipal Law, the Applicant understands and agrees that projects which will result in the removal of an industrial or manufacturing plant of the Project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the Project occupant within the state is ineligible for Agency Financial Assistance, unless otherwise approved by the Agency as reasonably necessary to preserve the competitive position of the Project in its respective industry.

ja

**D. City Human Right Law:** The Applicant agrees to endeavor to comply with the provisions of Article XI, Division 2 of the City Code, entitled "The Omnibus Human Rights Law," which prohibits discrimination in employment based upon age, race, sex, creed, color, religion, national origin, sexual orientation, disability or marital status. The Applicant hereby agrees to adhere to this policy or equal opportunity employment in the requirement, hiring, training, promotion, and termination of employees.

ja

**E. City of Syracuse and MWBE Preference:** The applicant understands and agrees that it is the preference of the Agency that the applicant provide, and use its best efforts to provide, opportunities for the purchase of equipment, goods and services from: (i) business enterprises located in the city of Syracuse; (ii) certified minority and/or women-owned business enterprises; and (iii) business enterprises that employ residents in the city of Syracuse. Consideration will be given by the Agency to the Project Applicant's efforts to comply, and compliance, with this objective at any time an extension of benefits awarded, or involvement by the Agency with the Project, is requested by the Project Applicant.

ja

**F. Local Labor Policy:** The applicant understands and agrees that local labor and contractors will be used for the construction, renovation, reconstruction, equipping of the Project unless a written waiver is received from the Agency. Failure to comply may result in the revocation or recapture of benefits awarded to the Project by the Agency. For the purposes of the policy, "Local" is defined as Onondaga, Cayuga, Cortland, Madison, Oneida, and Oswego Counties.

ja

**G. Annual Sales Tax Filings:** In accordance with §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, 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

ja

**H. Annual Employment Reports and Outstanding Bonds:** 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 FTE at this Project site. The Applicant also understands and agrees to provide on an annual basis any information regarding bonds, if any, issued by the Agency for the Project that is requested by the Comptroller of the State of New York.

ja

**I. Absence of Conflicts of Interest:** The Applicant has received from the Agency a list of the members, officers and employees of the Agency. 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 in Appendix B.

ja

**J. Compliance:** The Applicant understands and agrees that it is in substantial compliance with applicable local, state, and federal tax, worker protection, and environmental laws, rules, and regulations.

ja

**K. False or Misleading Information:** The Applicant understands and agrees that the submission of knowingly false or knowingly misleading information in this Application 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.

ja

**L. GML Compliance:** The Applicant certifies that, as of the date of the Application, the proposed project is in substantial compliance with all provisions of NYS General Municipal Law Article 18-A, including but not limited to Sections 859-a and 862(1).

ja

**M. SIDA's Policies:** The Applicant is familiar with all of SIDA's policies posted on its website ([http://www.syr.gov.net/Syracuse\\_Industrial\\_Development\\_Agency.aspx](http://www.syr.gov.net/Syracuse_Industrial_Development_Agency.aspx)) and agrees to comply with all applicable policies.

ja


**N. Disclosure:** The Applicant has read paragraph 6 of the instructions contained on the cover of this Application and understands that the Applicant must identify in writing to SIDA any information it deems proprietary and seeks to have redacted.

ja

**O. Reliance:** THE APPLICANT ACKNOWLEDGES THAT ALL ESTIMATES OF PROJECTED FINANCIAL IMPACTS, VALUE OF FINANCIAL ASSISTANCE REQUESTED, AND OTHER INFORMATION CONTAINED IN THIS APPLICATION WILL BE RELIED UPON BY SIDA AND ANY CHANGES IN SUCH INFORMATION MUST BE MADE IN WRITING AND MAY IMPACT THE GRANT OF FINANCIAL ASSISTANCE TO THE PROJECT.

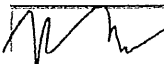
ja

**I am the CEO or a person authorized to bind the company/applicant, and have read the foregoing and agree to comply with all the terms and conditions contained therein as well as the policies of the City of Syracuse Industrial Development Agency.**

Name of Applicant Company	Beacon Armory LLC
Signature of Officer or Authorized Representative	
Name & Title of Officer or Authorized Representative	Managing Member
Date	6/2/2021

**VI. HOLD HARMLESS AGREEMENT**

Applicant hereby releases the City of Syracuse Industrial Development Agency and the members, officers, servants, agents and employees thereof (collectively 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: (A) 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 tax-exemptions and other assistance requested therein are favorably acted upon by the Agency, (B) the Agency's acquisition, construction, and/or installation of the Project described therein and (C) any further action taken by the Agency with respect to the Project, including without limiting the generality of the foregoing, all cause of action and attorney's fees and any other expenses incurred in defending any suits or action 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 reach final agreement with respect to the Project, or the inability of the Applicant, for any reason, to proceed with the Project, then, and in the event, upon presentation of an invoice itemizing the same, the Applicant shall pay to the Agency, its agents or assigns, all costs incurred by the Agency in the processing of or in connection with the Application, including attorney's fees, if any.

Name of Applicant Company	Beacon Armory LLC
Signature of CEO or a person authorized to bind the company/applicant	
Name & Title of Officer or Authorized Representative	Jeffrey Appel, Managing Member
Date	6/2/2021



CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY APPLICATION  
**APPENDIX A**  
**CONFLICT OF INTEREST STATEMENT**

Agency Board Members

1. Kathleen Murphy
2. Steven P. Thompson
3. Rickey T. Brown
4. Kenneth J. Kinsey
5. Dirk Sonneborn

Agency Officers/Staff

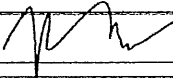
1. Judith DeLaney
2. John Vavonese
3. Debra Ramsey-Burns

Agency Legal Counsel & Auditor

1. Susan Katzoff, Esq., Bousquet Holstein, PLLC
2. Grossman St. Amour, PLLC.

The Applicant has received from the Agency a list of members, officers and staff of the Agency. To the best of my knowledge, 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:

Signature:



Authorized Representative:

Title:

Jeffreery Appel, Managing Member

Date:

6/2/2021

**City of Syracuse Industrial Development Agency**

**APPENDIX B**

**Agency Fee Schedule**

(Revised 1/15/19)

**Bond and Straight Lease Transactions:**

Application & Processing Fee .....	\$1,000.00
Project Commitment/Legal Fee .....	\$2,500.00
(Due with fully executed Application; Amount applied to SIDA's counsel fee)	

**Administrative Fee:**

Issuance of Bonds .....	1% Project Cost
(Without regard to principal amount of bonds issued.)	
Straight Lease/Agency Appointment .....	1% Project Cost
(Exemption from one or more mortgage recording, real property or sales and use taxes)	
Refunding of Bonds .....	1% of Project Cost

**New Money/Additional Financing on Existing Project:**

- Refinancing of project where no additional Financial Assistance is sought (other than MRTE) – ¼ of new money financed (exclusive of original mortgage amount).
- Refinancing of project where additional Financial Assistance is sought (in addition to MRTE) – 1% of new money financed.

**Post-Closing Items for Bond and Straight Lease Transactions:**

Annual Administrative Reporting Fee .....	\$250.00
(Paid at time of closing and annually thereafter for duration of SIDA's interest in Project Facility)	
Extension of sales tax exemption .....	\$500.00
Modification or Amendment of Closing Documents* .....	\$1,000.00

**\*including but not limited to refinancing of original mortgage**

Subsequent lender closing .....	\$250.00
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In addition to the foregoing, Applicants are responsible for payment of all costs and expenses incurred by SIDA in connection with application or Project including without limitation publication, copying costs, SEQRA compliance and fees and costs to SIDA's attorneys, engineers, and consultants. SIDA reserves the right to require a deposit to cover anticipated costs. Application fees are payable at time application/request is submitted. All fees are non-refundable. Applicants for bond transactions are responsible for payment of Bond Issuance Charge payable to the State of New York. Applicants are also responsible for payment of post-closing fees and costs associated with the appointment of additional agents. SIDA reserves the right to modify the this schedule at any time and to assess fees and charges in connection with other transactions such as grants of easement or lease of SIDA-owned property.

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY APPLICATION

**APPENDIX B**

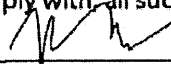
**Verification**

STATE OF New York )  
 ) SS.:  
COUNTY OF Onandaga )

Jeffrey Appel, deposes and says that s/he is the  
(Name of Individual)

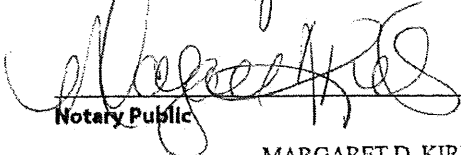
Managing Member of Beacon Armory LLC  
(Title) (Applicant Name)

that s/he is the CEO or a person authorized to bind the company/applicant, and has personally completed and read the foregoing Application and knows the contents thereof and that the same is true, accurate, and complete to the best of her/his knowledge, as subscribed and affirmed under the penalties of perjury. The grounds of deponent's beliefs relative to all matters in the said Application which are not stated upon her/his own personal knowledge are investigations which the deponent has caused to be made concerning the subject matter of the Application as well as, if applicable, information acquired by deponent in the course of her/his duties/responsibilities for the Applicant and from the books and papers of the Applicant. The deponent also acknowledges the receipt of the schedules attached to the Application, including but not limited to the Agency's fee schedule and assumes responsibility for payment of any and all applicable fees as described therein. Deponent further acknowledges review and understanding of the Agency's published policies, including but not limited to the Agency's Recapture Policy, and agrees on behalf of the Applicant to be bound by and comply with all such policies.

  
\_\_\_\_\_  
Applicant Representative's Signature  
Jeffrey Appel, Managing Member  
\_\_\_\_\_  
Title

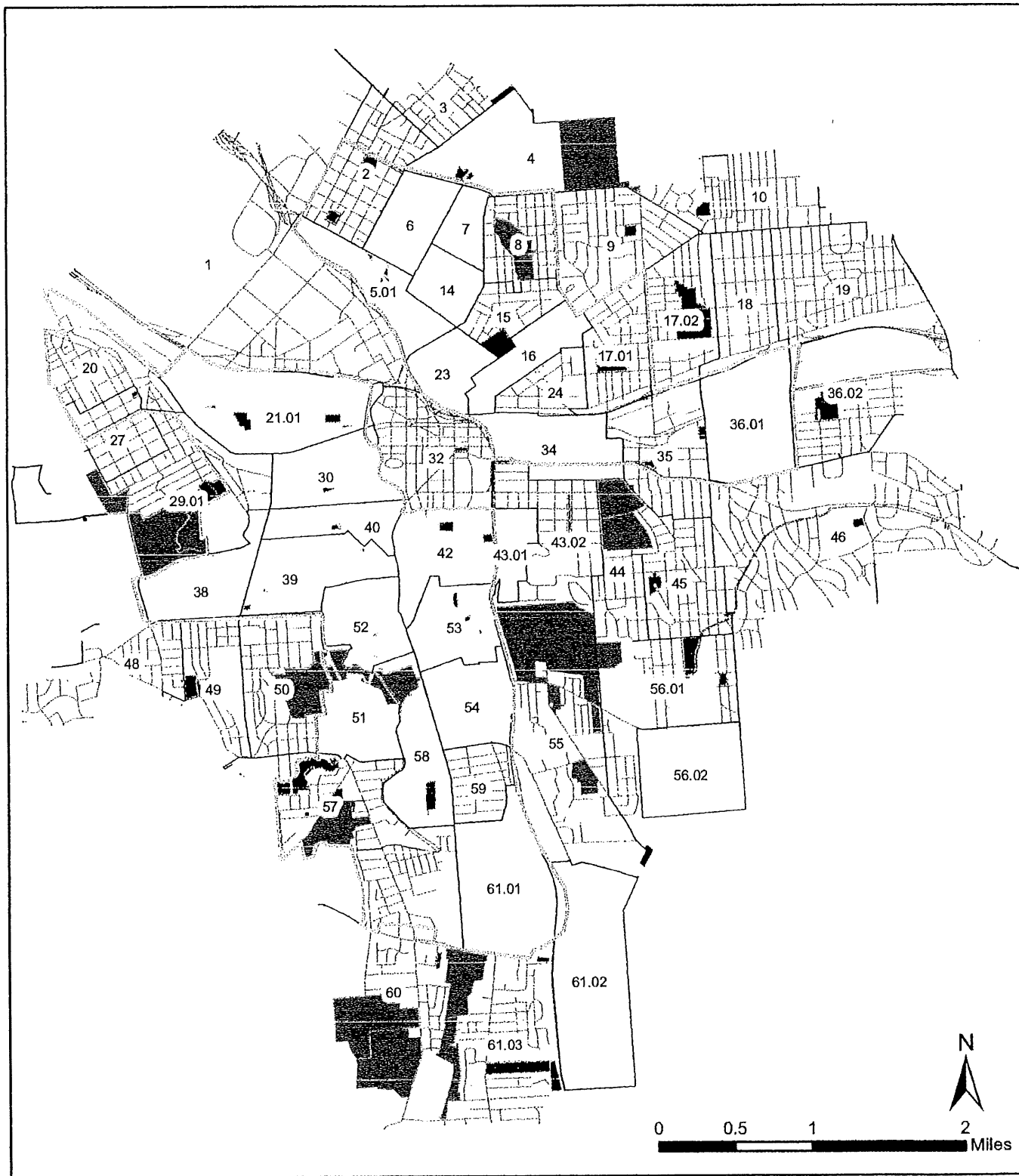
Subscribed and sworn to before me this

2nd day of June, 2021

  
\_\_\_\_\_  
Notary Public

MARGARET D. KIRKBY  
Notary Public, State of New York  
Qualified in Oswego County No. 4691918  
Commission Expires September 30, 2021


# Highly Distressed Census Tracts



**Legend**

- Highly Distressed Census Tracts (2016)
- 2010 Census Tracts
- Parks & Cemeteries
- NRSA Boundaries

Map created 7/12/2016.  
This map is for planning purposes only.  
The City of Syracuse cannot guarantee its accuracy.





## PROJECT AGREEMENT

**THIS PROJECT AGREEMENT** (the "**Project Agreement**"), is made as of December 1, 2021, by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 (the "**Agency**"), **BEACON ARMORY LLC** ("**Beacon**"), a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 325 South Salina Street, #3, Syracuse, New York 13202 and **SPILCO PROPERTIES, LLC** ("**Spilco**" and together with Beacon, collectively, the "**Company**"), a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 96 Locust Avenue, New Rochelle, New York 10801.

### WITNESSETH:

**WHEREAS**, Title I 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 641 of the Laws of 1979 of the State, as amended (collectively, with the Enabling Act, the "**Act**") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

**WHEREAS**, the Company submitted an application (the "**Application**") to the Agency requesting the Agency's assistance with respect to a certain project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the "**Building**") located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the "**Land**"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000

sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or their designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Beacon and Spilco to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.; and

**WHEREAS**, the Land and the Facility are connected to an adjacent building located at 229-37 West Fayette Street, Syracuse, New York (the land and building collectively referred to as the "**Adjacent Building**") which is owned by the Company; and

**WHEREAS**, the Company has advised the Agency that its lender (the "**Lender**") will require a pledge of the Adjacent Building as additional collateral for the note and mortgage to be given in connection with the Project; and

**WHEREAS**, by resolutions of its members adopted on September 21, 2021 (collectively, the "**Resolutions**"), the Agency authorized certain financial assistance for the benefit of the Project consisting of: (a) an exemption from New York State and local sales and use taxes for purchases and rentals related to the Project with respect to qualifying personal property included in or incorporated into the Project Facility or used in the acquisition, reconstruction, renovation or equipping of the Project Facility in an amount not to exceed **\$200,000**; and (b) an exemption from mortgage recording tax; (collectively referred to as the "**Financial Assistance**"); and

**WHEREAS**, it has been estimated and confirmed by the Company within its Application for Financial Assistance that: (i) the purchase of goods and services relating solely to the Project Facility, and subject to New York State and local sales and use taxes, are estimated to cost an amount up to **\$2,500,000**; and therefore, the value of the State and local sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$200,000**; and (ii) the mortgage recording tax exemption amount shall be approximately **\$56,250** (in accordance with Section 874 of the General Municipal Law). There are no real property tax abatement benefits to be provided to the Company; and

**WHEREAS**, the Company proposes to lease the Land, Facility and Adjacent Building to the Agency and the Agency desires to lease the Land, Facility and Adjacent Building from the Company pursuant to the terms of a certain Company Lease Agreement dated as of December 1, 2021 (the "**Company Lease**"), by and between the Company and the Agency; and

**WHEREAS**, the Agency proposes to acquire an interest in the Equipment pursuant to a bill of sale dated as of December 1, 2021 from the Company (the "**Bill of Sale**"); and

**WHEREAS**, contemporaneously with the execution of this Project Agreement, the Company shall execute and deliver an environmental compliance and indemnification agreement dated as of December 1, 2021 in favor of the Agency (the “*Environmental Compliance and Indemnification Agreement*”); and

**WHEREAS**, the Agency proposes to sublease the Project Facility and the Adjacent Building to the Company, and the Company desires to sublease the Project Facility and the Adjacent Building from the Agency, upon the terms and conditions set forth in a certain Agency Lease Agreement dated as of December 1, 2021 (the “*Agency Lease*”); and

**WHEREAS**, by its Resolutions, the Agency authorized the Company to act as its agent for the purposes of undertaking and completing the Project and the Agency delegated to the Company the authority to appoint sub-agents subject to the execution of this Project Agreement and compliance with the terms set forth herein, in the Resolutions and in the Agency Lease; and

**WHEREAS**, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolutions, and as more particularly described in this Project Agreement, and to confer the approved Financial Assistance, that the Company provide assurances with respect to the terms and conditions herein set forth; and

**WHEREAS**, this Project Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company. No Financial Assistance shall be provided to the Company prior to the effective date of this Project Agreement.

**NOW THEREFORE**, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

## **ARTICLE I PROJECT AND TERM**

**Section 1.01** Recitals. The foregoing recitals are incorporated by referenced as if fully set forth herein.

**Section 1.02** Defined terms. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Table of Definitions attached to the Agency Lease as Exhibit “C.”

**Section 1.03** Purpose of Project. It is understood and agreed by the parties that the purpose of the Agency’s provision of Financial Assistance with respect to the Project is to, and the entering by the Agency into the Company Lease, Agency Lease and this Project Agreement is in order to, promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping, furnishing and completing of the Project Facility, to advance job opportunities, health, general prosperity and economic welfare of the people of the City of Syracuse and to otherwise accomplish the public purpose of the Act.



**Section 1.04** Term. The term of this Project Agreement shall be the longer of: (1) the term of the Agency Lease; or (2) five years following the Project's Completion Date as evidenced by a certificate of occupancy (the "**Term**"). The Project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the Term of this Project Agreement and the Company's reporting obligations hereunder shall continue during the Term hereof. In addition, during the Term hereof, the Company and the Project shall be subject to Article V hereof.

## **ARTICLE II REAL PROPERTY TAX EXEMPTION**

**Section 2.01.** PILOT Agreement. The Company is not receiving an exemption from real property taxes from the Agency; and notwithstanding the Agency's interest in the Project Facility, the Company shall pay real property taxes as if the Agency had no interest in the Project Facility and it was privately owned.

## **ARTICLE III SALES AND USE TAX EXEMPTION**

**Section 3.01.** Scope of Agency. The Company agrees to limit its activities as agent for the Agency under the authority of the Resolutions and this Project Agreement to acquisition, reconstruction, installation and completion of the Project Facility. The right of the Company to act as agent of the Agency shall expire on **December 31, 2022**, unless extended by a resolution adopted by the members of the Agency, or unless terminated early in accordance with the terms of the Agency Lease. The value of the sales and use tax exemption benefits shall not exceed the amounts described in the Application and as set forth in Section 3.03(b) unless approved by a resolution adopted by the members of the Agency. All contracts entered into by the Company as agent for the Agency shall include the following language:

"This contract is being entered into by \_\_\_\_\_ (the "**Agent**"), as agent for and on behalf of the City of Syracuse Industrial Development Agency (the "**Agency**"), in connection with a certain project of the Agency for the benefit of the Agent consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for use in construction and/or incorporation and installation in certain premises located at 120-24 Walton Street, in the City of Syracuse, New York (the "**Premises**"). The machinery, equipment and building materials (collectively, the "**Equipment**") to be used in the construction and/or incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the use and/or acquisition of the Equipment is effected in accordance with the terms and conditions set forth in the Project Agreement dated as of December 1, 2021 by and between the Agency and the Company (the "**Project Agreement**"); and the Agent represents that this contract is in compliance with the terms of the Project Agreement. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract,

the vendor/contractor acknowledges and agrees to the terms and conditions set forth in this paragraph.”

**Section 3.02. Appointment of Sub-Agents.** Subject to the terms and conditions of this Project Agreement and pursuant to the Resolutions, the Agency hereby delegates to the Company the authority to appoint sub-agents of the Agency in connection with the Project, which may be agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and other parties as the Company chooses (each, a “*Sub-Agent*”). The appointment of each such Sub-Agent will be effective only upon: (1) the execution by the Sub-Agent and the Company of the Sub-Agent Appointment Agreement attached as Exhibit E to the Agency Lease (the “*Sub-Agent Agreement*”), the terms and provisions of which are incorporated herein; (2) the receipt by the Agency of a completed Form ST-60 in accordance with Section 3.03(c) below; and (3) receipt of any required insurance as set forth in the Sub-Agent Agreement.

**Section 3.03. Representations and Covenants of the Company.**

(a) The Company hereby incorporates and restates its representations, covenants and warranties made in the Agency Lease.

(b) The Company further covenants and agrees that the purchase of goods and services relating to the Project and subject to State and local sales and use taxes are estimated in the amount up to \$2,500,000, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$200,000. The Company further represents and warrants that none of the sales and use tax exemption benefits authorized by the Agency shall be used on or applied to the Adjacent Building but rather shall be used solely on and for the benefit of the Project Facility.

(c) The Company further covenants and agrees to complete “IDA Appointment of Project Operator or Agent For Sales Tax Purposes” (Form ST-60) for itself and each Sub-Agent and to provide said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(d) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance an “Annual Report of Sales and Use Tax Exemptions” (Form ST-340) regarding the value of sales and use tax exemptions the Company and its Sub-Agents have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with Section 874(8) of the Act. The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of their filed ST-340 to the Agency, but in no event later than March 29 of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of: (1) the Company’s authority to act as agents for the Agency; and (2) the authority of any Sub-Agent of the Agency appointed by the Company pursuant to Section 3.02 hereof to act as agent for the Agency.

(e) The Company further acknowledges and agrees that all purchases made in

furtherance of the Project by the Company and any Sub-Agent shall be made using “IDA Agent or Project Operator Exempt Purchase Certificate” (Form ST-123, a copy of which is attached to the Sub-Agent Agreement), and it shall be the responsibility of the Company and the Sub-Agent, as the case may be, (and not the Agency) to complete Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill of invoice should state, “I, [NAME OF AGENT], certify that I am a duly appointed agent of the City of Syracuse Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my Project Agreement with the City of Syracuse Industrial Development Agency.” The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project on each bill and invoice: BEACON ARMORY LLC – BENTLEY LOFTS PROJECT, 120-24 WALTON STREET, IDA PROJECT NO.: 31022106.

(f) The Company acknowledges and agrees that the Agency shall not be liable, either directly or indirectly or contingently, upon any contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

(g) The obligations of the Company hereunder are joint and several.

**Section 3.04. Hold Harmless Provisions.**

(a) The Company releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency’s undertaking the Project, including, but not limited to: (1) liability for loss or damage to property or bodily injury to or death of any and all persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Project Facility; (2) liability arising from or expense incurred by the Agency’s acquiring, constructing, equipping, installing, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency’s obligations under this Project Agreement or the enforcement of or defense of validity of any provision of this Project Agreement; (3) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Sections 3.01 and 3.02 hereof; and (4) all causes of action and reasonable attorneys’ fees and other expenses incurred in connection with any suits or actions that may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses

of the Agency are not incurred or do not result from the gross negligence or intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents (other than the Company) or employees by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(c) To effectuate the provisions of this Section 3.04, the Company agrees to provide for and insure, in the liability policies required by Section 3.05 of this Project Agreement, its liabilities assumed pursuant to this Section 3.04.

(d) Notwithstanding any other provisions of this Project Agreement, the obligations of the Company pursuant to this Section 3.04 shall remain in full force and effect after the termination of this Project Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency, or its officers, members, agents (other than the Company) or employees, relating thereto.

(e) The obligations and agreements of the Agency contained herein shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent (other than the Company), employee or servant of the Agency in his individual capacity, and the members, officers, agents (other than the Company), employees and servants of the Agency shall not be liable personally hereon or be subject to any personal liability of accountability based upon or in respect hereof or of any transaction contemplated hereby.

**Section 3.05. Insurance Required.**

(a) The Company agrees that it shall maintain all insurance required under the Agency Lease.

(b) The Company agrees that it shall cause its general contractor for the Project to maintain, effective as of the date of the Sub-Agent Agreement until the expiration or termination of the general contractor's employment by the Company, or its designee, with respect to the Project Facility, all of the same insurance with respect to the Project Facility, as set forth in Article 6 of the Agency Lease as if the general contractor were the Company thereunder. The Company further agrees that it shall cause its general contractor for the Project to comply and abide, effective as of the date of the Sub-Agent Agreement and until the expiration or

termination of the general contractor's employment by the Company, or its designee, with respect to the Project Facility, with all of the terms and conditions set forth in Article 6 of the Agency Lease with respect to the type, nature and proof of insurance required thereunder.

#### **ARTICLE IV COMMITMENTS AND REPORTING**

**Section 4.01. Compliance Commitments.** The Company agrees and covenants that it shall meet and maintain the commitments set forth in (a) below, and report on same as provided for herein, beginning in the first year following the Completion Date of the Project and continuing for the Term (as defined herein) hereof. The Company further agrees and covenants that it shall meet and maintain the commitments set forth in (b) below with respect to retained jobs set forth in the Application starting in the first year in which Financial Assistance is claimed and/or provided; and with respect to new jobs, the Company shall create, in years one (1) through five (5) following the Completion Date of the Project the new jobs set forth in and in accordance with the Company's Application. The reporting of, and the commitment to, each of (a), (b) and (c) below shall continue for a five (5) year period following the Completion Date of the Project:

(a) The total investment actually made with respect to the Project at the Project's Completion Date shall equal or exceed \$4,250,000, being the total project cost as stated in the Company's Application for Financial Assistance (the "**Investment Commitment**").

(b) There were no full time equivalent ("**FTE**") employees were retained by the Project Facility as of the date of the Application for Financial Assistance. The Company's application estimated the creation of two (2) new FTEs (the "**New FTEs**") at the Project Facility within the first five (5) years following the Completion Date of the Project Facility. The Company shall be required to meet and maintain all of the foregoing employment commitments during the Term (as defined in Section 1.03 above) hereof (the "**Employment Commitment**").

(c) The Company shall annually provide to the Agency certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project for the Term hereof (the "**Reporting Commitment**").

**Section 4.02. Reporting Requirement.** As part of the commitments set forth in Section 4.01, the Company shall provide annually, to the Agency, a certified statement and supporting documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, by zip code, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. **Exhibit "A"** contains a form of annual certification that the Company must complete and submit to the Agency on an annual basis. The Agency reserves the right to modify such form to require additional information that the Agency must have in order to comply with its reporting

requirements under the Act and/or its policies and to request such information more frequently than annually.

## ARTICLE V

### SUSPENSION, DISCONTINUATION, RECAPTURE AND/OR TERMINATION OF FINANCIAL ASSISTANCE

**Section 5.01.** Suspension, Discontinuation, Recapture and/or Termination of Financial Assistance. It is understood and agreed by the Parties that the Agency is entering into the Company Lease, the Agency Lease and this Project Agreement in order to ensure the completion of the Project and provide Financial Assistance to the Company for the Project Facility and to accomplish the public purposes of the Act.

(a) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, this Project Agreement, the Agency Lease and the Resolutions, the Company covenants and agrees that it is subject to recapture of all State sales and use tax exemption benefits if:

(1) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Project are not entitled to the State sales and use tax exemption benefits; or

(2) the State sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or

(3) the State sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(4) the Project has failed to comply with a material term or condition to use the property or services in the manner required by any project document between the Company and the Agency.

Each of the foregoing four events are hereinafter referred to as a “*State-Mandated Recapture Event*”. The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a State-Mandated Recapture Event has occurred.

(b) In addition to Section 5.01(a), in accordance with the policies of the Agency and the Resolutions, the Company covenants and agrees that the Agency shall have the right to suspend, discontinue, recapture or terminate all or any portion of any Financial Assistance to the extent any of the following occur (each a “*Deficit*”):

a) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property

or services not authorized by the Agency (each, a “**Local Sales Tax Benefit Violation**”);

- b) the company, upon completion of the project, fails to reach and maintain at least 85 percent of its employment requirements for job creation and/or retention (“**Job Deficit**”);
- c) the total investment actually made with respect to the project at the project’s completion date is less than 85 percent of its investment requirement (“**Investment Deficit**”);
- d) the company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project (“**Reporting Failure**”); or
- e) there otherwise occurs any event of default under any project document (each, an “Event of Default”) or a material violation of the terms and conditions of any project document (a “**Material Violation**”).

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure Event of Default or Material Violation (each a “**Noncompliance Event**”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any Project Document in accordance with the terms of the Project Document.

At the time of any Noncompliance Event, the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance in accordance with the terms hereof, the Agency Lease, as well as its Recapture Policy; and shall consider the following criteria in determining whether to proceed to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance:

- i. Whether the Company has proceeded in good faith.
- ii. Whether the Project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the Company.
- iii. Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create a more adverse situation for the Company, such as the Company going out of business or declaring bankruptcy, which would not occur if the Agency’s rights were not exercised.
- iv. Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create an adverse situation for the residents of the City of Syracuse.

- v. The assessment prepared in accordance with the Agency's Annual Assessment Policy.
- vi. Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance.

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance (the "**Determination**"). The Determination shall provide terms, if any, by which the Company may remedy any Noncompliance Event upon which the Determination was based. The Company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume Financial Assistance to the Company (which will be at the Agency's sole discretion).

(c) If a State-Mandated Recapture Event occurs or the Agency makes a Determination, the Company agrees and covenants that it will: (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company; and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the State sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

## **ARTICLE VI DEFAULTS AND REMEDIES**

**Section 6.01.** Event of Default. A default in the performance or the observance of any covenants, conditions, or agreements on the part of the Company in this Project Agreement or any other Company Document.

**Section 6.02** Remedies. Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

- (a) Cease performing under this Project Agreement;
- (b) Terminate any of the other Company Documents; and/or





If to the Company:

Beacon Armory LLC  
325 S. Salina Street, 3<sup>rd</sup> Floor  
Syracuse, New York 13202  
Attn: Jeffrey Appel

and

Spilco Properties, LLC  
96 Locust Avenue  
New Rochelle, New York 10801  
Attn: Spiro Spiliotis

With a copy to:

Newman & Lickstein  
109 South Warren Street, Suite 404  
Syracuse, New York 13202  
Attn: Scott A. Lickstein, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when received or delivery of same is refused by the recipient or personally delivered in the manner provided in this Section.

**Section 7.03. Amendments.** No amendment, change, modification, alteration or termination of this Project Agreement shall be made except in writing upon the written consent of the Company and the Agency.

**Section 7.04. Severability.** The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Project Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Project Agreement or any part thereof.

**Section 7.05. Counterparts.** This Project Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

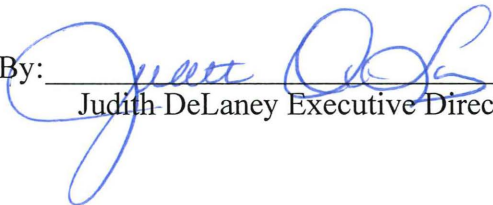
**Section 7.06. Governing Law.** This Project Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Onondaga County, New York.

**Section 7.07. Section Headings.** The headings of the several Sections in this Project Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Project Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties hereto have executed this Project Agreement as of the day and year first above written.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:  \_\_\_\_\_  
Judith DeLaney Executive Director

**BEACON ARMORY LLC**

By: \_\_\_\_\_  
Jeffrey Appel, Managing Member

**SPILCO PROPERTIES, LLC**

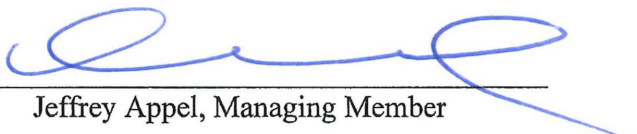
By: \_\_\_\_\_  
Spiro Spiliotis, Managing Member

**IN WITNESS WHEREOF**, the parties hereto have executed this Project Agreement as of the day and year first above written.

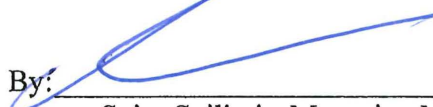
**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Judith DeLaney Executive Director

**BEACON ARMORY LLC**

By:   
Jeffrey Appel, Managing Member

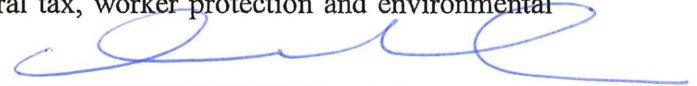
**SILCO PROPERTIES, LLC**

By:   
Spiro Spiliotis, Managing Member

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

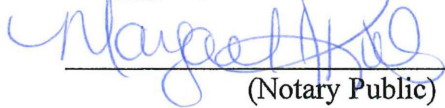
**JEFFREY APPEL**, being first duly sworn, deposes and says:

1. That I am the Managing Member of Beacon Armory LLC and that I am duly authorized on behalf of the Beacon Armory LLC to bind the Beacon Armory LLC and to execute this Project Agreement.
2. That the Beacon Armory LLC confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.



(Signature of Officer)

Subscribed and affirmed to me  
under penalties of perjury  
this 17 day of December, 2021.

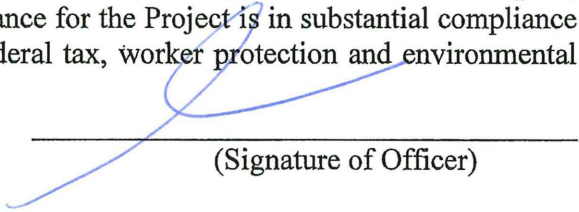
  
(Notary Public)

MARGARET D. KIRKBY  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01K14691918  
Qualified in Oswego County  
Commission Expires Sep. 30, 2022

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

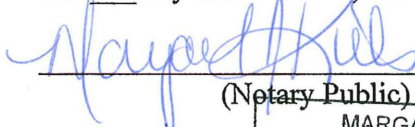
**SPIRO SPILIOTIS**, being first duly sworn, deposes and says:

1. That I am the Managing Member of Spiro Properties, LLC and that I am duly authorized on behalf of the Spiro Properties, LLC to bind the Spiro Properties, LLC and to execute this Project Agreement.
2. That the Spiro Properties, LLC confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.



(Signature of Officer)

Subscribed and affirmed to me  
under penalties of perjury  
this 17 day of December, 2021.

  
(Notary Public)

MARGARET D. KIRKBY  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01K14691918  
Qualified in Oswego County  
Commission Expires Sep. 30, 2022

**EXHIBIT A**

FORM OF ANNUAL REPORTING QUESTIONNAIRE

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202

Date

COMPANY  
COMPANY ADDRESS

Dear \_\_\_\_\_:

Our auditors, \_\_\_\_\_, CPAs are conducting an audit of our financial statements for the year ended December 31, \_\_\_\_\_. In connection with that audit, we request that you furnish certain information directly to our auditor with regard to the following security issued by/through the City of Syracuse Industrial Development Agency:

Sale - Leaseback Financing

Project: \_\_\_\_\_

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

Please provide the following information as of December 31, [year]:

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

(If Yes, please update information in Paragraph 1 above)

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

Total cost of goods/services purchased: \$ \_\_\_\_\_

New York State Sales Tax Exemptions Claimed [year]

New York Local Sales Tax Exemptions Claimed: [year]

New York State Mortgage Recording

Tax Exemption: [year]



Form of Syracuse Industrial Development Agency — Project Jobs Data [year]

From:

To: \_\_\_\_\_, CPAs

Re:

The following jobs information is furnished to you with regard to the above cited project:

**A. Job Retention/Creation:**

**I. Construction Jobs:**

Provide the name of your general contractor: \_\_\_\_\_.

Provide the address (including county) of your general contractor: \_\_\_\_\_.

Is the general contractor MWBE qualified? \_\_\_\_\_.

Is the general contractor Service-Disabled Veteran-Owned Business Enterprises ( SDVOBE) qualified? \_\_\_\_\_.

For each contractor and/or sub-contractor, provide the following information for the reporting period:

Bid awarded to (Name/Address/County*)	Value of contract	MWBE (Yes/No)	SDVOBE (Yes/No)	Number of jobs (FTE)

**\*Must include county**

**II. Permanent (non-construction) Jobs:**

Number of FTEs retained at the Project prior to date of application: \_\_\_\_\_.

Number of FTEs created by the Project during the reporting calendar year (*exclusive of construction jobs*): \_\_\_\_\_.

Of the jobs created by the Project during the reporting year (*exclusive of construction jobs*) identify how many are in each of the following categories:

**Professional/Managerial/Technical** - includes jobs which involve skill or competence of extraordinary degree and may include supervisory responsibilities (examples: architect, engineer, accountant, scientist, medical doctor, financial manager, programmer). **Number of jobs created in reporting year** \_\_\_\_\_.

**Skilled** - includes jobs that require specific skill sets, education, training, and experience and are generally characterized by high education or expertise level (examples: electrician, computer operator, administrative assistant, carpenter, sales representative). **Number of jobs created in reporting year** \_\_\_\_\_.

**Unskilled or Semi-Skilled** - includes jobs that require little or no prior acquired skills and involve the performance of simple duties that require the exercise of little or no independent judgment (examples: general cleaner, truck driver, typist, gardener, parking lot attendant, line operator, messenger, information desk clerk, crop harvester, retail salesperson, security guard, telephone solicitor, file clerk). **Number of jobs created in reporting year** \_\_\_\_\_.

Identify:

the average annual salary range of the FTEs (*exclusive of construction jobs*) created during the reporting year: \$ \_\_\_\_\_.

the total number of jobs (*exclusive of construction jobs*) created by the Project from the date of application through the reporting date: \_\_\_\_\_.

the total number of jobs (retained and created, *but exclusive of construction jobs*) at the Project from the date of application through the reporting date: \_\_\_\_\_.

What is the annual average salary range of the FTEs (*exclusive of construction jobs*) created at the Project to date: \$ \_\_\_\_\_.

**B. Geographical Hiring Data:**

1. Construction jobs:

Of the construction jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

2. FTEs hired (*exclusive of construction jobs*)

Of the FTE jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

Provide the same information reflecting FTEs hired from the date of application through the reporting date at the Project.

Comments:

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**BEACON ARMORY LLC**  
**AND**  
**SPILCO PROPERTIES, LLC**  
**AND**  
**CITY OF SYRACUSE**  
**INDUSTRIAL DEVELOPMENT AGENCY**

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**COMPANY LEASE AGREEMENT**

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**DATED AS OF DECEMBER 1, 2021**

**BENTLY LOFTS PROJECT**

## COMPANY LEASE AGREEMENT

**THIS COMPANY LEASE AGREEMENT** (the "*Company Lease*"), is made and entered into as of December 1, 2021, by and among **BEACON ARMORY LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 325 South Salina Street, 3<sup>rd</sup> Floor, Syracuse, New York 13202 ("*Beacon*"), **SPILCO PROPERTIES, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 96 Locust Avenue, New Rochelle, New York 10801 ("*Spilco*" and together with Beacon, collectively, the "*Company*") and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** a public benefit corporation of the State of New York, with offices at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 (the "*Agency*").

### WITNESSETH:

**WHEREAS**, Title 1 of Article 18-A of the New York General Municipal Law (the "*Enabling Act*") was duly enacted into law as Chapter 1030 of the New York Laws of 1969; 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 buildings or other improvements, 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 of New York 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 properties, to mortgage and pledge any or all of its properties, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

**WHEREAS**, the Agency was created pursuant to and in accordance with the provisions of the Enabling Act by Chapter 641 of the Laws of 1979 of the State of New York (collectively with the Enabling Act, the "*Act*") and is empowered under the Act to undertake the Project (as hereinafter defined); and

**WHEREAS**, the Agency, by resolution adopted on September 30, 2021, agreed, at the request of the Company to undertake a project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the "*Building*") located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the "*Land*"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units

and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or their designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Land and the Facility are connected to an adjacent building located at 229-37 West Fayette Street, Syracuse, New York (the land and building collectively referred to as the "**Adjacent Building**") which is owned by the Company.

**WHEREAS**, the Company is the fee owner of the Land and Facility; and

**WHEREAS**, the Company has advised the Agency that its lender (the "**Lender**") will require a pledge of the Adjacent Building as additional collateral for the note and mortgage to be given in connection with the Project and that Company has agreed to pledge the Adjacent Building to the Agency to satisfy the Lender's requirements; and

**WHEREAS**, the Agency proposes to assist the Company's acquisition, reconstruction and equipping of the Project Facility and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company and/or its designee as its agent with respect to completing the Project; (2) leasing of the Land, Facility and the Adjacent Building by the Agency pursuant to a company lease agreement; (3) accepting an interest in the Equipment pursuant to a bill of sale from the Company; (4) subleasing the Land, the Facility and the Adjacent Building to the Company pursuant to an agency lease agreement; and (5) entering into one or more mortgages in favor of the Company's Lender.

**WHEREAS**, in order to accommodate the Lender's collateral requirements, the owner of the Adjacent Building has agreed to lease its interests in the Adjacent Building to the Agency and the Company has requested the Agency agree to extend its interest to the Adjacent Building solely for the purposes of the approved mortgage recording tax exemption, with the understanding that all of the State and local sales and use tax exemption benefits authorized by the Agency, if any, will be realized from the work done solely on the Project Facility (the "**Lender Requirements**"); and

**WHEREAS**, the Agency proposes to assist the Company's acquisition, construction and equipping of the Project Facility, and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company, and/or its designee, as its agent with respect to undertaking and completing the Project Facility; (2) accepting a leasehold interest in the Land, Facility and Adjacent Building from the Company pursuant to this Company Lease and acquiring an interest in

the Equipment pursuant to a bill of sale from the Company; and (3) subleasing the Project Facility to the Company pursuant to the Agency Lease; and

**WHEREAS**, the Agency now proposes to lease the Land, Facility and Adjacent Building from the Company pursuant to the terms and conditions set forth herein; and

**WHEREAS**, all things necessary to constitute this Company Lease 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 Company Lease have, in all respects, been duly authorized.

**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 RECITALS AND DEFINITIONS**

### **1.0 RECITALS.**

The foregoing recitals are incorporated herein by reference as if fully set forth hereinbelow.

### **1.1 DEFINITIONS.**

For all purposes of this Company Lease and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions which is attached to the Agency Lease Agreement dated as of December 1, 2021 between the Agency and the Company (the "*Agency Lease*") as Exhibit "C" thereto except as otherwise expressly defined herein or the context hereof otherwise requires.

### **1.2 INTERPRETATION.**

In this Company Lease, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "herein," "hereunder," and any similar terms as used in this Company Lease refer to this Company Lease; the term "heretofore" shall mean before and the term "hereafter" shall mean after the date of this Company Lease;

(b) Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; and

(c) Any certificates, letters, or opinions required to be given pursuant to this Company Lease 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 Company Lease.

## **ARTICLE II DEMISE; PREMISES; TERM**

### **2.1 DEMISE.**

The Company hereby leases to the Agency, and the Agency hereby leases from the Company, the Land, the Facility and the Adjacent Building for the stated term for the rents, covenants and conditions set forth herein subject only to the Permitted Encumbrances.

### **2.2 DESCRIPTION OF PREMISES LEASED.**

The leased premises is the Land, the Facility and the Adjacent Building all as described in the recitals of this Company Lease and as more fully described on **Exhibit "A"** attached hereto.

### **2.3 TERM.**

The Project is leased for a term which shall commence as of December 1, 2021, and shall end on the expiration or earlier termination of the Agency Lease.

### **2.4 MANDATORY CONVEYANCE.**

At the expiration of the term hereof or any extension thereof by mutual agreement, or as otherwise provided in the Agency Lease, this Company Lease shall automatically expire without any further action by the parties hereto. The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing, delivering and recording terminations of leases and bill of sale together with any other documents therewith and to take such other and further actions reasonably necessary to confirm the termination of the Agency's interest in the Project, all at the Company's sole cost and expense.

### **2.5 CONSIDERATION.**

The Agency is paying to the Company concurrently with the execution hereof consideration of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Company.

### **2.6 REPRESENTATIONS AND COVENANTS OF THE COMPANY.**

Beacon Armory LLC and Spilco Properties, LLC, each as noted or jointly as the Company, make the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) Beacon is a limited liability company duly organized, validly existing and in good standing under the laws of New York, has the power to enter into this Company Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Company Lease and the other Company Documents.

(b) Spilco is a limited liability company duly organized, validly existing and in good standing under the laws of New York, has the power to enter into this Company Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Company Lease and the other Company Documents.

(c) The obligations of the Company hereunder shall be joint and several.

(d) This Company Lease and the other Company Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of each Beacon and Spilco, enforceable against each in accordance with their respective terms.

(e) The Company has a valid and enforceable fee interest in the Land and the Facility and the Adjacent Building, and each shall remain and retain such interests for the term of this Company Lease unless otherwise consented to in writing by the Agency.

(f) Neither the execution and delivery of this Company Lease and the other Company Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions thereof will:

(1) Result in a breach of, or conflict with any term or provision in, Beacon's or Spilco's Articles of Organization or Operating Agreement, each as applicable;

(2) Require consent under (which has not been heretofore received) or result in a breach of or default under any credit agreement, indenture, purchase agreement, mortgage, deed of trust indenture, commitment, guaranty or other agreement or instrument to which either Company is a party or by which either Company or any of its property may be bound or affected; or

(3) Conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any Governmental Authority or court (domestic or foreign) having jurisdiction over the Company or any of the property of the Company.

(g) So long as the Agency holds an interest in the Project Facility and the Adjacent Building, the Project Facility and the Adjacent Building is and will continue to be a "project" (as such quoted term is defined in the Act), and the Company will not take any action (or omit to take any action required by the Company Documents or which the Agency, together with Agency's counsel, advise the Company in writing should be taken), or allow any action to

be taken, which action (or omission) would in any way cause the Project Facility or the Adjacent Building not to constitute a “project” (as such quoted term is defined in the Act).

(h) The Company shall cause all notices as required by law to be given and shall comply or cause compliance with all laws, ordinances, municipal rules, and regulations and requirements of all Governmental Authorities applying to or affecting the construction, equipping and operation of the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company, were the owner of the Project Facility), and the Company will defend and save the Agency and its officers, members, agents (other than the Company), and employees harmless from all fines and penalties due to failure to comply therewith.

(i) The Company shall perform, or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency (which is within the control of the Company) under and pursuant to the Agency Lease, this Company Lease and the other Company Documents and shall defend, indemnify, and hold harmless the Agency and its members, officers, agents (other than the Company), servants and employees from and against every expense, liability, or claim arising out of the failure of the Company to fulfill its obligations under the provisions of this Section 2.6.

(j) The Company acknowledges, restates and affirms the obligations, representations, warranties and covenants set forth in Sections 2.2 and 11.12 of the Agency Lease as if fully set forth herein.

### **ARTICLE III DISPUTE RESOLUTION**

#### **3.1 GOVERNING LAW.**

This Company Lease shall be governed in all respects by the laws of the State of New York.

#### **3.2 WAIVER OF TRIAL BY JURY.**

THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS COMPANY LEASE, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS COMPANY LEASE.

### **ARTICLE IV MISCELLANEOUS CLAUSES**

#### **4.1 NOTICES.**

All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the

intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

(a) To the Agency: City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202  
Attn: Chair

With copies to: Corporation Counsel  
City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202

and

Bousquet Holstein PLLC  
110 West Fayette Street, Suite 1000  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

(b) To the Company: Beacon Armory LLC  
325 S. Salina Street, 3<sup>rd</sup> Floor  
Syracuse, New York 13202  
Attn: Jeffrey Appel

and

Spilco Properties, LLC  
96 Locust Avenue  
New Rochelle, New York 10801  
Attn: Spiro Spiliotis

With a copy to: Newman & Lickstein  
109 South Warren Street, Suite 404  
Syracuse, New York 13202  
Attn: Scott A. Lickstein, Esq.

#### **4.2 NO RECOURSE UNDER THIS COMPANY LEASE.**

No provision, covenant or agreement contained herein, in any other agreement entered into in connection herewith, or any obligations herein imposed, upon the Agency, or any breach thereof, shall constitute or give rise to or impose upon the Agency, a debt or other pecuniary liability or a charge upon its general credit, and all covenants, stipulations, promises, agreements and obligations of the Agency contained in this Company Lease shall be deemed to

be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his individual capacity.

#### **4.3 ENTIRE AGREEMENT.**

This Company Lease contains the entire agreement between the parties and all prior negotiations and agreements are merged in this Company Lease. This Company Lease may not be changed, modified or discharged, in whole or in part, except by a written instrument executed by the party against whom enforcement of the change, modification or discharge is sought.

#### **4.4 AGENCY REPRESENTATIONS.**

The Company expressly acknowledges that neither the Agency nor the Agency's directors, members, employees or agents has made or is making, and the Company, in executing and delivering this Company Lease, is not relying upon warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Company Lease, and no rights, easements or licenses are or shall be acquired by the Company by implication or otherwise unless expressly set forth in this Company Lease.

#### **4.5 BINDING EFFECT.**

This Company Lease shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

#### **4.6 PARAGRAPH HEADINGS.**

Paragraph headings are for convenience only and shall not affect the construction or interpretation of this Company Lease.

#### **4.7 CONSENT TO AGENCY LEASE; SUBORDINATION.**

The Company hereby consents to the sublease by the Agency of the Project Facility to the Company pursuant to the Agency Lease. The Company acknowledges and agrees that this Company Lease and the Agency Lease shall be subordinate in all respects to the Mortgages.

#### **4.8 HOLD HARMLESS PROVISIONS.**

(a) The Company hereby releases the Agency and its members, officers, agents, and employees from, agree that the Agency and its members, officers, agents, and employees shall not be liable for, and agree to indemnify, defend, and hold the Agency and its members, officers, agents, and employees harmless from and against any and all claims arising as a result of the Agency's undertaking of the Project, including, but not limited to:

(1) Liability for loss or damage to Property or bodily injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project

Facility, or arising by reason of or in connection with the occupation or the use thereof, or the presence on, in, or about the Project Facility;

(2) Liability arising from or expense incurred by the Agency's acquisition of a leasehold interest in the Project Facility and the subleasing of the Project Facility, including, without limiting the generality of the foregoing, all liabilities or claims arising as a result of the Agency's obligations under the Agency Lease, the Company Lease or the Mortgage;

(3) All claims arising from the exercise by the Company of the authority conferred upon it and performance of the obligations assumed under Article II hereof;

(4) All causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities, or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents, or employees.

The foregoing indemnities shall apply notwithstanding the fault or negligence (other than gross negligence or willful misconduct) on the part of the Agency or any of its officers, members, agents, servants, or employees and irrespective of any breach of statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents, or employees by any employee of the Company, or any contractor of the Company, or anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Company such contractor under workers' compensation laws, disability benefit laws, or other employee benefit laws.

(c) Notwithstanding any other provisions of this Company Lease, the obligations of the Company pursuant to this Section 4.8 shall remain in full force and effect after the termination of the Agency Lease and this Company Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution relating to the matters herein described may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents (other than the Company), or employees, relating thereto.

(d) For purposes of this Section 4.8, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

#### **4.9 NO RECOURSE; SPECIAL OBLIGATION.**

The obligations and agreements of the Agency contained herein and in the other Agency Documents and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent, or employee of the Agency in his individual capacity; and the members, officers, agents, and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations 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, other than revenues derived from or constituting Unassigned Rights. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents, or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents, and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents, and employees against all liability expected to be incurred as a result of compliance with such request.

Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section 4.9 shall not alter the full force and effect of any Event of Default under the Agency Lease.

(d) For purposes of this Section 4.9, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

#### **4.10 MERGER OF AGENCY.**

(a) Nothing contained in this Company Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to any other body corporate and politic and public instrumentality of the State of New York, or political subdivision thereof, which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger, or assignment, the due and punctual performance and observance of all the agreements and conditions of this Company Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) As of the date of any such consolidation, merger, or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger, or assignment as the Company reasonably may request.

#### **4.11 EXECUTION OF COUNTERPARTS.**

This Company Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

#### **4.12 EVENT OF DEFAULT.**

A default in the performance or the observance of any covenants, conditions, or agreements on the part of the Company in this Company Lease, the Agency Lease or the Project Agreement.

#### **4.13 REMEDIES.**

Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

- 1) Terminate the Company Lease or the Agency Lease; or
- 2) 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.

#### **4.14 AMENDMENTS, CHANGES AND MODIFICATIONS.**

This Company Lease may not be amended, changed, modified, altered, or terminated except by an instrument in writing signed by the parties hereto.



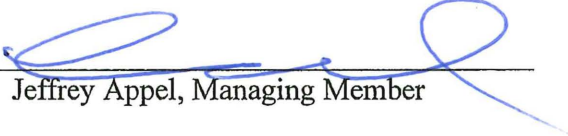
#### **4.15 JOINT AND SEVERAL.**

Notwithstanding anything in this Agreement to the contrary, the Companies shall be jointly and severally liable for all payments and obligations hereunder. A separate action or actions may be brought and prosecuted against each Company, whether or not an action is brought against any other person or Company or whether or not any other person or Company is joined in such action or actions.

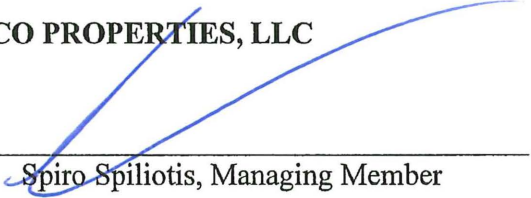
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the Company and the Agency have duly executed this Company Lease, as of the day and year first above written.

**BEACON ARMORY LLC**

By:   
Jeffrey Appel, Managing Member

**SPILCO PROPERTIES, LLC**

By:   
Spiro Spiliotis, Managing Member

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Judith DeLaney, Executive Director

**IN WITNESS WHEREOF**, the Company and the Agency have duly executed this Company Lease, as of the day and year first above written.

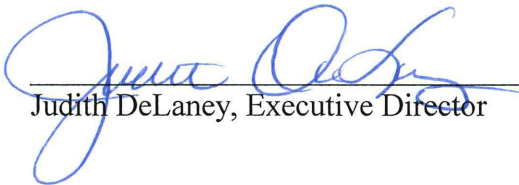
**BEACON ARMORY LLC**

By: \_\_\_\_\_  
Jeffrey Appel, Managing Member

**SPILCO PROPERTIES, LLC**

By: \_\_\_\_\_  
Spiro Spiliotis, Managing Member

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:  \_\_\_\_\_  
Judith DeLaney, Executive Director

## EXHIBIT A

### DESCRIPTION OF REAL PROPERTY

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Nos. 1, 2, 30, 31, 40 and 41 of Block No. 105-D, Syracuse, New York, according to a Map made by B.F. Green and filed in the Onondaga County Clerk's Office on October 11, 1850 and bounded and described as follows:

Beginning at a point in the southerly line of West Fayette Street, said point being N. 89° 44' 00" W., 208.855 feet distant, measured along said street line from the westerly line of South Clinton Street, said point being where the centerline of the west wall of the so-called Tallman and Palmer Store, now or formerly known as No. 225 West Fayette Street, intersects the south line of West Fayette Street; thence southwardly along the center of said wall and the same continued about 115.0 feet to a point in range with the north face of the north wall of the six story brick building erected by E.F. Holden on Walton Street; thence westwardly along said range line about 27/100 of a foot to the northeasterly corner of said six story building; thence southwardly along the east face of the brick wall of said building about 90.0 feet to a point in the north line of Walton Street, said point being N. 89° 45' 00" W., 208.856 feet distant, measured along the said northerly line of Walton Street, from the westerly line of South Clinton Street; thence N. 89° 45' 00" W., 64.304 feet along said northerly line of Walton Street to a point; thence N. 00° 13' 20" W., 110.08 feet to a point; thence N. 89° 44' 00" W., .54 of a foot to a point; thence N. 00° 16' 00" E., 95.0 feet to a point in the southerly line of West Fayette Street; thence S. 89° 44' 00" E., 65.045 feet along said street line to the place of beginning.

**ALSO, ALL THAT TRACT OR PARCEL OF LAND**, situate lying and being under the waters of the old channel of Onondaga Creek (now filled in), situate in the City of Syracuse, County of Onondaga and State of New York, said tract or parcel being all of the old channel of Onondaga Creek lying within the premises describe above.



Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2229

## Onondaga County Clerk Recording Cover Sheet

Received From :  
BRADT LUCIANI

Return To :  
NEWMAN & LICKSTEIN  
COURTHOUSE  
PICK-UP BOX

Method Returned : MAIL

**First PARTY 1**

BEACON ARMORY LLC

**First PARTY 2**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Index Type : Land Records

Instr Number : 2021-00062415

Book : Page :

Type of Instrument : Memorandum Of Lease

Type of Transaction : Deed Misc

Recording Fee: \$71.00

Recording Pages : 5

The Property affected by this instrument is situated in Syracuse, in the  
County of Onondaga, New York

**Real Estate Transfer Tax**

RETT # : 6118

Deed Amount : \$0.00

RETT Amount : \$0.00

Total Fees : \$71.00

State of New York

County of Onondaga

I hereby certify that the within and foregoing was  
recorded in the Clerk's office for Onondaga  
County, New York

On (Recorded Date) : 12/27/2021

At (Recorded Time) : 2:09:34 PM



Doc ID - 046109860005

*Lisa Dell*  
Lisa Dell, County Clerk



This sheet constitutes the Clerks endorsement required by Section 319 of Real Property Law of the State of New York

Entered By: RSWEENIE Printed On : 12/27/2021 At: 2:13:35PM

**MEMORANDUM OF  
COMPANY LEASE AGREEMENT**

***NAME AND ADDRESS OF LESSOR:*** Beacon Armory LLC  
325 South Salina Street, 3<sup>rd</sup> Floor  
Syracuse, New York 13202

Spilco Properties, LLC  
96 Locust Avenue  
New Rochelle, New York 10801

***NAME AND ADDRESS OF LESSEE:*** City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202

***DESCRIPTION OF LEASED PREMISES:***

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being more particularly described in **Exhibit "A"** annexed hereto, together with the improvements thereon.

***DATE OF EXECUTION OF COMPANY LEASE AGREEMENT:***


As of December 1, 2021.

***TERM OF COMPANY LEASE AGREEMENT:***

The term of the Company Lease shall commence on the date hereof and continue in full force and effect until **January 31, 2023**, unless earlier terminated as provided in that certain Agency Lease dated of even date herewith between the same parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of December, 2021.

**BEACON ARMORY LLC**

By:   
Jeffrey Appel, Managing Member

**SPILCO PROPERTIES, LLC**

By:   
Spiro Spiliotis, Managing Member

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Judith DeLaney, Executive Director



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

On the 17<sup>th</sup> day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **JEFFREY APPEL**, 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.

*Margaret D. Kirkby*  
\_\_\_\_\_  
Notary Public

MARGARET D. KIRKBY  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01K14691918  
Qualified in Oswego County *al*  
Commission Expires Sep. 30, 20\_\_

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

On the 17<sup>th</sup> day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **SPIRO SPILIOTIS**, 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.

*Margaret D. Kirkby*  
\_\_\_\_\_  
Notary Public

MARGARET D. KIRKBY  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01K14691918  
Qualified in Oswego County *gs*  
Commission Expires Sep. 30, 20\_\_

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

On this 15<sup>th</sup> day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **JUDITH DELANEY**, 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.

*Lori L. McRobbie*  
\_\_\_\_\_  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20\_\_ *22*

## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE LAND

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Nos. 1, 2, 30, 31, 40 and 41 of Block No. 105-D, Syracuse, New York, according to a Map made by B.F. Green and filed in the Onondaga County Clerk's Office on October 11, 1850 and bounded and described as follows:

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**ALSO, ALL THAT TRACT OR PARCEL OF LAND**, situate lying and being under the waters of the old channel of Onondaga Creek (now filled in), situate in the City of Syracuse, County of Onondaga and State of New York, said tract or parcel being all of the old channel of Onondaga Creek lying within the premises describe above.



Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

See Form TP-584-I, Instructions for Form TP-584, before completing this form. Print or type.

Schedule A - Information relating to conveyance

Form with sections for Grantor/Transferor and Grantee/Transferee, including checkboxes for entity types and fields for name, address, and SSN/EIN.

Location and description of property conveyed

Table with 5 columns: Tax map designation, SWIS code, Street address, City, town, or village, and County.

Type of property conveyed (mark an X in applicable box)

Form with checkboxes for property types (1-8) and a date of conveyance field (12/01/2021).

Condition of conveyance (mark an X in all that apply)

Form with multiple checkboxes (a-s) describing the condition of conveyance, such as fee interest, leasehold grant, etc.

Table for recording officer's use with columns for Amount received, Date received, and Transaction number.

**Schedule B – Real estate transfer tax return (Tax Law Article 31)**

**Part 1 – Computation of tax due**

- 1 Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, mark an X in the Exemption claimed box, enter consideration and proceed to Part 3) .....  **Exemption claimed**
- 2 Continuing lien deduction (see instructions if property is taken subject to mortgage or lien) .....
- 3 Taxable consideration (subtract line 2 from line 1) .....
- 4 Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3 .....
- 5 Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G) .....
- 6 Total tax due\* (subtract line 5 from line 4) .....

1.		0 00
2.		0 00
3.		0 00
4.		0 00
5.		0 00
6.		0 00

**Part 2 – Computation of additional tax due on the conveyance of residential real property for \$1 million or more**

- 1 Enter amount of consideration for conveyance (from Part 1, line 1) .....
- 2 Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...
- 3 Total additional transfer tax due\* (multiply line 2 by 1% (.01)) .....

1.		
2.		
3.		

**Part 3 – Explanation of exemption claimed on Part 1, line 1 (mark an X in all boxes that apply)**

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, New York State, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) ..... a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts..... d
- e. Conveyance is given in connection with a tax sale..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F ..... f
- g. Conveyance consists of deed of partition..... g
- h. Conveyance is given pursuant to the federal Bankruptcy Act..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, § 1401(e) (attach documents supporting such claim) ..... k

\* The total tax (from Part 1, line 6 and Part 2, line 3 above) is due within 15 days from the date of conveyance. Make check(s) payable to the county clerk where the recording is to take place. For conveyances of real property within New York City, use Form TP-584-NYC. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

**Schedule C – Credit Line Mortgage Certificate (Tax Law Article 11)**

Complete the following only if the interest being transferred is a fee simple interest.  
This is to certify that: (mark an X in the appropriate box)



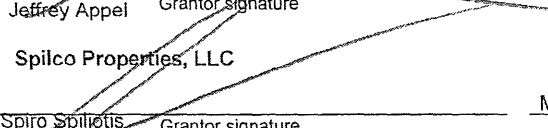
- 1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
- 2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - a  The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
  - b  The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
  - c  The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
  - d  The maximum principal amount secured by the credit line mortgage is \$3 million or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

**Note:** for purposes of determining whether the maximum principal amount secured is \$3 million or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

  - e  Other (attach detailed explanation).
- 3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
  - a  A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
  - b  A check has been drawn payable for transmission to the credit line mortgagee or mortgagee's agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
- 4.  The real property being transferred is subject to an outstanding credit line mortgage recorded in \_\_\_\_\_ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is \_\_\_\_\_. No exemption from tax is claimed and the tax of \_\_\_\_\_ is being paid herewith. (Make check payable to county clerk where deed will be recorded.)

**Signature (both the grantors and grantees must sign)**

The undersigned certify that the above information contained in Schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of their knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

<p>Beacon Armory, LLC</p>  <p>_____ Jeffrey Appel Grantor signature</p>	<p>City of Syracuse Industrial Development Agency</p>  <p>_____ Judith DeLaney Grantee signature</p>	<p>_____ Executive Director Title</p>
<p>Spilco Properties, LLC</p>  <p>_____ Spiro Spiliotis Grantor signature</p>	<p>_____ Managing Member Title</p>	<p>_____ Grantee signature Title</p>

**Reminder:** Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you marked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place? If no recording is required, send this return and your check(s), made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

**Schedule D – Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, § 663)**

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part 2, mark an X in the second box under *Exemption for nonresident transferors/sellers*, and sign at bottom.

**Part 1 – New York State residents**

If you are a New York State resident transferor/seller listed in Form TP-584, Schedule A (or an attachment to Form TP-584), you must sign the certification below. If one or more transferor/seller of the real property or cooperative unit is a resident of New York State, **each** resident transferor/seller must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

**Certification of resident transferors/sellers**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law § 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**Note:** A resident of New York State may still be required to pay estimated tax under Tax Law § 685(c), but not as a condition of recording a deed.

**Part 2 – Nonresidents of New York State**

If you are a nonresident of New York State listed as a transferor/seller in Form TP-584, Schedule A (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law § 663(c), mark an X in the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor/seller, that transferor/seller is not required to pay estimated personal income tax to New York State under Tax Law § 663. **Each** nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on Form TP-584-I, page 1.

**Exemption for nonresident transferors/sellers**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law § 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from \_\_\_\_\_ Date to \_\_\_\_\_ Date (see instructions).
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of New York State, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

## SCHEDULE "A"

### **Grantor/Transferor**

Beacon Armory LLC  
325 S. Salina Street, 3<sup>rd</sup> Floor  
Syracuse, New York 13202  
Federal EIN: 86-2735708

Spilco Properties, LLC  
96 Locust Avenue  
New Rochelle, New York 10801  
Federal EIN: 46-1869302





**BILL OF SALE TO AGENCY**

**BEACON ARMORY LLC** , a limited liability company organized under the laws of the State of New York with an office to conduct business at 325 South Salina Street, #3, Syracuse, New York 13202 and **SPILCO PROPERTIES, LLC**, a limited liability company organized under the laws of the State of New York with on office to conduct business at 96 Locust Avenue, New Rochelle, New York 10801 (collectively, the "**Company**"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Company from the City of Syracuse Industrial Development Agency, a public benefit corporation organized and existing pursuant to the laws of the State of New York (the "**Agency**"), having its office at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202, the receipt of which is hereby acknowledged by the Company, hereby sells, transfers, and delivers unto the Agency, its successors and assigns, all those materials, machinery, equipment, fixtures and furnishings now owned or hereafter acquired by the Company in connection with the Project Facility, as described in the Agency Lease entered between the Agency and the Company dated as of December 1, 2021 (the "**Agency Lease**"), and as listed on "**Exhibit A**" attached hereto.

**TO HAVE AND HOLD** the same unto the Agency, its successors and assigns, forever.

The Company hereby represents and warrants that it is the true and lawful owner of the personal property being conveyed hereby, that all of the foregoing are free and clear of all liens, security interests, and encumbrances, except for Permitted Encumbrances, as defined in the Agency Lease, and that the Company has the right to sell the same as aforesaid; and the Company covenants that it will warrant and defend title to the same for the benefit of the Agency and its successors and assigns against the claims and demands of all persons.

**IN WITNESS WHEREOF**, the Company has caused this instrument to be executed by its duly authorized representative on the date indicated beneath the signature of such representative and dated as of the 1<sup>st</sup> day of December, 2021.

**BEACON ARMORY LLC**

By: 

Jeffrey Appel, Managing Member

**SPILCO PROPERTIES, LLC**

By: 

Spiro Spiliotis, Managing Member

## EXHIBIT "A"

### DESCRIPTION OF THE EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by **BEACON ARMORY LLC and SPILCO PROPERTIES, LLC** (collectively, the "*Company*") and now or hereafter attached to, contained in or used or acquired in connection with the Project Facility (as defined in the Agency Lease or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, furniture, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators, freezers, rugs, movable partitions, cleaning equipment, maintenance equipment, restaurant supplies and equipment, shelving, racks, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus aid materials, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.



**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**BEACON ARMORY LLC**

**AND**

**SFILCO PROPERTIES, LLC**

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**AGENCY LEASE AGREEMENT**

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**DATED AS OF DECEMBER 1, 2021**

**BENTLEY LOFTS PROJECT**

**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF CONTENTS .....	i
<b>ARTICLE I RECITALS AND DEFINITIONS</b> .....	3
1.0 RECITALS .....	3
1.1 DEFINITIONS.....	3
1.2 INTERPRETATION.....	3
<b>ARTICLE II REPRESENTATIONS AND COVENANTS</b> .....	4
2.1 REPRESENTATIONS OF THE AGENCY.....	4
2.2 REPRESENTATIONS AND COVENANTS OF THE COMPANY.....	4
<b>ARTICLE III CONVEYANCE OF LEASEHOLD INTEREST IN PROJECT FACILITY</b> .....	9
3.1 AGREEMENT TO CONVEY LEASEHOLD INTEREST TO COMPANY.....	9
3.2 USE OF PROJECT FACILITY .....	9
<b>ARTICLE IV RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT</b> .....	9
4.1 RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT FACILITY.....	9
4.2 COMPLETION OF PROJECT FACILITY.....	10
4.3 COSTS OF COMPLETION PAID BY COMPANY .....	11
4.4 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES.....	11
4.5 COOPERATION IN EXECUTION OF ADDITIONAL MORTGAGES AND MODIFICATIONS OF MORTGAGES. ....	12
<b>ARTICLE V AGREEMENT TO LEASE PROJECT FACILITY; RENTAL PAYMENTS</b> .....	12
5.1 AGREEMENT TO LEASE PROJECT FACILITY.....	12
5.2 TERM OF LEASE; EARLY TERMINATION; SURVIVAL .....	14
5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.....	15
5.4 NATURE OF OBLIGATIONS OF COMPANY HEREUNDER .....	16
<b>ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES, AND INSURANCE</b> .....	17
6.1 MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY .....	17
6.2 TAXES, ASSESSMENTS, AND UTILITY CHARGES.....	17

6.3	INSURANCE REQUIRED .....	18
6.4	ADDITIONAL PROVISIONS RESPECTING INSURANCE.....	19
6.5	APPLICATION OF NET PROCEEDS OF INSURANCE.....	19
<b>ARTICLE VII</b>	<b>DAMAGE, DESTRUCTION, AND CONDEMNATION .....</b>	<b>20</b>
7.1	DAMAGE OR DESTRUCTION.....	20
7.2	CONDEMNATION.....	21
7.3	ADDITIONS TO PROJECT FACILITY .....	22
<b>ARTICLE VIII</b>	<b>SPECIAL COVENANTS .....</b>	<b>22</b>
8.1	NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS" .....	22
8.2	HOLD HARMLESS PROVISIONS .....	22
8.3	RIGHT OF ACCESS TO PROJECT FACILITY.....	24
8.4	MAINTENANCE OF EXISTENCE .....	24
8.5	AGREEMENT TO PROVIDE INFORMATION .....	24
8.6	BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS.....	25
8.7	COMPLIANCE WITH ORDERS, ORDINANCES, ETC. ....	25
8.8	DISCHARGE OF LIENS AND ENCUMBRANCES.....	25
8.9	PERFORMANCE BY AGENCY OF COMPANY'S OBLIGATIONS.....	25
8.10	DEPRECIATION DEDUCTIONS AND TAX CREDITS .....	26
8.11	EMPLOYMENT OPPORTUNITIES.....	26
8.12	SALES AND USE EXEMPTION.....	26
8.13	IDENTIFICATION OF THE EQUIPMENT.....	28
<b>ARTICLE IX</b>	<b>ASSIGNMENTS; TRANSFERS; MERGER OF AGENCY .....</b>	<b>28</b>
9.1	ASSIGNMENT OF AGENCY LEASE.....	28
9.2	TRANSFERS OF INTERESTS.....	28
9.3	MERGER OF AGENCY .....	28
<b>ARTICLE X</b>	<b>EVENTS OF DEFAULT AND REMEDIES.....</b>	<b>29</b>
10.1	EVENTS OF DEFAULT DEFINED.....	29
10.2	REMEDIES ON DEFAULT.....	30
10.3	REMEDIES CUMULATIVE.....	31
10.4	AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.....	31
10.5	NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.....	31
<b>ARTICLE XI</b>	<b>MISCELLANEOUS .....</b>	<b>32</b>
11.1	NOTICES.....	32
11.2	BINDING EFFECT .....	33
11.3	SEVERABILITY .....	33
11.4	AMENDMENTS, CHANGES AND MODIFICATIONS .....	33
11.5	EXECUTION OF COUNTERPARTS .....	33
11.6	APPLICABLE LAW .....	33

11.7	WAIVER OF TRIAL BY JURY .....	33
11.8	SUBORDINATION.....	34
11.9	SURVIVAL OF OBLIGATIONS .....	34
11.10	TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.....	34
11.11	NO RECOURSE; SPECIAL OBLIGATION.....	34
11.12	OBLIGATION TO SELL AND PURCHASE THE EQUIPMENT .....	36
11.13	ENTIRE AGREEMENT.....	36
11.14	DISCLOSURE .....	37

EXHIBIT "A"	REAL PROPERTY DESCRIPTION
EXHIBIT "B"	DESCRIPTION OF EQUIPMENT
EXHIBIT "C"	TABLE OF DEFINITIONS
EXHIBIT "D"	LOCAL ACCESS AGREEMENT
EXHIBIT "E"	FORM OF ANNUAL REPORTING QUESTIONNAIRE
EXHIBIT "F"	FORM OF SUB-AGENT AGREEMENT
EXHIBIT "G"	RECAPTURE POLICY
SCHEDULE "1"	FORM OF CERTIFICATION REGARDING ONGOING OBLIGATIONS UPON TERMINATION OF LEASES

## AGENCY LEASE AGREEMENT

**THIS AGENCY LEASE AGREEMENT**, dated as of December 1, 2021 (the "**Agency Lease**"), is among the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a body corporate and politic and a public instrumentality of the State of New York, having its office at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 (the "**Agency**"), **BEACON ARMORY LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 325 South Salina Street, #3, Syracuse, New York 13202 ("**Beacon**") and **SPILCO PROPERTIES, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 96 Locust Avenue, New Rochelle, New York 10801 ("**Spilco**") and together with Beacon, collectively, the "**Company**").

### WITNESSETH:

**WHEREAS**, the Agency is authorized and empowered by Title I of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, 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, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, 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, among other things, to: (i) make contracts and leases, and to execute such documents as necessary or convenient, with a public or private person, firm, partnership, or corporation; (ii) to acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects (as defined in the Act); and (iii) to sell, lease and otherwise dispose of any such property; and

**WHEREAS**, the Agency, by resolution adopted on September 30, 2021, agreed, at the request of the Company to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the "**Building**") located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the "**Land**"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the



“*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “*Financial Assistance*”); (C) the appointment of the Beacon and Spilco or their designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Beacon and Spilco to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

**WHEREAS**, the Land and the Facility are connected to an adjacent building located at 229-37 West Fayette Street, Syracuse, New York (the land and building collectively referred to as the “*Adjacent Building*”) which is owned by the Company.

**WHEREAS**, the Company is the fee owner of the Land and Facility; and

**WHEREAS**, the Company has advised the Agency that its lender (the “*Lender*”) will require a pledge of the Adjacent Building as additional collateral for the note and mortgage to be given in connection with the Project.

**WHEREAS**, the Agency proposes to assist the Company's acquisition, reconstruction and equipping of the Project Facility and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company and/or its designee as its agent with respect to completing the Project; (2) leasing of the Land, Facility and the Adjacent Building by the Agency pursuant to a company lease agreement; (3) accepting an interest in the Equipment pursuant to a bill of sale from the Company; (4) subleasing the Land, the Facility and the Adjacent Building to the Company pursuant to an agency lease agreement; and (5) entering into one or more mortgages in favor of the Company’s Lender.

**WHEREAS**, in order to accommodate the Lender's collateral requirements, the Company has agreed to lease its interests in the Adjacent Building to the Agency and the Company has requested the Agency agree to extend its interest to the Adjacent Building solely for the purposes of the approved mortgage recording tax exemption with the understanding that all of the State and local sales and use tax exemption benefits authorized by the Agency will be realized from the work done solely on the Project Facility (the “*Lender Requirements*”); and

**WHEREAS**, the Agency proposes to assist the Company’s acquisition, reconstruction, renovation and equipping of the Project Facility and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company and/or its designee as its agent with respect to the undertaking and completing the Project; (2) accepting a leasehold interest in the Land, the Facility and the Adjacent Building from the Company and a fee interest in the Equipment pursuant to a bill of sale from Beacon and Spilco; and (2) subleasing the Project Facility to the Company pursuant to this Agency Lease; and

**WHEREAS**, the Company is the fee owner of the Land and the Facility and the Adjacent Building and each have leased their respective interests in the Land, the Facility and/or the

Adjacent Building to the Agency pursuant to the Company Lease Agreement dated as of December 1, 2021 (the “*Company Lease*”); and

**WHEREAS**, the Company has conveyed title to the Equipment to the Agency pursuant to the Bill of Sale dated as of December 1, 2021 (the “*Bill of Sale*”); and

**WHEREAS**, the Agency now proposes to sublease the Project Facility to the Company pursuant to the terms and conditions herein set forth; and

**WHEREAS**, all things necessary to constitute this Agency Lease 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 Agency Lease have, in all respects, been duly authorized.

**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 RECITALS AND DEFINITIONS**

### **1.0 RECITALS.**

The foregoing recitals are incorporated herein by reference as if fully set forth hereinbelow.

### **1.1 DEFINITIONS.**

For all purposes of this Agency Lease and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions attached hereto as **Exhibit “C”** except as otherwise expressly defined herein or the context hereof otherwise requires.

### **1.2 INTERPRETATION.**

In this Agency Lease, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “herein,” “hereunder,” and any similar terms as used in this Agency Lease refer to this Agency Lease; the term “heretofore” shall mean before and the term “hereafter” shall mean after the date of this Agency Lease;

(b) Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; and

(c) Any certificates, letters, or opinions required to be given pursuant to this Agency Lease 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 Agency Lease.

## **ARTICLE II REPRESENTATIONS AND COVENANTS**

### **2.1 REPRESENTATIONS OF THE AGENCY.**

The Agency makes the following representations to the Company as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established under the provisions of the Act and has the power to enter into this Agency Lease and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Project Facility, the Project Facility will constitute a “project,” as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute, deliver, and perform this Agency Lease and the other Agency Documents.

(b) Neither the execution and delivery of this Agency Lease, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions of this Agency Lease and the other Agency Documents by the Agency will conflict with or result in a breach by the Agency of any of the terms, conditions, or provisions of the Act, the By-Laws of the Agency, or any order, judgment, restriction, agreement, or instrument to which the Agency is a party or by which it is bound or will constitute a default by the Agency under any of the foregoing.

(c) This Agency Lease and the other Agency Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Agency, enforceable in accordance with their respective terms.

### **2.2 REPRESENTATIONS AND COVENANTS OF THE COMPANY.**

Beacon Armory LLC and Spilco Properties, LLC, each as noted or jointly as the Company, make the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) Beacon is a limited liability company duly organized, validly existing and in good standing under the laws of New York, has the power to enter into this Agency Lease and the other Agency Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Agency Lease and the other Agency Documents.

(b) Spilco is a limited liability company duly organized, validly existing and in good standing under the laws of New York, has the power to enter into this Agency Lease and the other Agency Documents and to carry out its obligations hereunder and thereunder, and has

duly authorized the execution, delivery, and performance of this Agency Lease and the other Agency Documents.

(c) The obligations of the Company hereunder are joint and several amongst Beacon and Spilco.

(d) This Agency Lease and the other Agency Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of each Beacon and Spilco, enforceable in accordance with their respective terms.

(e) Each Beacon and Spilco have a valid and enforceable fee interest in the Land and the Facility and the Adjacent Building, and each shall remain and retain such interests for the term of this Agency Lease unless otherwise consented to in writing by the Agency.

(f) The Company shall complete the Project Facility on or before the Completion Date.

(g) This Project is located in a Highly Distressed Area (as that term is defined in the Act.

(h) The Company acknowledges and agrees that no portion of the State and local sales and use tax exemption provided to the Project by the Agency shall be used on, toward or for the benefit of the Adjacent Building but rather solely with respect to the Project Facility;

(i) For the duration of the term hereof, the Company shall operate the Project Facility as the Project Facility and for the purposes presented herein and in the Application and Plans and Specifications presented to the Agency.

(j) Neither the execution and delivery of this Agency Lease and the other Company Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions thereof will:

(1) Result in a breach of, or conflict with any term or provision in, the Beacon's or Spilco's Articles of Organization or Operating Agreement;

(2) Require consent under (which has not been heretofore received) or result in a breach of or default under any credit agreement, indenture, purchase agreement, mortgage, deed of trust, commitment, guaranty or other agreement or instrument to which the Company is a party or by which the Company or any of its property may be bound or affected; or

(3) Conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any Governmental Authority or court (domestic or foreign) having jurisdiction over the Company or any of the property of the Company or violate any Applicable Laws.

(a) The providing of Financial Assistance to the Project by the Agency:

(1) Has been an important consideration in Beacon and Spilco's decision to acquire, reconstruct, renovate, equip and complete the Project Facility in the City of Syracuse;

(2) Will not result in the removal of an industrial or manufacturing plant or commercial activity of any Project Facility occupant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of any user, occupant, or proposed user or occupant of the Project Facility located within the State, except as permitted by the Act; and

(3) Will help eliminate blight and advance job opportunities, prosperity, and standard of living and help prevent economic deterioration.

(k) So long as the Agency holds a leasehold interest in the Project Facility and the Adjacent Building, the Project Facility and the Adjacent Building are and will continue to be a "project" (as such quoted term is defined in the Act), and the Company will not take any action (or omit to take any action required by the Company Documents or which the Agency, together with Agency's counsel, advise the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way cause the Project Facility or the Adjacent Building not to constitute a "project" (as such quoted term is defined in the Act).

(l) The Company shall cause all notices as required by law to be given and shall comply or cause compliance with all Applicable Laws, and the Company will defend and save the Agency and its officers, members, agents (other than the Company), and employees harmless from all fines and penalties due to failure to comply therewith.

(m) The Project will not have a significant effect on the environment" (within the meaning of such term as used in SEQRA) and the Company hereby covenants to comply with all mitigating measures, requirements and conditions, if any, enumerated in the SEQR Resolution under SEQRA applicable to the acquisition, construction and installation of the Project Facility and in any other approvals issued by any other Governmental Authority with respect to the Project. No material changes with respect to any aspect of the Project Facility have arisen from the date of the issuance of such negative declaration which would cause the determination contained therein to be untrue.

(n) The Company acknowledges the Agency's Local Access Policy and their obligation to comply. The Company further understands and agrees that it is the preference of the Agency that the Company provide opportunities for the purchase of goods and services from: (i) business enterprises located in the City; (ii) certified minority and or women-owned business enterprises; and (iii) business enterprises that employ residents of the City. The Company further understand and acknowledge that consideration will be given by the Agency to their efforts to comply, and compliance, with this objective at any time an extension of benefits is sought or involvement by the Agency with the Project is requested by the Company.

(o) The Company is ready to proceed with construction of the Project Facility.

(p) The acquisition, reconstruction, renovation, equipping and completion of the Project Facility will promote employment opportunities and help prevent economic deterioration in the City by the creation and/or preservation of both full and part-time jobs.

(q) The Company has all currently necessary permits, licenses, and governmental approvals and consents (collectively, "**Approvals**") for the construction and equipping of the Project Facility and has or will have such Approvals timely for each phase of, and throughout the reconstruction, renovation and equipping of the Project Facility.

(r) The Company will not sublease the whole or any portion of the Project Facility or the Adjacent Building for an unlawful purpose.

(s) No part of the Project Facility will be located outside of the City.

(t) The Company shall perform, or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency (which is within the control of the Company) under and pursuant to this Agency Lease, the Company Lease and the other Company Documents and shall defend, indemnify, and hold harmless the Agency and its members, officers, agents (other than the Company), servants and employees from and against every expense, liability, or claim arising out of the failure of the Company to fulfill its obligations under the provisions of this Section 2.2.

(u) The Company agrees that except as is otherwise provided by collective bargaining contracts or agreements applicable to the Project, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with 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 is located. The Company further agrees that except as is otherwise provided by collective bargaining contracts or agreements applicable to the Project, it will first consider persons eligible to participate in the Federal Job Training Partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the Department of Labor for such new employment opportunities.

(v) The Company shall provide to the Agency any and all documentation or information requested by the Agency so that the Agency can comply with all of its reporting requirements under the Act.

As a condition precedent to receiving or benefiting from any State sales and use tax exemption benefits, the Company acknowledges and agrees to all terms and conditions of Section 875(3) of the Act. Section 875(3) of the Act is herein incorporated by reference. As part of such conditions precedent:

(1) The Company shall not take any State or local Sales and Use Tax exemptions to which it is not entitled, which are in excess of the amount authorized by the Agency in reliance on the Company's Application or which are for property or services not authorized.

(2) The Company shall comply with all material terms and conditions to use property or services in the manner required by the Agency Documents.

(3) The Company shall cooperate with the Agency in the Agency's efforts to recover, recapture, receive or otherwise obtain from the Company any Sales Tax Recapture Amount (as defined herein) and shall, upon the Agency's request, immediately pay to the Agency any Sales Tax Recapture Amount, together with any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise. The Company acknowledges and agrees that the failure of the Company to promptly pay any Sales Tax Recapture Amount to the Agency will be grounds for the State Commissioner of Taxation and Finance to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties.

(w) The amount of State and local sales and use tax benefits comprising the Financial Assistance approved by the Agency shall not exceed **\$200,000**. The Company shall not request, obtain nor claim State and local sales and use tax exemptions in excess of this amount; and further acknowledges and agrees, notwithstanding the Lender Requirements, and aside from the approved mortgage recording tax exemption benefit, that all of the State and local sales and use tax exemption benefits authorized by the Agency will be realized from the work done solely on the Project Facility.

(x) The Company hereby acknowledges that any exemption from mortgage recording tax authorized by the Agency as part of the Financial Assistance is limited by Section 874 of the Act. The amount of exemption from mortgage recording tax is estimated to be \$56,250.

(y) The Company hereby acknowledges, agrees and covenants to timely pay all costs of reconstruction, renovation, equipping and completing the Project, and its obligations hereunder including, but not limited to, Article 4 hereof.

(z) The Company hereby represents, warrants and covenants that no properties owned or leased by the Company in the City are currently the subject of any violations, including but not limited to zoning and/or permitting, by any governmental agency nor are any such properties delinquent in any taxes or payments in lieu thereof to any municipality. The Company further represents, warrants and covenants that all Company owned or leased properties are in compliance with, all laws, ordinances, rules, regulations, and requirements of all Governmental Authorities and that there are no pending or threatened law suits against the City or County.

**ARTICLE III  
CONVEYANCE OF LEASEHOLD INTEREST IN PROJECT FACILITY**

**3.1 AGREEMENT TO CONVEY LEASEHOLD INTEREST TO COMPANY.**

The Company has conveyed to the Agency, pursuant to the Company Lease, a leasehold interest in the Land, Facility and Adjacent Building, all as more fully described in **Exhibit "A"** attached hereto, any improvements now or hereafter constructed and installed thereon, subject to Permitted Encumbrances and all of its right, title and interest in the Equipment via a Bill of Sale, as more fully described in **Exhibit "B"** attached hereto. Under this Agency Lease, the Agency will convey, or will cause to be conveyed, to the Company, a subleasehold interest in the Project Facility and the Adjacent Building, subject to Permitted Encumbrances and exclusive of the Agency's Unassigned Rights.

**3.2 USE OF PROJECT FACILITY.**

Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in accordance with the terms of this Agency Lease and for the purposes described in the third WHEREAS clause of this Agency Lease; provided that such use causes the Project Facility to qualify or continue to qualify as a "project" under the Act. The Company shall be entitled to use the Adjacent Building for all such permitted uses provided that for the term of this Agency Lease the Adjacent Building qualify or continue to qualify as a "project" under the Act.

**ARTICLE IV  
RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT**

**4.1 RECONSTRUCTION, RENOVATION, CONSTRUCTION AND EQUIPPING OF THE PROJECT FACILITY.**

(a) The Company shall promptly reconstruct, renovate, equip and complete the Project Facility, all in accordance with the Plans and Specifications on or before the Completion Date. Unless a written waiver is first obtained from the Agency, in accordance with the Agency's Local Access Policy, the Company and their Additional Agents (as defined herein), shall utilize local labor, contractors and suppliers for the reconstruction, renovation, equipping and completion of the Project Facility. For purposes of this Agency Lease, and in particular this Section 4.1, the term "**local**" shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland Counties. Failure to comply with the local labor requirements of this Section 4.1 (collectively, "**Local Labor Requirements**") may result in the revocation or recapture of all benefits provided/approved to the Project by the Agency. Failure to comply with any portion of Article 4 may result in the loss of all benefits provided or for the benefit of the Project in the Agency's sole discretion. In furtherance thereof, the Agency's Local Access Agreement has been completed and is attached hereto as **Exhibit "D"**.

(b) The Agency hereby confirms the appointment of the Company as its true and lawful agents to perform the following in compliance with the terms, purposes, and intent of



this Agency Lease, the Act and the other Company Documents, and the Company hereby accepts such appointment:

(1) To reconstruct, renovate, equip and complete the Project Facility and to acquire the Equipment in accordance with the terms hereof;

(2) To make, execute, acknowledge, and deliver any contracts, orders, receipts, writings, and instructions with any other Persons and, in general, to do all things which may be requisite or proper, all for the reconstruction, renovation, equipping and completion of the Project Facility with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the Agency shall have no liability for the payment of any sums due thereunder;

(3) To pay all fees, costs and expenses incurred in the reconstruction, renovation, equipping and completion of the Project Facility from funds made available therefore from the funds of the Company; and

(4) To ask, demand, sue for, levy, recover, and receive all such sums of money, debts, dues, and other demands whatsoever which may be due, owing, and payable to the Agency under the terms of any contract, order, receipt, or writing in connection with the reconstruction, renovation, equipping and completion of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond, or other performance security.

(c) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1, provided, however, that the Agency shall have no liability for the payment of any sums due thereunder.

(d) The Company has given, or will give or cause to be given, all notices and have complied, or will comply or cause compliance with, all laws, ordinances, rules, regulations, and requirements of all Governmental Authorities applying to or affecting the conduct of work on the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company were the owner of the Project Facility), and the Company will defend, indemnify, and save the Agency and its officers, members, agents, servants, and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(e) The Company understands and agrees that it is the preference of the Agency that the Company provide opportunities for the purchase of goods and services relative to the Project from: (i) business enterprises located in the City; (ii) certified minority and/or women-owned business enterprises; and (iii) business enterprises that employ residents of the City. Consideration will be given by the Agency to the Company's efforts to comply, and compliance with, this objective at any time an extension of benefits is requested, or further involvement by the Agency with the Project, is requested by the Company.

## **4.2 COMPLETION OF PROJECT FACILITY.**

(a) The Company shall proceed with due diligence to acquire, reconstruct, renovate, equip and complete the Project Facility on or before the Completion Date in accordance with the Plans and Specifications. Completion of the acquisition, reconstruction, renovation and equipping of the Project Facility shall be evidenced by a certificate signed by an Authorized Representative of each Beacon and Spilco and approved by the Agency, on or before the Completion Date, stating:

(1) The date of such completion;

(2) That all labor, services, materials, and supplies used therefor and all costs and expenses in connection therewith have been paid;

(3) That the Company has good and valid title to all Property constituting the Project Facility subject to the interest of the Agency therein and to this Agency Lease, the Company Lease and the Bill of Sale; and

(4) That the Project Facility is ready for occupancy, use and operation for its intended purposes.

(b) Notwithstanding the foregoing, such certificate may state that (1) it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being; (2) it is given only for the purposes of this Section 4.2; and (3) no Person other than the Agency may benefit therefrom.

(c) Such certificate shall be accompanied by (1) copy of a certificate of occupancy, if required, and any and all permissions, licenses, or consents required of Governmental Authorities for the occupancy, operation, and use of the Project Facility for its intended purposes; and (2) Lien releases from the Company's contractor and any subcontractors under a contract with a price in excess of \$100,000.

#### **4.3 COSTS OF COMPLETION PAID BY COMPANY.**

(a) The Company agrees to complete the Project in accordance with the terms hereof and to pay in full all costs of the reconstruction, renovation, equipping and completion of the Project Facility.

(b) No payment by the Company pursuant to this Section 4.3 shall entitle the Company to any diminution or abatement of any amounts payable by the Company under this Agency Lease.

#### **4.4 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES.**

In the event of a default by any materialman or Additional Agent (as defined herein) under any contract made by them in connection with reconstruction, renovation,

equipping and completion of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company against the materialman or Additional Agent so in default and against each surety for the performance of such contract. The Company may prosecute or defend any action or proceeding or take any other action involving any such materialman or Additional Agent or surety which Beacon and Spilco deems reasonably necessary. The Company shall advise the Agency of any actions or proceedings taken hereunder. No such suit shall relieve the Company of any of its obligations under this Agency Lease and the other Company Documents.

#### **4.5 COOPERATION IN EXECUTION OF ADDITIONAL MORTGAGES AND MODIFICATIONS OF MORTGAGES.**

The Agency agrees, upon written request of an Authorized Representative of the Company and subject to the provisions of the Act, to use its commercially reasonable efforts to execute and deliver one or more Mortgages and such additional instruments and documents may be requested by the Company and approved by counsel to the Agency and as may be required in connection with the Company's financing or refinancing for the costs of reconstruction, renovation and equipping of the Project Facility, provided that:

(a) No Event of Default under this Agency Lease, the Company Lease, the Project Agreement or the Mortgage shall have occurred and be continuing; and

(b) The execution and delivery of such documents by the Agency (i) is permitted by law in effect at the time; and (ii) will serve the public purposes of the Act; and

(c) The Company will be responsible for and shall pay, from the proceeds thereof or otherwise, the Agency's fee and the costs and expenses of the Agency incidental to such additional financing, refinancing or modification thereof, including without limitation the reasonable attorneys' fees of the Agency; and

(d) The documents to be signed by the Agency shall contain the provisions set forth in Sections 8.2 and 11.11 hereof, and shall not impose any duties or obligations upon the Agency except as may be acceptable to the Agency.

### **ARTICLE V AGREEMENT TO LEASE PROJECT FACILITY; RENTAL PAYMENTS**

#### **5.1 AGREEMENT TO LEASE PROJECT FACILITY.**

In consideration of the Company's covenant herein to make rental payments, and the other covenants of the Company contained herein, including the covenant to make additional rent and other payments required hereby, the Agency hereby agrees to lease to the Company, and the Company hereby agrees to lease from the Agency, the Project Facility and the Adjacent Building for and during the term provided herein and upon and subject to the terms and conditions herein set forth and subject to Permitted Encumbrances.

The Agency's acceptance of the leasehold interest in and to the Land, Facility and Adjacent Building pursuant to the Company Lease, and its acquisition of an interest in the Equipment pursuant to the Bill of Sale, and the holding of said interests were effected and performed solely at the request of the Company pursuant to the requirements of the Act. The Agency hereby transfers and conveys all of its beneficial and equitable interests, if any, in the Project Facility and the Adjacent Building to the Company, except for its Unassigned Rights. As a result, the parties hereby acknowledge and agree that subject to the terms and conditions of this Agency Lease, the Company has all of the equitable and beneficial ownership and other interest in the Project Facility (except for the Unassigned Rights), and will have all the equitable and beneficial ownership and other interest in the Project Facility and Adjacent Building (except for the Unassigned Rights), such that the Company, and not the Agency, shall have an:

(i) unconditional obligation to bear the economic risk of depreciation and diminution in value of the Project Facility due to obsolescence or exhaustion, and shall bear the risk of loss if the Project Facility is destroyed or damaged;

(ii) unconditional obligation to keep the Project Facility and Adjacent Building in good condition and repair;

(iii) unconditional and exclusive right to the possession of the Project Facility and Adjacent Building, and shall have sole control of and responsibility for the Project Facility or the and Adjacent Building;

(iv) unconditional obligation to maintain insurance coverage on, and such reserves with respect to, the Project Facility and the Adjacent Building as may be required by the Company, the Agency and the Mortgagee with respect to the Project and the Adjacent Building;

(v) unconditional obligation to pay all taxes levied on, or payments in lieu thereof, and assessments made with respect to, the Project Facility and the Adjacent Building;

(vi) subject to the Unassigned Rights, unconditional and exclusive right to receive rental and any other income and other benefits of the Project Facility and the Adjacent Building and from the operation of the Project;

(vii) unconditional obligation to pay for all of the capital investment in the Project Facility;

(viii) unconditional obligation to bear all expenses and burdens of the Project Facility and the Adjacent Building and to pay for all maintenance and operating costs in connection with the Project Facility and the Adjacent Building; and

(ix) unconditional and exclusive right to include all income earned from the operation of the Project Facility and the Adjacent Building and claim all deductions and

credits generated with respect to the Project Facility on its annual federal, state and local tax returns.

With respect to all of the foregoing, the Agency shall have no obligation to determine, as amongst Beacon and Spilco, which company has which rights or obligations.

## 5.2 TERM OF LEASE; EARLY TERMINATION; SURVIVAL.

(a) The term of this Agency Lease shall commence on the date hereof and continue in full force and effect until **January 31, 2023** (the "**Term**"), unless early terminated as provided herein. Notwithstanding anything herein to the contrary, the obligations of the Company to report hereunder and the Agency's rights to recapture shall continue during the Reporting Period (as defined herein). As a condition to the termination of this Agency Lease, the Company shall be obligated to execute and deliver the certification attached hereto at **Schedule "1"** regarding the Company's ongoing obligations.

(b) The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing, delivering and recording terminations of the Agency Lease, the Company Lease, preparing a bill of sale together with any other documents therewith and to take such other and further actions reasonably necessary to confirm the termination of the Agency's interest in the Project.

(c) The Company shall have the option, at any time during the Term of this Agency Lease, to terminate this Agency Lease. In the event that the Company shall exercise its option to terminate this Agency Lease pursuant to this Section 5.2(c), the Company shall file with the Agency a certificate stating their joint intention to do so pursuant to this Section 5.2(c) and to comply with the requirements set forth in Section 5.2(d) hereof.

(d) As a condition to the effectiveness of the Company's exercise of their right to early termination, the following payments shall be made:

(1) **To the Agency**: an amount certified by the Agency as sufficient to pay all unpaid fees and expenses of the Agency incurred under this Agency Lease and the Company Lease (including, but not limited to those in connection with the early termination of this Agency Lease); and

(2) **To the Appropriate Person**: an amount sufficient to pay all other fees, expenses or charges, if any, then due and payable under this Agency Lease and the other Agency Documents.

(e) The certificate required to be filed pursuant to Section 5.2(c), setting forth the provision thereof permitting early termination of this Agency Lease shall also specify the date upon which the payments pursuant to subdivision (d) of this Section 5.2 shall be made, which date shall not be less than thirty (30) nor more than sixty (60) days from the date such certificate is filed with the Agency.

(f) Contemporaneously with the termination of this Agency Lease in accordance with Sections 5.1 or 5.2 hereof, the Agency shall transfer, and the Company shall accept, all of the Agency's right, title and interest in the Project Facility and the Adjacent Building, including the Equipment, for a purchase price of One Dollar (\$1.00) plus the payment of all other sums due hereunder and all legal fees and costs associated therewith. Contemporaneously with the termination of this Agency Lease and the Company Lease shall terminate; however, the Project Agreement shall survive in accordance with its terms.

(g) The Agency shall, upon payment by the Company of the amounts pursuant hereto and to Sections 5.2(d) above and Section 5.3, deliver to the Company all documents furnished to the Agency by the Company, or prepared by the Agency at the sole expense of the Company, and reasonably necessary to evidence termination of the Company Lease and the Agency Lease, including, but not limited to, lease terminations and a bill of sale from the Agency to the Company with respect to its interest in the Equipment, without representation or warranty, subject to the following: (1) any Liens to which such Project Facility and Adjacent Building were subject when conveyed to the Agency, (2) any Liens created at the request of the Company or to the creation of which the Company consented or in the creation of which the Company acquiesced, (3) any Permitted Encumbrances, and (4) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Agency Lease.

(h) The obligation of the Agency under this Section 5.2 to convey the Project Facility and the Adjacent Building to the Company will be subject to: (i) there being no uncured Event of Default existing hereunder or under any payment in lieu of tax agreement now or hereafter entered into with respect to all or any portion of the Project Facility or under any other Company Documents, or any other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default; and (ii) the Company's payment of all expenses, fees and taxes, if any, applicable to or arising from such transfer.

(i) For purposes of this Agency Lease, upon termination of the Agency Lease by its term or for any other reason, the Agency shall: (i) transfer its interests in the Project Facility and the Adjacent Building to the Company; and (ii) its interest in the Equipment to the Company. The Agency shall have no obligation or responsibility to determine as amongst Beacon and Spilco their respective fee/lease or other interests in the properties and/or equipment so conveyed.

### **5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.**

(a) The Company shall pay basic rental payments for the Project Facility consisting of: (i) to the Agency an amount sufficient to pay any and all other amounts due hereunder; and (ii) to the Mortgagee, an amount equal to the debt service and amounts becoming due and payable under the Mortgage and the indebtedness secured thereby on the due date thereof.

(b) The Company shall pay to the Agency, as additional rent, within ten (10) days after the receipt of a demand therefor from the Agency, any annual administrative fees of the Agency, the sum of the reasonable fees, costs and expenses of the Agency and the officers,

members, agents, and employees thereof incurred by the reason of the Agency's lease or sublease of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Agency Lease, the Company Lease or any of the other Agency Documents and any other fee or expense of the Agency with respect to the Project Facility or the Adjacent Building, or any of the other Agency Documents, the payment of which is not otherwise provided for under this Agency Lease, including, without limitation, reasonable fees and disbursements of Agency counsel, including fees and expenses incurred in connection with the Agency's enforcement of any rights hereunder or incurred after the occurrence and during the continuance of an Event of Default, in connection with any waiver, consent, modification or amendment to this Agency Lease or any other Agency Document that may be requested by the Company, or, in connection with any action by the Agency at the request of or on behalf of the Company hereunder or under any other Agency Document. Any additional rent not received within ten (10) business days after demand shall accrue interest after the expiration of such ten days at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

(c) The administrative fee payable by the Company to the Agency in conjunction with this Project and the Agency's granting of Financial Assistance and all outstanding counsel fees and costs shall be paid at closing. In addition, the Company acknowledges that to the extent there are any post-closing legal fees incurred by the Agency in conjunction with this Project, same are the obligation of the Company and shall constitute additional rent hereunder.

(d) The Company agrees to make the above-mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event that the Company shall fail to make or cause to be made any of the payments required under this Agency Lease, the item or installment not so paid shall continue as an obligation of the Company until such item or installment is paid in full.

#### **5.4 NATURE OF OBLIGATIONS OF COMPANY HEREUNDER.**

(a) The obligations of the Company to make the payments required by this Agency Lease and to perform and observe any and all of the other covenants and agreements on its part contained herein are general obligations of the Company and are absolute and unconditional irrespective of any defense or any rights of set-off, recoupment, or counterclaim it may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue, or abate any payment required by, or fail to observe any of its other covenants or agreements contained in this Agency Lease for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the reconstruction, renovation and equipping of the Project Facility, any defect in the title, design, operation, merchantability, fitness, or condition of the Project Facility or the Adjacent Building, or any part thereof, or in the suitability of the Project Facility, or any part thereof, for the Company's purposes or needs, or failure of consideration for, destruction of or damage to, or Condemnation of title to, or the use of all or any part of the Project Facility or the Adjacent Building, any change in the tax or other laws of the United States of America or of the State of New York, or any political subdivision thereof, or

any failure of the Agency to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Agency Lease or the Company Lease.

(b) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Agency Lease or the Company Lease, and in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance (subject to the provisions of Section 11.11).

## **ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE**

### **6.1 MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY.**

The Company shall:

(a) Keep the Project Facility and the Adjacent Building in good condition and repair and preserve the same against waste, loss and damage, ordinary wear and tear excepted;

(b) Make all necessary repairs and replacements to the Project Facility and Adjacent Building or any part thereof (whether ordinary or extraordinary, structural, or non-structural, foreseen or unforeseen) which is damaged, destroyed, or condemned; and

(c) Operate the Project Facility and the Adjacent Building in a sound and economic manner in general accordance with the Project description as set forth herein and in the Application and the Plans and Specifications the Company previously provided to the Agency in the Application or otherwise.

### **6.2 TAXES, ASSESSMENTS AND UTILITY CHARGES.**

(a) The Company shall pay as the same respectively become due:

(1) Any and all taxes and governmental charges of any kind, whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility and the Adjacent Building including but not limited to all real property;

(2) All utility and other charges, including "service charges," incurred or imposed for the operation, maintenance, use, occupancy, upkeep, and improvement of the Project Facility, the non-payment of which would create, or entitle the obligee to impose, a Lien on the Project Facility or the Adjacent Building; and

(3) All assessments and charges of any kind whatsoever lawfully made by any Governmental Authority for public improvements.



(b) The Company may in good faith actively contest any such taxes, assessments, and other charges, provided that (1) the Company shall have first notified the Agency of such contest; (2) no Event of Default under this Agency Lease or any of the other Company Documents shall have occurred and be continuing; and (3) the Company shall have set aside adequate reserves for any such taxes, assessments and other charges. If the Company demonstrates to the reasonable satisfaction of the Agency and certifies to the Agency by delivery of a written certificate, that the non-payment of any such items will not endanger any part of the Project Facility or the Adjacent Building or subject the Project Facility or the Adjacent Building, or any part thereof, to loss or forfeiture, the Company may permit the taxes, assessments, and other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. Otherwise, such taxes, assessments, or charges shall be paid promptly by the Company or secured by the Company's posting a bond in form and substance satisfactory to the Agency.

(c) Notwithstanding anything herein to the contrary, and notwithstanding the Agency's interest in the Project Facility, the Company shall pay all taxes as if privately owned and the Agency had no interest in the Project Facility.

### **6.3 INSURANCE REQUIRED.**

During the Term of this Agency Lease, the Company shall maintain or cause to be maintained insurance with respect to the Project Facility and the Adjacent Building against such risks and for such amounts as are customarily insured against by businesses of like size and type and as required of the Agency, paying (as the same becomes due and payable) all premiums with respect thereto, including:

(a) Insurance against loss or damage by fire, lightning, and other casualties customarily insured against (with a uniform standard extended coverage endorsement), such insurance to be in an amount not less than the full replacement value of the completed Project Facility, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company.

(b) Workers' compensation insurance, disability benefits' insurance, and each other form of insurance which the Company is required by law to provide covering loss resulting from injury, sickness, disability, or death of employees of the Company who are located at or assigned to the Project Facility;

(c) A policy of commercial general liability insurance with a limit of liability of not less than \$1,000,000 per occurrence on an "occurrence" basis and \$2,000,000 in the aggregate for bodily injury, including death, and property damage, including but not limited to, contractual liability under this Agency Lease and personal injury, with blanket excess liability coverage in an amount not less than \$2,000,000, covering the Project Facility and Equipment and the Company's and the Agency's use or occupancy thereof against all claims on account of bodily injury or death and property damage occurring upon, in or about the Project Facility and the Adjacent Building or in connection with the ownership, maintenance, use and/or occupancy of the Project Facility and the Adjacent Building and all appurtenant areas.

#### **6.4 ADDITIONAL PROVISIONS RESPECTING INSURANCE.**

All insurance required by Section 6.3 shall be with insurance companies of recognized financial standing selected by the Company and licensed to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other Persons engaged in businesses similar in size, character, and other respects to those in which the Company are engaged. All policies evidencing such insurance except the Workers' Compensation policy shall name the Company as insured and the Agency as an additional insured, as its interests may appear, and shall provide that such coverage with respect to the Agency be primary and non-contributory with any insurance secured by the Agency and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof.

Prior to the Closing Date, the Company shall deliver to the Agency, satisfactory to the Agency in form and substance: (i) certificates evidencing all insurance required hereby; (ii) the additional insured endorsement(s) applicable to the Agency; (iii) the final insurance binder addressed to the Company covering the Project Facility and the Adjacent Building; and (iv) evidence that the insurance so required is on a primary and non-contributory basis. In addition, the Company shall provide, if so requested by the Agency, a final and complete copy of each insurance policy within thirty (30) days of the Closing Date.

The Company shall deliver or cause to be delivered to the Agency on or before the first business day of each January thereafter each of the items set forth in the immediately preceding paragraph, dated not earlier than the immediately preceding month, reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4. The Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agency Lease each year throughout the Term of this Agency Lease.

All premiums with respect to the insurance required by Section 6.3 shall be paid by the Company, provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

#### **6.5 APPLICATION OF NET PROCEEDS OF INSURANCE.**

The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 shall be applied as follows:

(a) The Net Proceeds of the insurance required by subsection 6.3(a) shall be paid and applied as provided in Section 7.1 hereof; and

(b) The Net Proceeds of the insurance required by subsections 6.3(b) and 6.3(c) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

**ARTICLE VII  
DAMAGE, DESTRUCTION, AND CONDEMNATION**

**7.1 DAMAGE OR DESTRUCTION.**

(a) If the Mortgage shall be in effect or the Mortgagee shall have any interest in the Project Facility arising under or related to the Mortgage, whether by foreclosure or otherwise and the Project Facility shall be damaged or destroyed, in whole or in part, then insurance proceeds shall be paid in accordance with the relevant provisions of the Mortgage regarding the distribution of such insurance proceeds, provided that there shall be no abatement or reduction in amounts payable to the Agency hereunder. If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and the Project Facility shall be damaged or destroyed, in whole or in part:

(1) There shall be no abatement or reduction in the amounts payable by the Company under this Agency Lease or otherwise (whether or not the Project Facility is replaced, repaired, rebuilt, or restored); and

(2) The Company shall promptly give notice thereof to the Agency;  
and

(3) Except as otherwise provided in subsections 7.1(b) and 7.1(c) hereof, upon receipt of the insurance proceeds, the Company shall promptly replace, repair, rebuild, or restore the Project Facility to substantially the same condition as existed prior to such damage or destruction, with such changes, alterations, and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations, or modifications do not change the nature of the Project Facility, such that it does not constitute a "project" (as such quoted term is defined in the Act); and in the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

(b) If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility, then notwithstanding anything to the contrary contained in subsection 7.1(a), the Company shall not be obligated to replace, repair, rebuild, or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection 7.1(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to replace, repair, rebuild, or restore the Project Facility. In such event, the lesser of (1) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Project Facility, or (2) any other sums due and payable to the Agency pursuant to this Agency Lease and the other Agency and Company Documents, shall be applied to the repayment of all amounts due to the Agency under this Agency Lease, the Company Lease and other Agency Documents. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to repay any and all amounts payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of all such insurance settlements so that any and all amounts then due and payable under this Agency Lease, the Company Lease

and the other Agency Documents to the Agency shall be paid in full. If all amounts due under this Agency Lease, the Company Lease, the Mortgage and the other Agency Documents are paid in full, all such Net Proceeds, or the balance thereof, shall be paid to the Company for its purposes.

(c) The Company and the Mortgagee may adjust all claims under any policies of insurance required by subsections 6.3(a) and 6.3(c) hereof with the prior written consent of the Agency, which consent shall not be unreasonably withheld.

## **7.2 CONDEMNATION.**

(a) If the Mortgage shall be in effect or the Mortgagee shall have any interest in the Project Facility arising under or related to the Mortgage, whether by foreclosure or otherwise and title to, or the use of, all, substantially all or less than substantially all of the Project Facility shall be taken by Condemnation, then Condemnation proceeds shall be paid in accordance with the relevant provisions of the Mortgage regarding the distribution of such Condemnation proceeds, provided that there shall be no abatement or reduction in amounts payable to the Agency hereunder. If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and if title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation:

(1) There shall be no abatement or reduction in the amounts payable by the Company under this Agency Lease or otherwise (whether or not the Project Facility is restored); and

(2) The Company shall promptly give notice thereof to the Agency;  
and

(3) Except as otherwise provided in subsections 7.2(b) and 7.2(c) hereof, upon receipt of the Condemnation proceeds, the Company shall promptly restore the Project Facility (excluding any part of the Project Facility taken by Condemnation) to substantially the condition and value as an operating entity as existed prior to such Condemnation; and the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

(b) If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and if title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation, then notwithstanding anything to the contrary contained in subsection 7.2(a), the Company shall not be obligated to restore the Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection 7.2(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to restore the Project Facility. In such event, the lesser of (1) the Net Proceeds of any Condemnation award, or (2) the amount necessary to pay the Agency pursuant to this Agency Lease, the Company Lease and the other Agency Documents, shall be applied to payment of all amounts then due and payable to the Agency under this Agency Lease, the Company Lease and other Agency Documents. If the Net Proceeds

of any Condemnation award are less than the amount necessary to pay any and all amounts then due and payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of such Condemnation award so that any and all amounts then due and payable under this Agency Lease, the Company Lease and other Agency Documents to the Agency shall be paid in full. If all amounts due under this Agency Lease, the Company Lease, the Mortgage and the other Agency Documents have been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

(c) Beacon and Spilco and the Mortgagee with the prior written consent of the Agency (which consent shall not be unreasonably withheld), shall have sole control of any Condemnation proceeding with respect to the Project Facility, or any part thereof, and may negotiate the settlement of any such proceeding.

### **7.3 ADDITIONS TO PROJECT FACILITY.**

All replacements, repairs, rebuilding, or restoration made pursuant to Sections 7.1 or 7.2 hereof, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Project Facility as if the same were specifically described herein.

## **ARTICLE VIII SPECIAL COVENANTS**

### **8.1 NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS."**

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY, OR FITNESS OF THE PROJECT FACILITY, OR ANY PART THEREOF, OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

### **8.2 HOLD HARMLESS PROVISIONS.**

(a) The Company hereby releases the Agency and its members, officers, agents and employees from, agrees that the Agency and its members, officers, agents and employees shall not be liable for, and agrees to indemnify, defend, and hold the Agency and its members, officers, agents and employees harmless from and against any and all claims arising as a result of the Agency's undertaking the Project or its taking of an interest in the Adjacent Building, including, but not limited to:

(1) Liability for loss or damage to Project Facility, the Adjacent Building or bodily injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project Facility or the Adjacent Building, or arising by reason of or in connection with the occupation or the use thereof, or the presence on, in, or about the Project Facility or the Adjacent Building;

(2) Liability arising from or expense incurred by the Agency's acquisition of a leasehold interest in the Project Facility and/or the Adjacent Building and the subleasing of the Project Facility and the Adjacent Building, including, without limiting the generality of the foregoing, all liabilities or claims arising as a result of the Agency's obligations under this Agency Lease, the Company Lease, the Mortgage or any other documents executed by the Agency at the direction of the Company in conjunction with the Project Facility and/or the Adjacent Building;

(3) All claims arising from the exercise by the Company, and or its Additional Agents (as defined herein) of the authority conferred upon it and performance of the obligations assumed under Section 4.1 hereof;

(4) Any and all claims arising from the non-disclosure of information, if any, requested by the Company in accordance with Section 11.14 hereof;

(5) All causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities, or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents or employees.

To the fullest extent permitted by law, the foregoing indemnities shall apply notwithstanding the fault or negligence (other than gross negligence or willful misconduct) on the part of the Agency or any of its officers, members, agents, servants or employees and irrespective of any breach of statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents, or employees by any employee of the Company, or any materialman or Additional Agent of the Company, or anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefit laws, or other employee benefit laws.

(c) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure, in the liability policies required by Section 6.3, its liabilities assumed pursuant to this Section 8.2.

(d) Notwithstanding any other provisions of this Agency Lease, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Agency Lease and the Company Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution relating to the matters herein described may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents or employees relating thereto.

(e) For purposes of this Section 8.2 and Section 11.11 hereof, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

### **8.3 RIGHT OF ACCESS TO PROJECT FACILITY.**

During the Term of this Agency Lease, the Company agrees that the Agency and its duly authorized agents shall have the right to enter upon and to examine and inspect the Project Facility upon reasonable notice to the Company and with the least disturbance of Project Facility tenants as reasonably possible.

### **8.4 MAINTENANCE OF EXISTENCE.**

During the Term of this Agency Lease, the Company will maintain its existence and will not dissolve or otherwise dispose of all or substantially all of its assets.

### **8.5 AGREEMENT TO PROVIDE INFORMATION.**

The Company shall have an obligation to report and provide information, as set forth herein during the term of the Project Agreement (the "**Reporting Period**"), and no less frequently than annually, the Company agrees, whenever reasonably requested by the Agency or the Agency's auditor, to provide and certify, or cause to be certified, such information concerning the Project and/or the Company, its finances, and for itself and each of its Additional Agents, information regarding job creation<sup>1</sup>, Local Labor Requirements, exemptions from State and local sales and use tax, real property and mortgage recording taxes and other topics as the Agency from time to time reasonably considers necessary or appropriate including, but not limited to those reports, in substantially the form as set forth in **Exhibit "E"** attached hereto, those reports set forth in Section 8.12 hereof, and such other information necessary as to enable the Agency to monitor and/or make any reports required by law or governmental regulation, including but not limited to §875 of the Act (all of the foregoing collectively, the "**Reporting Requirements**").

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<sup>1</sup> To the extent the Project includes commercial space and/or tenants for which the Company calculated job creation as part of its projections in its Application, the Company is obligated, through its lease or other rental agreement with those commercial tenants, to require that such tenants report to the Company, in accordance with the terms of Section 8.5 hereof, the number of full and part time jobs created and maintained by each such tenant for inclusion in the Company's reporting to or at the request of the Agency.

Notwithstanding anything herein to the contrary, the Agency's ability to recapture benefits in accordance with its policy and the terms hereof, shall be for a period of time no less than the Reporting Period.

#### **8.6 BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS.**

During the Term of this Agency Lease, the Company agrees to maintain proper accounts, records, and books, in which full and correct entries shall be made in accordance with generally accepted accounting principles, of all business and affairs of the Company.

#### **8.7 COMPLIANCE WITH ORDERS, ORDINANCES, ETC.**

(a) The Company agrees that it will, during any period in which the amounts due under this Agency Lease remain unpaid, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter affect the Company's obligations hereunder or be applicable to the Project Facility and the Adjacent Building, or any part thereof, or to any use, manner of use, or condition of the Project Facility and the Adjacent Building, or any part thereof, the applicability of the same to be determined both as if the Agency were the owner of the Project Facility and the Adjacent Building and as if the Company were the owner of the Project Facility and the Adjacent Building.

(b) Notwithstanding the provisions of subsection 8.7(a), the Company may, in good faith, actively contest the validity or the applicability of any requirement of the nature referred to in said subsection 8.7(a), provided that the Company shall have first notified the Agency of such contest, no Event of Default shall be continuing under this Agency Lease, or any of the other Company Documents; and such contest and failure to comply with such requirement shall not subject the Project Facility to loss or forfeiture. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency or its members, officers, agents, or employees may be liable for prosecution for failure to comply therewith, in which event the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

#### **8.8 DISCHARGE OF LIENS AND ENCUMBRANCES.**

During the Term of this Agency Lease, the Company hereby covenants that, except for Permitted Encumbrances, the Company agrees not to create, or suffer to be created, any Lien on the Project Facility and/or the Adjacent Building, or any part thereof without the prior written consent of the Agency. The Company shall promptly notify the Agency of any Permitted Encumbrances created, or suffered to be created, on the Project Facility and/or the Adjacent Building.

#### **8.9 PERFORMANCE BY AGENCY OF COMPANY'S OBLIGATIONS.**

Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but need not, upon ten (10) days' prior written notice to or demand



on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company, or the Agency and paying all expenses, including, without limitation, reasonable attorneys' fees; and the Company shall pay immediately upon demand all sums so expended by the Agency under the authority hereof, together with the interest thereon at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is greater.

#### **8.10 DEPRECIATION DEDUCTIONS AND TAX CREDITS.**

The parties agree that as between them, the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility and the Adjacent Building pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility and/or the Adjacent Building which constitutes "Section 38 Property" and to all other State and/or federal income tax deductions and credits which may be available with respect to the Project Facility and /or the Adjacent Building. Notwithstanding, the Agency shall have no obligation to determine the rights to the foregoing as amongst Beacon and/or Spilco .

#### **8.11 EMPLOYMENT OPPORTUNITIES.**

The Company shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.

#### **8.12 SALES AND USE TAX EXEMPTION.**

(a) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain State and local sales use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. The Agency makes no representations or warranties that any property is exempt from the payment of State or local sales or use taxes. Any exemption from the payment of State or local sales or use taxes resulting from the involvement of the Agency with the Project shall be subject to Section 875 of the Act and shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the Agency or by Beacon and/or Spilco as agent of the Agency as a part of the Project prior to the Completion Date, or incorporated within the Project Facility prior to the Completion Date. No operating expenses of the Project Facility, and no other purchases of services or property shall be subject to an exemption from the payment of State sales or use tax. It is the intention of the parties hereto that the Company will receive a State and local sales and use tax exemption solely with respect to the Project, said sales tax exemption to be evidenced by a letter to be issued by the Agency on the date of the execution of this Agency Lease. The Company acknowledges that as an agent of the Agency, it must complete and provide to each vendor Form ST-123 for purchases. The failure to furnish a completed Form ST-123 (IDA Agent or Project Operator Exempt Purchase Certificate) with each purchase will result in loss of the exemption for that purchase. The Company further acknowledges that the sales tax exemption provided by the Agency is applicable solely to the Project Facility and is expressly not to be used for any other purpose or project including but not limited to the Adjacent Building.

(b) The Company may use and appoint a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, “***Additional Agents***”) in furtherance of the completion of the Project. However, for each Additional Agent, the Company must first: (i) cause the each such appointed Additional Agent to execute and deliver a sub-agent agreement, in the form attached hereto at **Exhibit “F”**, and provide a fully executed copy to the Agency; and (ii) submit a completed Form ST-60 to the Agency for execution and filing with the New York State Department of Taxation and Finance.

(c) The Company acknowledges and agree that an Additional Agent must be appointed as an agent of the Agency in order to avail itself of the Agency’s sales and use tax exemption for purchases or rentals of equipment, tools and supplies with respect to the Project Facility.

(d) Pursuant to Section 874(8) of the Act, the Company agrees to annually file and cause each Additional Agent or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, and provide the Agency with a copy of same, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the “***Annual Sales Tax Report***”), a statement of the value of all sales and use tax exemptions claimed by the Company and all other Additional Agents under the authority granted to Beacon and/or Spilco pursuant to Section 4.1(b) of this Agency Lease. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be removal of authority to act as agent of the Agency. Therefore, if the Company shall fail to comply with the requirements of this subsection (d), irrespective of any notice and cure period afforded, the Company, and each Additional Agent, shall immediately cease to be the agent of the Agency in connection with the Project. Beacon and Spilco are responsible for obtaining from the New York State Department of Taxation and Finance the current version of such Annual Sales Tax Report.

(e) The Company agrees to furnish to the Agency a copy of each such Annual Sales Tax Report submitted to the New York State Department of Taxation and Finance by the Company pursuant to Section 874(8) of the Act for itself and any Additional Agent.

(f) Pursuant to Section 874(9) of the Act, the Agency agrees to file within thirty (30) days of the Closing Date with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the “***Thirty-Day Sales Tax Report***”), a statement identifying the Company, or 30 days from the appointment of any Additional Agent appointed in accordance with the terms herein, as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating the estimated value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

(g) Pursuant to Section 875(3) of the Act, and in conjunction with Agency policy, the Agency shall and in some circumstances may, recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance consisting of State and local sales and use tax exemption (the “*Sales Tax Recapture Amount*”) in accordance with the Agency’s Recapture Policy, a copy of which is attached hereto at **Exhibit “G”**, this Agency Lease and the Project Agreement.

### **8.13. IDENTIFICATION OF THE EQUIPMENT.**

All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency.

## **ARTICLE IX ASSIGNMENTS; TRANSFERS; MERGER OF AGENCY**

### **9.1 ASSIGNMENT OF AGENCY LEASE.**

This Agency Lease may not be assigned by the Company, in whole or in part, nor all or any part of the Project Facility or Adjacent Building subleased, nor any part of the Project Facility or Adjacent Building sold, leased, transferred, conveyed or otherwise disposed of without the prior written consent of the Agency, which consent shall be in the Agency’s sole and absolute discretion; provided however, that the Company may enter into leases for individual rental units that are part of the Project Facility without the consent of the Agency. Any assignment or sublease of this Agency Lease shall not effect a release of the Company from its obligations hereunder.

### **9.2 TRANSFERS OF INTERESTS.**

Company shall not assign or otherwise transfer or allow an assignment or transfer, of a controlling interest in the Company, whether by operation of law or otherwise (including, without limitation, by way of a merger, consolidation or a change of control whereby the current existing equity holders of the Company, as of the date of the application to the Agency, would own, in the aggregate, less than a majority of the total combined voting power of all classes of equity interest of the Company or any surviving entity), without the prior written consent of Agency, which consent shall be in the Agency’s sole and absolute discretion.

### **9.3 MERGER OF AGENCY.**

(a) Nothing contained in this Agency Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to any other body corporate and politic and public instrumentality of the State of New York, or political subdivision thereof, which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger, or assignment, the due and punctual performance and observance of all the agreements and conditions of this Agency Lease to be kept and performed by the Agency shall be expressly

assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) Promptly following the effective date of any such consolidation, merger, or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger, or assignment as the Company reasonably may request.

## **ARTICLE X EVENTS OF DEFAULT AND REMEDIES**

### **10.1 EVENTS OF DEFAULT DEFINED.**

The following shall be "Events of Default" under this Agency Lease, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Agency Lease, any one or more of the following events:

(a) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to subsection 5.3 or 8.12(g); or

(b) A failure of the Company to remain current on all taxes owed including but not limited to real property taxes; or

(c) Failure by the Company to maintain the insurance required by Section 6.3;  
or

(d) A default in the performance or the observance of any other of the covenants, conditions, or agreements on the part of the Company in this Agency Lease and the continuance thereof for a period of thirty (30) days after written notice is given by the Agency or, if such covenant, condition, or agreement is capable of cure but cannot reasonably be cured within such thirty-day period, the failure of the Company to commence to cure within such thirty-day period and to prosecute the same with due diligence and cure the same within an additional thirty (30) days; or

(e) A transfer in contravention of Article 9 hereof;

(f) The occurrence of an "Event of Default" under the Mortgage, the Company Lease, the Project Agreement or any of the other Company Documents which is not timely cured as provided therein; or

(g) The Company shall generally not pay its debts as such debts become due or is unable to pay its debts as they become due.

(h) The Company shall conceal, remove, or permit to be concealed or removed any part of its Property with intent to hinder, delay, or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any

bankruptcy, fraudulent conveyance, or similar law, or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid, or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof; or

(i) By order of a court of competent jurisdiction, a trustee, receiver, or liquidator of the Project Facility, or any part thereof, or of the Company shall be appointed and such order shall not be discharged or dismissed within sixty (60) days after such appointment; or

(j) The filing by the Company of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute; the failure by the Company within sixty (60) days to lift any execution, garnishment, or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder; the commencement of a case under Title 11 of the United States Code against the Company as the debtor, or commencement under any other federal or state bankruptcy statute of a case, action, or proceeding against the Company, and continuation of such case, action, or proceeding without dismissal for a period of sixty (60) days; the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company; or in connection with any insolvency or bankruptcy case, action, or proceeding, appointment by final order, judgment, or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Company unless such order, judgment, or decree is vacated, dismissed, or dissolved within sixty (60) days of its issuance.

(k) The imposition of a Lien on the Project Facility other than a Permitted Encumbrance.

## **10.2 REMEDIES ON DEFAULT.**

(a) Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

- 1) Terminate this Agency Lease;
- 2) Terminate the Company Lease;
- 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 or under the Company Lease, the Project Agreement and/or to enforce the Company's obligations and duties under the Company Documents and the Agency's rights under the Agency Documents, including but not limited to, specific performance;
- 4) Terminate the Company's or any additional agent's appointment as agent of the Agency; or

5) Seek to recover all or some of the Recapture Amount in accordance with the Agency's Recapture Policy, this Agency Lease and the Project Agreement.

(b) No action taken pursuant to this Section 10.2 shall relieve the Company from its obligations to make all payments required by Sections 5.3(b) and 8.2 hereof.

### **10.3 REMEDIES CUMULATIVE.**

No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agency Lease, the Company Lease and the other Company Documents or now or hereafter existing at law or in equity to collect any amounts then due, or thereafter to become due, hereunder and thereunder and to enforce the Agency's right to terminate this Agency Lease and the Company Lease. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article 10, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Agency Lease.

### **10.4 AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.**

The Company shall remit, upon the execution and delivery of this Agency Lease, all legal fees and costs incurred by the Agency in conjunction with the Project Facility and the Adjacent Building, its approval, and the Financial Assistance. In the event the Company should Default under any of the provisions of this Agency Lease, or a dispute arises hereunder, and the Agency should employ attorneys or incur other expenses to preserve or enforce its rights hereunder or for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees and costs of such attorneys and such other expenses so incurred. In addition, the Company acknowledges that to the extent there are any post-closing legal fees incurred by the Agency in conjunction with this Project, same are the obligation of the Company and as set forth herein.

### **10.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.**

In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE XI  
MISCELLANEOUS**

**11.1 NOTICES.**

All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

(a) If to the Agency, to: City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202  
Attn: Chair

With a copy to: Corporation Counsel  
City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202

and

Bousquet Holstein PLLC  
One Lincoln Center, Suite 1000  
110 West Fayette Street  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

(b) If to the Company, to: Beacon Armory LLC  
325 South Salina Street, 3<sup>rd</sup> Floor  
Syracuse, New York 13202  
Attn: Jeffrey Appel

and

Spilco Properties, LLC  
96 Locust Avenue  
New Rochelle, New York 10801  
Attn: Spiro Spiliotis

With a copy to: Newman & Lickstein  
109 South Warren Street, Suite 404  
Syracuse, New York 13202  
Attn: Scott A. Lickstein, Esq.

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.

#### **11.2 BINDING EFFECT.**

This Agency Lease shall inure to the benefit of and shall be binding upon the Agency and the Company and, as permitted by this Agency Lease, upon their respective heirs, successors and assigns.

#### **11.3 SEVERABILITY.**

If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall for any reason be held, or shall in fact be, inoperative, unenforceable, or contrary to law in any particular circumstance; such circumstance shall not render the provision in question inoperative or unenforceable in any other circumstance. Further, if any one or more of the sentences, clauses, paragraphs, or sections herein is contrary to law, then such covenant(s) or agreement(s) shall be deemed severable of remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Agency Lease.

#### **11.4 AMENDMENTS, CHANGES AND MODIFICATIONS.**

This Agency Lease may not be amended, changed, modified, altered, or terminated except by an instrument in writing signed by the parties hereto.

#### **11.5 EXECUTION OF COUNTERPARTS.**

This Agency Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

#### **11.6 APPLICABLE LAW.**

This Agency Lease shall be governed exclusively by the applicable laws of the State of New York.

#### **11.7 WAIVER OF TRIAL BY JURY.**

THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS AGENCY LEASE, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGENCY LEASE.



## **11.8 SUBORDINATION.**

This Agency Lease shall be subject and subordinate to the Company Lease and the Mortgage and all Permitted Encumbrances in all respects. The Company Lease is deemed to be effective immediately prior to this Agency Lease.

## **11.9 SURVIVAL OF OBLIGATIONS.**

(a) The obligations of the Company to repay, defend and/or provide the indemnity or information required by Sections 8.2, 8.5 and 8.12 hereof shall survive the termination of this Agency Lease and all such payments and obligations after such termination shall be made upon demand of the party to whom such payment and/or obligation is due.

(b) The obligations of the Company to repay, defend and/or provide the indemnity required by Sections 8.2 and 8.12 shall survive the termination of this Agency Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency or its officers, members, agents (other than the Company) or employees relating thereto.

(c) The obligations of the Company required by Articles 4 and 5 and Sections 2.2, 8.4, 8.5, 10.4 and 11.14 hereof shall similarly survive the termination of this Agency Lease.

## **11.10 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.**

The Table of Contents and the Section headings in this Agency Lease have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provision of this Agency Lease.

## **11.11 NO RECOURSE; SPECIAL OBLIGATION.**

The obligations and agreements of the Agency contained herein and in the other Agency Documents and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent or employee of the Agency in his individual capacity; and the members, officers, agents and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations 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 and/or the Adjacent Building, other than revenues derived from or constituting Unassigned Rights. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

(d) For purposes of this Section 11.11, neither the Company nor any Additional Agent shall be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section 11.11 shall not alter the full force and effect of any Event of Default under this Agency Lease.

### **11.12 OBLIGATION TO SELL AND PURCHASE THE EQUIPMENT.**

(a) Contemporaneously with the termination of this Agency Lease in accordance with Section 5.2 hereof, the Agency shall sell and the Company shall purchase all the Agency's right, title and interest in and to all of the Equipment for a purchase price equal to the sum of One Dollar (\$1.00), plus payment of all sums due and payable to the Agency or any other Person pursuant to this Agency Lease and the other Company Documents. The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing and delivering the bill of sale together with any other documents therewith, including lease terminations in accordance with Section 5.2 hereof, and to take such other and further actions reasonably necessary to confirm the termination of the Agency's interest in the Equipment.

(b) The sale and conveyance of the Agency's right, title and interest in and to the Equipment shall be effected by the execution and delivery by the Agency to the Company of a bill of sale to the Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such transfer of title.

(c) The Company agrees to prepare the bill of sale to the Company and all schedules thereto, together with all necessary documentation, and to forward same to the Agency at least thirty (30) days prior to the date that title to the Equipment is to be conveyed to the Company. The Agency shall have no obligation to determine, as between them, the respective interests of the Beacon and/or Spilco in and to the Equipment so transferred. In the event the Company fails to prepare such bill(s) of sale, the Agency may prepare one or more bill of sale in the name of any one or more of the Companies without regard to each Company's respective interest.

### **11.13 ENTIRE AGREEMENT.**

This Agency Lease and the Company Lease contain the entire agreement between the parties and all prior negotiations and agreements are merged therein.

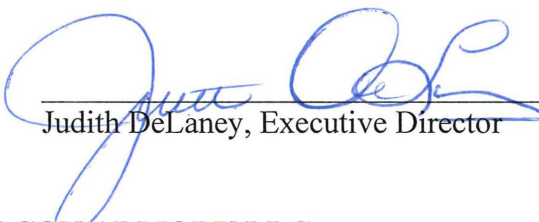
#### 11.14 DISCLOSURE.

Section 875(7) of the New York General Municipal Law (“GML”) requires that the Agency post on its website all resolutions and agreements relating to the Company’s appointment as an agent of the Agency or otherwise related to the Project; and Article 6 of the New York 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 Company feels that there are elements of the Project or information about the Company in the Agency’s possession 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 Company’s competitive position, the Company must identify such elements in writing, supply same to the Agency on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Agency and the Company have caused this Agency Lease to be executed in their respective names by their duly authorized representatives as of the day and year first written above.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:  \_\_\_\_\_  
Judith DeLaney, Executive Director

**BEACON ARMORY LLC**

By: \_\_\_\_\_  
Jeffrey Appel, Managing Member

**SPILCO PROPERTIES, LLC**

By: \_\_\_\_\_  
Spiro Spiliotis, Managing Member

**IN WITNESS WHEREOF**, the Agency and the Company have caused this Agency Lease to be executed in their respective names by their duly authorized representatives as of the day and year first written above.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Judith DeLaney, Executive Director

**BEACON ARMORY LLC**

By: \_\_\_\_\_  
Jeffrey Appel, Managing Member

**SPILCO PROPERTIES, LLC**

By: \_\_\_\_\_  
Spiro Spiliotis, Managing Member

## EXHIBIT "A"

### REAL PROPERTY DESCRIPTION

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Nos. 1, 2, 30, 31, 40 and 41 of Block No. 105-D, Syracuse, New York, according to a Map made by B.F. Green and filed in the Onondaga County Clerk's Office on October 11, 1850 and bounded and described as follows:

Beginning at a point in the southerly line of West Fayette Street, said point being N. 89° 44' 00" W., 208.855 feet distant, measured along said street line from the westerly line of South Clinton Street, said point being where the centerline of the west wall of the so-called Tallman and Palmer Store, now or formerly known as No. 225 West Fayette Street, intersects the south line of West Fayette Street; thence southwardly along the center of said wall and the same continued about 115.0 feet to a point in range with the north face of the north wall of the six story brick building erected by E.F. Holden on Walton Street; thence westwardly along said range line about 27/100 of a foot to the northeasterly corner of said six story building; thence southwardly along the east face of the brick wall of said building about 90.0 feet to a point in the north line of Walton Street, said point being N. 89° 45' 00" W., 208.856 feet distant, measured along the said northerly line of Walton Street, from the westerly line of South Clinton Street; thence N. 89° 45' 00" W., 64.304 feet along said northerly line of Walton Street to a point; thence N. 00° 13' 20" W., 110.08 feet to a point; thence N. 89° 44' 00" W., .54 of a foot to a point; thence N. 00° 16' 00" E., 95.0 feet to a point in the southerly line of West Fayette Street; thence S. 89° 44' 00" E., 65.045 feet along said street line to the place of beginning.

**ALSO, ALL THAT TRACT OR PARCEL OF LAND**, situate lying and being under the waters of the old channel of Onondaga Creek (now filled in), situate in the City of Syracuse, County of Onondaga and State of New York, said tract or parcel being all of the old channel of Onondaga Creek lying within the premises describe above.

## EXHIBIT "B"

### DESCRIPTION OF EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by **BEACON ARMORY LLC AND SPILCO PROPERTIES, INC.** (collectively, the "*Company*") and now or hereafter attached to, contained in or used or acquired in connection with the Project Facility (as defined in the Agency Lease or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, furniture, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators, freezers, rugs, movable partitions, cleaning equipment, maintenance equipment, restaurant supplies and equipment, shelving, racks, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus aid materials, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.



## EXHIBIT “C”

### TABLE OF DEFINITIONS

The following terms shall have the meanings set forth below, unless the context or use clearly indicate another or different meaning and the singular form of such defined words and terms shall include the plural and vice versa:

**Act:** means the New York State Industrial Development Agency Act (N.Y. Gen. Municipal Law §§ 850 et seq.) as amended, together with Section 926 of the N.Y. General Municipal Law, as amended from time to time.

**Additional Agents:** means a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents appointed by the Company in furtherance of the completion of the Project in accordance with the terms of the Agency Lease.

**Adjacent Building:** means a building connected and adjacent to the Land and Facility which is located at 229-37 West Fayette Street, Syracuse, New bearing tax parcel identification number: 101.-04-03.0 and as more particularly described on **Exhibit “A”** attached to the Agency Lease.

**Agency:** means the City of Syracuse Industrial Development Agency and its successors and assigns.

**Agency Documents:** means the Project Agreement, the Agency Lease, the Company Lease, the Mortgage and any other documents executed by the Agency in connection with the Project or the Financial Assistance granted in connection therewith.

**Agency Lease:** means the Agency Lease Agreement dated as of December 1, 2021, by and between the Agency and the Company, as the same may be amended or supplemented from time to time.

**Applicable Laws:** means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the Agency were the owner of the Project Facility and as if the Company and not the Agency were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility,

(2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

***Application:*** means the application submitted by the Company to the Agency dated June 2, 2021, requesting the Agency undertake the Project, as same may be amended or supplemented from time to time.

***Authorized Representative:*** means for the Agency, the Chair or Vice Chair of the Agency; for the Company, its Member or its Managing Member (designated by resolution) or any officer designated in a certificate signed by an Authorized Representative of such Company and, for either the Agency or the Company, any additional persons designated to act on behalf of the Agency or the Company by written certificate furnished by the designating party containing the specimen signature of each designated person.

***Beacon:*** means Beacon Armory LLC, a limited liability company, organized and existing under the laws of the State of New York having an address at 325 South Salina Street, 3<sup>rd</sup> Floor, Syracuse, New York 13202, and its permitted successors and assigns.

***Bill of Sale:*** means that certain Bill of Sale from Beacon and Spilco to the Agency dated as of December 1, 2021 in connection with the Equipment.

***City:*** means the City of Syracuse.

***Closing Date:*** means December 22, 2021.

***Closing Memorandum:*** means the closing memorandum of the Agency relating to the Project.

***Code:*** means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

***Company:*** means Beacon and Spilco, collectively.

***Company Certification:*** means the Certification dated as of December 1, 2021 executed by the Company regarding the Agency's Local Access Policy.

***Company Documents:*** means the Company Lease, the Agency Lease, the Project Agreement, the Mortgage, the Environmental Compliance and Indemnification Agreement, the Bill of Sale, the Company Certification and any other documents executed by the Company (or any one of them) in connection with the Project, the Adjacent Building or the Financial Assistance granted in connection therewith.

***Company Lease:*** means the Company Lease Agreement dated as of December 1, 2021 from the Company to the Agency, pursuant to which the Company leased the Project Facility to the Agency, as the same may be amended or supplemented from time to time.

**Completion Date:** means December 31, 2022.

**Condemnation:** means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

**County:** means the County of Onondaga in the State of New York.

**Environmental Compliance and Indemnification Agreement:** means the Environmental Compliance and Indemnification Agreement dated as of December 1, 2021 by the Company to the Agency.

**Equipment:** means all materials, machinery, furnishings, fixtures and equipment installed or used at the Project Facility, as of the Closing Date and thereafter acquired for or installed in, or upon, the Project Facility, as more fully described in **Exhibit "B"** to the Agency Lease.

**Facility:** means the buildings and other improvements located or to be constructed on the Land.

**Financial Assistance:** has the meaning given to such term in Section 854(14) of the Act.

**Financial Assistance Recapture Amounts:** means any and all other components of Financial Assistance, including any payment in lieu of taxes benefits or mortgage recording tax exemptions provided to the Company.

**Governmental Authority or Governmental Authorities:** means any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign.

**Land:** means the improved real property located at 120-24 Walton Street, in the City of Syracuse, County of Onondaga, State of New York, more particularly described on **Exhibit "A"** attached to the Agency Lease.

**Lien:** means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including, but not limited to, a security interest arising from a mortgage, encumbrance, pledge, conditional sale, or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases, and other similar title exceptions and encumbrances, including, but not limited to mechanics, materialmen, warehousemen, and carriers liens and other similar encumbrances effecting real property. For purposes hereof, a Person shall be deemed to be the owner of any property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the property has been retained by or vested in some other person for security purposes.

**Mortgage:** means one or more mortgages from the Agency and the Company to the Mortgagee and recorded in the Onondaga County Clerk's office subsequent to the filing and recording of the Memorandum of Agency Lease, securing construction and/or permanent financing for the Project Facility, executed in accordance with Section 4.5 of the Agency Lease, and securing the Note.

**Mortgagee:** means a lender, its successors and assigns, providing financing pursuant to the Note and Mortgage, relative to the costs of construction and/or equipping of the Project Facility, secured by the Project Facility and/or the Adjacent Building.

**Net Proceeds:** means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys' fees) incurred in obtaining such gross proceeds.

**Note:** means one or more notes given by the Company to the Mortgagee in connection with the Mortgage for construction or permanent financing relative to the Project Facility.

**Permitted Encumbrances:** means (A) utility, access and other easements and rights of way, and restrictions, encroachments and exceptions, that benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) artisans', mechanics', materialmen's, warehousemen's, carriers', landlords', bankers', workmen's compensation, unemployment compensation and social security, and other similar Liens to the extent permitted by the Agency Lease, including the lien of the Mortgage, (C) Liens for taxes (1) to the extent permitted by the Agency Lease or (2) at the time not delinquent, (D) any Lien on the Project Facility obtained through any Agency Document or Company Document or the Mortgage, (E) Liens of judgments or awards in respect of which an appeal or proceeding for review shall be pending (or is pending within ten days after entry) and a stay of execution shall have been obtained (or is obtained within ten days after entry), or in connection with any claim or proceeding, (F) Liens on any Property hereafter acquired by the Company or any subsidiary which liens are created contemporaneously with such acquisition to secure or provide for the payment or financing of any part of the purchase price thereof, (G) Liens consisting solely of restrictions under any applicable laws or any negative covenants in any applicable agreements (but only to the extent that such restrictions and covenants do not prohibit the execution, delivery and performance by the Company of the Agency Lease and the Mortgage, and (H) existing mortgages or encumbrances on the Project Facility as of the Closing Date or thereafter incurred with the consent of the Mortgagee and the Agency.

**Person:** means an individual, partnership, corporation, limited liability company, trust, or unincorporated organization, and any government or agency or political subdivision or branch thereof.

**Plans and Specifications:** means all representations, plans and specifications presented by the Company to the Agency in its Application and as described in the Project description in the third WHEREAS cause of this Agency Lease, and any other presentation or representations made by the Company to the Agency relating to the construction, reconstruction, renovation,

equipping and completion of the Project Facility; and any additional plans and specifications approved by the Mortgagee.

**Project:** shall have the meaning ascribed thereto in the third *WHEREAS* clause of this Agency Lease.

**Project Agreement:** means the Project Agreement dated as of December 1, 2021 between the Company and the Agency setting forth rights and obligations of the parties with respect to the Financial Assistance, as the same may be amended or supplemented from time to time.

**Project Facility:** means the Land, the Facility and the Equipment.

**Property:** means any interest in any kind of property or asset, whether real, personal, or mixed, or tangible or intangible.

**Recapture Amount:** means collectively, the Sales Tax Recapture Amount and the Financial Assistance Recapture Amounts.

**Resolution or Resolutions:** means the Agency's resolutions adopted on September 30, 2021 authorizing the undertaking of the Project and the execution and delivery of certain documents by the Agency in connection therewith.

**Sales and Use Tax or State Sales and Use Taxes:** means, when used with respect to State sales and use taxes, sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

**Sales Tax Recapture Amount:** means the portion of the Financial Assistance consisting of State and local sales and use tax exemption the Agency shall and in some circumstances may, recover, recapture, receive or otherwise obtain from the Company pursuant to Section 875(3) of the Act, and in conjunction with Agency policy, in accordance with the Agency's Recapture Policy.

**SEQRA:** means the State Environmental Quality Review Act constituting Article 8 of the State Environmental Conservation Law and the regulations promulgated thereunder, as amended.

**Spilco:** means Spilco Properties, LLC, a limited liability company, organized and existing under the laws of the State of New York having an address at 96 Locust Avenue, New Rochelle, New York 10801, and its permitted successors and assigns.

**State:** means the State of New York.

***Unassigned Rights:*** means:

- (i) the right of the Agency in its own behalf to receive all opinions of counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications, if any, required to be delivered to the Agency under the Agency Lease;
- (ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency under the Agency Lease;
- (iii) the right of the Agency to enforce or otherwise exercise in its own behalf all agreements of the Company with respect to ensuring that the Project Facility shall always constitute a qualified “project” as defined in and as contemplated by the Act;
- (iv) the right of the Agency to require and enforce any right of defense and any indemnity from any Person;
- (v) the right of the Agency in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 2.2(f), 2.2(h), 2.2(m), 2.2(q), 4.1, 4.5, 5.3, 5.4, 6.2, 6.3, 6.4, 8.2, 8.3, 8.5, 8.7, 8.9, 8.12, 10.2, 10.4, 11.9, 11.11 and 11.12 of the Agency Lease and Sections 2.6(g), 4.8 and 4.9 of the Company Lease; and
- (vi) the right of the Agency in its own behalf to declare an Event of Default and enforce its remedies under Article X of the Agency Lease or with respect to any of the Agency’s Unassigned Rights.

**EXHIBIT "D"**

**LOCAL ACCESS AGREEMENT**

**City of Syracuse**  
**Industrial Development Agency**

**Local Access Agreement**

Beacon Armory LLC/ Spilco Properties LLC (the Company) understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation, reconstruction and equipping of the Project unless a written waiver is first received from the Agency, and agrees to provide the information requested below as a way to provide access for local participation.

<b>Company</b>		Beacon Armory LLC/ Spilco Properties LLC				<b>General Contractor</b>		Metropolitan Group of New York LLC				
<b>Representative for Contract Bids and Awards</b>		Jeffrey Appel				<b>Contact</b>		Spiro Spiliotis				
<b>Address</b>		325 South Salina Street 3 <sup>rd</sup> Floor				<b>Address</b>		325 South Salina Street 3 <sup>rd</sup> Floor				
<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13202	<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13202	
<b>Phone</b>	917.848.0152		<b>Fax</b>				<b>Phone</b>	917.494.6042		<b>Fax</b>		
<b>Email</b>	jeff@armoryboys.com				<b>Email</b>	SPIRO.SPILLOTIS@GMAIL.COM						
<b>Project Address</b>		120-124 Walton Street				<b>Construction Start Date</b>		2/1/2022				
<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13202	<b>Occupancy Date</b>		3/1/2023				

Project Components – Indicate those for which bids will be sought:

Item	Estimated Value	Bid Date	Contact
Site work/Demolition	150000	2.1.2022	Spiro Spiliotis
Foundation and footings	30000	2.1.2022	Spiro Spiliotis
Building	400000	3.1.2022	Spiro Spiliotis
Masonry	30000	3.1.2022	Spiro Spiliotis
Metals	150000	2.1.2022	Spiro Spiliotis
Wood/casework	100000	2.1.2022	Spiro Spiliotis
Thermal/moisture proof	100000	2.2.2022	Spiro Spiliotis
Doors, windows, glazing	100000	2.2.2022	Spiro Spiliotis
Finishes	500000	3.1.2022	Spiro Spiliotis
Electrical	400000	3.1.2022	Spiro Spiliotis
HVAC	400000	3.1.2022	Spiro Spiliotis
Plumbing	300000	3.1.2022	Spiro Spiliotis
Specialties	35000	4.1.2022	Spiro Spiliotis
Machinery & Equipment	100000	4.1.2022	Spiro Spiliotis
Furniture and Fixtures	100000	4.1.2022	Spiro Spiliotis
Utilities	100000	4.1.2022	Spiro Spiliotis
Paving			
Landscaping			
Other (identify)			



**City of Syracuse**  
**Industrial Development Agency**

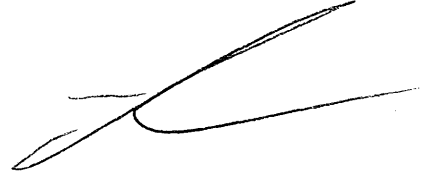
Finishes	500000	3.1.2022	Spiro Spiliotis
Electrical	400000	3.1.2022	Spiro Spiliotis
HVAC	400000	3.1.2022	Spiro Spiliotis
Plumbing	300000	3.1.2022	Spiro Spiliotis
Specialties	35000	4.1.2022	Spiro Spiliotis
Machinery & Equipment	100000	4.1.2022	Spiro Spiliotis
Furniture and Fixtures	100000	4.1.2022	Spiro Spiliotis
Utilities	100000	4.1.2022	Spiro Spiliotis
Paving			
Landscaping			
Other (identify)			

Date: 12/15/2021

Company: Beacon Armory/ Spilco Properties

Signature:   
Spiliotis

Name: Jeffrey Appel/ Spiro



**EXHIBIT "E"**

**FORM OF ANNUAL REPORTING QUESTIONNAIRE**

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202

Date

COMPANY  
COMPANY ADDRESS

Dear \_\_\_\_\_:

Our auditors, \_\_\_\_\_, CPAs are conducting an audit of our financial statements for the year ended December 31, \_\_\_\_\_. In connection with that audit, we request that you furnish certain information directly to our auditor with regard to the following security issued by/through the City of Syracuse Industrial Development Agency:

Sale - Leaseback Financing

Project: \_\_\_\_\_

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

Please provide the following information as of December 31, [year]:

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

(If Yes, please update information in Paragraph 1 above)

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

Total cost of goods/services purchased: \$ \_\_\_\_\_

New York State Sales Tax Exemptions Claimed [year]

New York Local Sales Tax Exemptions Claimed: [year]

New York State Mortgage Recording

Tax Exemption: [year]

Form of Syracuse Industrial Development Agency — Project Jobs Data [year]

From:

To: \_\_\_\_\_, CPAs

Re:

The following jobs information is furnished to you with regard to the above cited project:

**A. Job Retention/Creation:**

**I. Construction Jobs:**

Provide the name of your general contractor: \_\_\_\_\_.

Provide the address (including county) of your general contractor: \_\_\_\_\_.

Is the general contractor MWBE qualified? \_\_\_\_\_.

Is the general contractor Service-Disabled Veteran-Owned Business Enterprises ( SDVOBE) qualified? \_\_\_\_\_.

For each contractor and/or sub-contractor, provide the following information for the reporting period:

Bid awarded to (Name/Address/County*)	Value of contract	MWBE (Yes/No)	SDVOBE (Yes/No)	Number of jobs (FTE)

**\*Must include county**

**II. Permanent (non-construction) Jobs:**

Number of FTEs retained at the Project prior to date of application: \_\_\_\_\_.

Number of FTEs created by the Project during the reporting calendar year (*exclusive of construction jobs*): \_\_\_\_\_.

Of the jobs created by the Project during the reporting year (*exclusive of construction jobs*) identify how many are in each of the following categories:

**Professional/Managerial/Technical** - includes jobs which involve skill or competence of extraordinary degree and may include supervisory responsibilities (examples: architect, engineer, accountant, scientist, medical doctor, financial manager, programmer). **Number of jobs created in reporting year** \_\_\_\_\_.

**Skilled** - includes jobs that require specific skill sets, education, training, and experience and are generally characterized by high education or expertise level (examples: electrician, computer operator, administrative assistant, carpenter, sales representative). **Number of jobs created in reporting year** \_\_\_\_\_.

**Unskilled or Semi-Skilled** - includes jobs that require little or no prior acquired skills and involve the performance of simple duties that require the exercise of little or no independent judgment (examples: general cleaner, truck driver, typist, gardener, parking lot attendant, line operator, messenger, information desk clerk, crop harvester, retail salesperson, security guard, telephone solicitor, file clerk). **Number of jobs created in reporting year** \_\_\_\_\_.

Identify:

the average annual salary range of the FTEs (*exclusive of construction jobs*) created during the reporting year: \$ \_\_\_\_\_.

the total number of jobs (*exclusive of construction jobs*) created by the Project from the date of application through the reporting date: \_\_\_\_\_.

the total number of jobs (retained and created, *but exclusive of construction jobs*) at the Project from the date of application through the reporting date: \_\_\_\_\_.

What is the annual average salary range of the FTEs (*exclusive of construction jobs*) created at the Project to date: \$ \_\_\_\_\_.

**B. Geographical Hiring Data:**

1. Construction jobs:

Of the construction jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

2. FTEs hired (*exclusive of construction jobs*)

Of the FTE jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

Provide the same information reflecting FTEs hired from the date of application through the reporting date at the Project.

Comments:

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**EXHIBIT "F"**

**FORM OF SUB-AGENT AGREEMENT**

**THIS SUB-AGENT APPOINTMENT AGREEMENT** (the "**Agreement**"), dated as of \_\_\_\_\_, 20\_\_, is by and between **BEACON ARMORY LLC**, with a mailing address of 325 South Salina Street, 3<sup>rd</sup> Floor, Syracuse, New York 13202, **SPILCO PROPERTIES, LLC**, with a mailing address of 96 Locust Avenue, New Rochelle, New York 10801 (collectively, the "**Company**"), and \_\_\_\_\_, a \_\_\_\_\_ of the State of New York, having an office for the transaction of business at \_\_\_\_\_ (the "**Sub-Agent**").

**WITNESSETH:**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") was created by Chapter 641 of the Laws of 1979 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "**Act**") as a body corporate and politic and as a public benefit corporation of the State of New York (the "**State**"); and

**WHEREAS**, by resolution of its members adopted on September 30, 2021 (the "**Resolution**"), the Agency agreed to undertake a project for the benefit of the Company (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the "**Building**") located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the "**Land**"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, under the Resolution and in the Agency Lease Agreement by and between the Company and the Agency dated as of December 1, 2021 (the "**Agency Lease**") the Agency

appointed the Company as its agent for purposes of completing the Project and delegated to the Company the authority to appoint as agents of the Agency a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (the “*Additional Agents*” or “*Sub-Agents*”), for the purpose of completing the Project and benefitting from the State and local sales and use tax exemption that forms a portion of the Financial Assistance all in accordance with the terms of the Resolution and the Agency Lease; and

**WHEREAS**, the Company and the Agency entered into a Project Agreement dated as of December 1, 2021 (the “*Project Agreement*”).

**NOW, THEREFORE**, the parties hereto hereby agree as follows:

1. The Company hereby appoints the Sub-Agent as an Additional Agent of the Agency for the purpose of assisting the Company and the Agency in the completion of the Project and benefitting from the State and local sales and use tax exemption relative to expenditures made in furtherance thereof. The Sub-Agent is only an agent of the Agency for the aforementioned purposes. The Sub-Agent hereby agrees to limit its activities as agent for the Agency under the authority of this Agreement to acts reasonably related to the completion of the Project Facility.

2. The Sub-Agent represents, warrants, covenants, agrees and acknowledges:

a. that the undersigned is an authorized representative of the Sub-Agent with authority to bind the Sub-Agent and upon execution of this Agreement by the undersigned, same shall be binding upon the Sub-Agent.

b. to make all records and information regarding State and local sales and use tax exemption benefits claimed by it in connection with the Project available to the Company and the Agency upon request. The Sub-Agent agrees to comply with all procedures and policies established by the State Department of Taxation and Finance, or any similar entity, regarding the documenting or reporting of any State and local sales and use tax exemption benefits, including providing to the Company all information of the Sub-Agent necessary for the Company to complete the State Department of Taxation and Finance’s “Annual Report of Sales and Use Tax Exemptions” (Form ST-340).

c. to be bound by and comply with the terms and conditions of the Agency’s policies, the Resolution and Section 875(3) of the Act (as if such section were fully set forth herein). Without limiting the scope of the foregoing, the Sub-Agent acknowledges and agrees to be bound by the Agency’s Suspension, Discontinuation and Recapture of Benefits Policy (the “*Recapture Policy*”), a copy of which is attached hereto as **Schedule “A”**.

d. that the failure of the Sub-Agent to promptly pay any Sales Tax Recapture Amount in accordance with the Recapture Policy, the Agency Lease and/or the Resolution to the Agency will be grounds for the Agency, the State Commissioner of Taxation and Finance or such other entity, to collect sales and use taxes from the Sub-Agent under Article 28 of the Tax Law, or other applicable law, policy or contract, together with interest and penalties. In addition



to the foregoing, the Sub-Agent acknowledges and agrees that for purposes of exemption from State sales and use taxation, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the Tax Law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

e. that all purchases made by the Sub-Agent in connection with the Project shall be made using Form ST-123 (IDA Agent or Project Operator Exempt Purchase Certificate), a copy of which is attached hereto as **Schedule “B”**). It shall be the responsibility of the Sub-Agent (and not the Company or the Agency) to complete Form ST-123. The failure to furnish a completed Form ST-123 with each purchase will result in loss of the exemption for that purchase.

f. that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Sub-Agent is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Sub-Agent acknowledges and agrees that the bill of invoice should state, “I, [NAME OF SUB-AGENT], certify that I am a duly appointed agent of the City of Syracuse Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following Agency project and that such purchases qualify as exempt from sales and use taxes under my Sub-Agent Appointment Agreement.” The Sub-Agent further acknowledges and agrees that the following information shall be used by the Sub-Agent to identify the Project on each bill and invoice: BEACON ARMORY LLC – BENTLEY LOFTS PROJECT, 120-24 Walton Street, IDA Project No.: 31022106.

g. that for purposes of any exemption from the State sales and use taxation as part of any Financial Assistance requested, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

h. that the Sub-Agent shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), for such claims or liabilities that arise as a result of the Sub-Agent acting as agent for the Agency pursuant to this Agreement or otherwise.

The Sub-Agent shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation only to Sub-Agent’s work on or for the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

The foregoing defenses and indemnities shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

i. that as agent for the Agency or otherwise, the Sub-Agent will comply at the Sub-Agent's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Sub-Agent with respect to the Project Facility.

j. that Section 875(7) of the Act requires the Agency to post on its website all resolutions and agreements relating to the Sub-Agent's appointment as an agent of the Agency or otherwise related to the Project, including this Agreement, and that Public Officers Law Article 6 declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Sub-Agent feels that there is information about the Sub-Agent in the Agency's possession 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 Sub-Agent's competitive position, the Sub-Agent must identify such elements in writing, supply same to the Agency prior to or contemporaneously with the execution hereof and request that such elements be kept confidential in accordance with Public Officers Law Article 6. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the Act.

k. The Sub-Agent agrees Local contractors and suppliers will be used for the construction and equipping of the Project unless a waiver is first received from the Agency in writing. Such waiver shall be in the Agency's sole discretion. The Sub-Agent agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project. Local shall mean, for the purposes of this Agreement, Onondaga, Oswego, Madison, Cayuga, Cortland and Oneida Counties. Failure to comply with the local labor requirements of this Section (j) (collectively, the "**Local Labor Requirements**") may result in the revocation or recapture of benefits provided/approved to the Project by the Agency.

l. that the Sub-Agent must timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project on an annual basis.

m. that the failure to comply with the foregoing will result in the loss of the exemption.

n. that if the Sub-Agent is the general contractor for the Project, then at all times following the execution of this Agreement, and during the term thereof, the Sub-Agent shall maintain or cause to be maintained the following insurance policies with an insurance company licensed in the State that has an A.M. Best rating of not less than A-:

(a) Insurance against loss or damage by fire, lightning, and other casualties customarily insured against (with a uniform standard extended coverage endorsement), such insurance to be in an amount not less than the full replacement value of the completed Project Facility, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the general contractor.

(b) Workers' compensation insurance, disability benefits' insurance, and each other form of insurance which the general contractor is required by law to provide covering loss resulting from injury, sickness, disability, or death of employees of the general contractor who are located at or assigned to the Project Facility;

(c) A policy of commercial general liability insurance with a limit of liability of not less than \$1,000,000 per occurrence on an "occurrence" basis and \$2,000,000 in the aggregate for bodily injury, including death, and property damage, including but not limited to, contractual liability under this Agency Lease and personal injury, with blanket excess liability coverage in an amount not less than \$2,000,000, covering the Project Facility and Equipment and the Company's and the Agency's use or occupancy thereof against all claims on account of bodily injury or death and property damage occurring upon, in or about the Project Facility or in connection with the ownership, maintenance, use and/or occupancy of the Project Facility and all appurtenant areas.

In addition, all insurance required by this section shall be with insurance companies of recognized financial standing selected by the general contractor and licensed to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other Persons engaged in businesses similar in size, character, and other respects to those in which the general contractor is engaged. All policies evidencing such insurance except the Workers' Compensation policy shall name the general contractor as insured and the Agency as an additional insured, as its interests may appear, and shall provide that such coverage with respect to the Agency be primary and non-contributory with any insurance secured by the Agency and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof.

Prior to the effective date of this Agreement, the general contractor shall deliver to the Agency, satisfactory to the Agency in form and substance: (i) Certificates evidencing all insurance required hereby; (ii) the additional insured endorsement(s) applicable to the Agency; (iii) the final insurance binder addressed to the general contractor covering the Project Facility; and (iv) evidence that the insurance so required is on a primary and non-contributory basis. In addition, the general contractor shall provide, if so requested by the Agency, a final and complete copy of each insurance policy within thirty (30) days of the execution of this Agreement.

The general contractor shall deliver or cause to be delivered to the Agency on or before the first business day of each January thereafter each of the items set forth in the immediately preceding paragraphs, dated not earlier than the immediately preceding month, reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required hereby for so long as the general contractor is performing, supervising or causing work to be done on or at the Project Facility. The general contractor shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement in each such year.

o. that every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State of New York, without regard to its conflicts-of-laws provisions that if applied might require the application of the laws of another jurisdiction; and that the Sub-Agent irrevocably and expressly submits to the exclusive personal jurisdiction of the Supreme Court of the State of New York and the United States District Court for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.

3. Failure of the Sub-Agent to comply with any of the provisions of this Agreement shall result in the immediate nullification of the appointment of the Sub-Agent and the immediate termination of this Agreement and may result in the loss of the Company's State and local sales and use tax exemption with respect to the Project at the sole discretion of the Agency. In addition, such failure may result in the recapture of the State and local sales and use taxes avoided.

4. The Company acknowledges that the assumption of certain obligations by the Sub-Agent in accordance with this Agreement does not relieve the Company of its obligations under any provisions of the Agency Lease or of any other agreement entered into by the Company in connection with the Project.

5. The Company and the Sub-Agent agree that the Agency is a third-party beneficiary of this Agreement.

6. This Agreement shall be in effect until the earlier of: (i) the completion of the work on the Project by the Sub-Agent; or (ii) the Sub-Agent's loss of status as an agent of the Agency as set forth herein. Notwithstanding the foregoing, the provisions of Sections 2(b), 2(c), 2(f), 2(g), 2(j), and 2(l) shall survive the termination of this Agreement.

**IN WITNESS WHEREOF**, the Company and the Sub-Agent have caused this Agreement to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.

**BEACON ARMORY LLC**

By: \_\_\_\_\_  
Jeffrey Appel, Managing Member

**SPILCO PROPERTIES, LLC**

By: \_\_\_\_\_  
Spiro Spiliotis, Managing Member

[NAME OF SUB-AGENT]

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE "A"**  
**To Sub-Agent Agreement**

**RECAPTURE POLICY**

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**City of Syracuse**  
**Industrial Development Agency**  
333 West Washington Street, Suite 130  
Syracuse, NY 13202  
Tel (315) 473-3275 Fax (315) 435-3669

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## **RECAPTURE POLICY**

### **I. STATEMENT OF PURPOSE**

The City of Syracuse Industrial Development Agency (the “Agency”) has adopted this Recapture Policy (the “*Recapture Policy*”) in accordance with Sections 874(10) and 874(11) of the New York State General Municipal Law. This Recapture Policy shall be consistent with and in compliance with the provisions of Chapter 1030 of Laws of 1969 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 641 of the Laws of 1979 of the State of New York, as amended from time to time (said Chapter and the Enabling Act being hereinafter collectively referred to as the “*Act*”), and any other applicable law.

### **II. MANDATORY RECAPTURE OF THE NEW YORK STATE PORTION OF SALES AND USE TAX**

The Agency shall recapture from project applicants New York State sales and use tax benefits, in accordance with the provisions of the General Municipal Law, from projects that utilized State sales and use tax exemptions:

- a) To which the project was not entitled;
- b) In excess of the amounts authorized by the Agency;
- c) For property or services not authorized by the Agency; and/or
- d) For a project that has failed to comply with a material term or condition to use the property or services in the manner required by any of the project documents between the company and the Agency.

The approving resolution(s) and project documents granting financial assistance in the form of State sales and use tax exemption benefits shall include the terms and conditions of the foregoing recapture provision. Within thirty (30) days of the recapture, the recapture amount shall be remitted to the New York State Department of Taxation and Finance. Such remittances shall include interest, at the legal rate, imposed by the Agency. The failure to pay over such amounts to the Agency shall be grounds for the New York State Tax Commissioner to assess and

determine State sales and use taxes due from the company under article twenty-eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

In order to determine if one of the foregoing events have occurred (a “*State Mandated Recapture Event*”) and to effectuate this recapture of New York State sales and use tax benefits the Agency shall:

- a) Keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
- b) Report within thirty days of providing any financial assistance in the form of a sales and use tax exemption, the project, the estimated amount of the exemption and other information as may be required by the New York State Tax Commissioner (Form ST-60).
- c) The Agency shall file an annual report with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales and use tax exemptions.

### **III. SUSPENSION, DISCONTINUATION, RECAPTURE AND TERMINATION OF OTHER FORMS OF FINANCIAL ASSISTANCE**

With respect to all other financial assistance provided to a project (other than the State portion of sales and use tax exemptions) the Agency shall have the right to suspend, discontinue, recapture or terminate financial assistance to any company for a project to the extent that:

- a) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property or services not authorized by the Agency (each, a “*Local Sales Tax Benefit Violation*”);
- b) the company, upon completion of the project, fails to reach and maintain at least 85 percent of its employment requirements for job creation and/or retention (“*Job Deficit*”);
- c) the total investment actually made with respect to the project at the project’s completion date is less than 85 percent of its investment requirement (“*Investment Deficit*”);
- d) the company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project (“*Reporting Failure*”); or



- e) there otherwise occurs any event of default under any project document (each, an “Event of Default”) or a material violation of the terms and conditions of any project document (a “*Material Violation*”).

#### IV. ANNUAL ASSESSMENT

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a State Mandated Recapture Event, a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure Event of Default or Material Violation (each a “*Noncompliance Event*”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any project document in accordance with the terms of the project document.

At the time of any Noncompliance Event (other than a State Mandated Recapture Event), the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the financial assistance provided to a project, and shall consider the following in making its determination:

- a) Whether the company has proceeded in good faith.
- b) Whether the project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the company.
- c) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create a more adverse situation for the company, such as the company going out of business or declaring bankruptcy, which would not occur if the Agency’s rights were not exercised.
- d) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create an adverse situation for the residents of the City of Syracuse.
- e) The assessment prepared in accordance with the Agency’s Annual Assessment Policy.
- f) Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance.

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the financial assistance (the “*Determination*”). The Determination shall provide terms, if any, by which a company may remedy any Noncompliance Event (other than a State Mandated Recapture Event) upon which the Determination was based. The

company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume financial assistance to the company (which will be at the Agency's sole discretion).

The project agreement entered into between the Agency and the company (the "*Project Agreement*") shall include the terms and conditions of the foregoing provisions. The Agency shall also include in the Project Agreement a requirement that the company comply with the Agency's right to suspend, discontinue, recapture or terminate the financial assistance and that the company shall repay all or a portion of the financial assistance granted by the Agency to the company pursuant to any Determination.

Any such amount constituting local tax exemptions shall be redistributed to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction.

#### **IV. RECAPTURE PERIOD**

Except as otherwise provided by the General Municipal Law, the recapture period will be the longer of: (1) the term of the Lease Agreement; or (2) five years following the project's completion date. A project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of the Project Agreement.

Adopted: June 21, 2016

**SCHEDULE "B"**  
**to Sub-Agent Agreement**

**FORM ST-123**



New York State Department of Taxation and Finance

New York State Sales and Use Tax

### IDA Agent or Project Operator

### Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

# ST-123

(7/14)

This certificate is not valid unless all entries have been completed.

**Note:** To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller	Name of agent or project operator
Street address	Street address
City, town, or village      State      ZIP code	City, town, or village      State      ZIP code
Agent or project operator sales tax ID number (see instructions)	

Mark an **X** in one:     Single-purchase certificate     Blanket-purchase certificate (valid only for the project listed below)

**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

#### Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA		
Name of project	IDA project number (see DSD numbers)	
Street address of project site		
City, town, or village	State	ZIP code
Enter the date that you were appointed agent or project operator (mm/dd/yy) .....	/	/
Enter the date that agent or project operator status ends (mm/dd/yy) .....	/	/

#### Exempt purchases

(Mark an **X** in boxes that apply)

- A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include the date)	Date
Type or print the name, title, and relationship that appear in the signature box	

## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1118(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your Certificate of Authority, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features



**Sales Tax Information Center:** (518) 455-2889

To order forms and publications: (518) 457-5431



**Text Telephone (TTY) Hotline**  
(for persons with hearing and speech disabilities using a TTY): (518) 455-5032

**EXHIBIT "G"**  
**RECAPTURE POLICY**

---

**City of Syracuse**  
**Industrial Development Agency**  
201 East Washington Street, 7<sup>th</sup> Floor  
Syracuse, NY 13202  
Tel (315) 473-3275 Fax (315) 435-3669

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**RECAPTURE POLICY**

**I. STATEMENT OF PURPOSE**

The City of Syracuse Industrial Development Agency (the “Agency”) has adopted this Recapture Policy (the “*Recapture Policy*”) in accordance with Sections 874(10) and 874(11) of the New York State General Municipal Law. This Recapture Policy shall be consistent with and in compliance with the provisions of Chapter 1030 of Laws of 1969 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 641 of the Laws of 1979 of the State of New York, as amended from time to time (said Chapter and the Enabling Act being hereinafter collectively referred to as the “*Act*”), and any other applicable law.

**II. MANDATORY RECAPTURE OF THE NEW YORK STATE PORTION OF SALES AND USE TAX**

The Agency shall recapture from project applicants New York State sales and use tax benefits, in accordance with the provisions of the General Municipal Law, from projects that utilized State sales and use tax exemptions:

- e) To which the project was not entitled;
- f) In excess of the amounts authorized by the Agency;
- g) For property or services not authorized by the Agency; and/or
- h) For a project that has failed to comply with a material term or condition to use the property or services in the manner required by any of the project documents between the company and the Agency.

The approving resolution(s) and project documents granting financial assistance in the form of State sales and use tax exemption benefits shall include the terms and conditions of the foregoing recapture provision. Within thirty (30) days of the recapture, the recapture amount shall be remitted to the New York State Department of Taxation and Finance. Such remittances shall include interest, at the legal rate, imposed by the Agency. The failure to pay over such amounts to the Agency shall be grounds for the New York State Tax Commissioner to assess and

determine State sales and use taxes due from the company under article twenty-eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

In order to determine if one of the foregoing events have occurred (a “*State Mandated Recapture Event*”) and to effectuate this recapture of New York State sales and use tax benefits the Agency shall:

- d) Keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
- e) Report within thirty days of providing any financial assistance in the form of a sales and use tax exemption, the project, the estimated amount of the exemption and other information as may be required by the New York State Tax Commissioner (Form ST-60).
- f) The Agency shall file an annual report with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales and use tax exemptions.

### **III. SUSPENSION, DISCONTINUATION, RECAPTURE AND TERMINATION OF OTHER FORMS OF FINANCIAL ASSISTANCE**

With respect to all other financial assistance provided to a project (other than the State portion of sales and use tax exemptions) the Agency shall have the right to suspend, discontinue, recapture or terminate financial assistance to any company for a project to the extent that:

- f) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property or services not authorized by the Agency (each, a “*Local Sales Tax Benefit Violation*”);
- g) the company, upon completion of the project, fails to reach and maintain at least 85 percent of its employment requirements for job creation and/or retention (“*Job Deficit*”);
- h) the total investment actually made with respect to the project at the project’s completion date is less than 85 percent of its investment requirement (“*Investment Deficit*”);
- i) the company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project (“*Reporting Failure*”); or



- j) there otherwise occurs any event of default under any project document (each, an “Event of Default”) or a material violation of the terms and conditions of any project document (a “*Material Violation*”).

#### IV. ANNUAL ASSESSMENT

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a State Mandated Recapture Event, a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure Event of Default or Material Violation (each a “*Noncompliance Event*”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any project document in accordance with the terms of the project document.

At the time of any Noncompliance Event (other than a State Mandated Recapture Event), the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the financial assistance provided to a project, and shall consider the following in making its determination:

- g) Whether the company has proceeded in good faith.
- h) Whether the project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the company.
- i) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create a more adverse situation for the company, such as the company going out of business or declaring bankruptcy, which would not occur if the Agency’s rights were not exercised.
- j) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create an adverse situation for the residents of the City of Syracuse.
- k) The assessment prepared in accordance with the Agency’s Annual Assessment Policy.
- l) Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance.

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the financial assistance (the “*Determination*”). The Determination shall provide terms, if any, by which a company may remedy any Noncompliance Event (other than a State Mandated Recapture Event) upon which the Determination was based. The

company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume financial assistance to the company (which will be at the Agency's sole discretion).

The project agreement entered into between the Agency and the company (the "*Project Agreement*") shall include the terms and conditions of the foregoing provisions. The Agency shall also include in the Project Agreement a requirement that the company comply with the Agency's right to suspend, discontinue, recapture or terminate the financial assistance and that the company shall repay all or a portion of the financial assistance granted by the Agency to the company pursuant to any Determination.

Any such amount constituting local tax exemptions shall be redistributed to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction.

#### **IV. RECAPTURE PERIOD**

Except as otherwise provided by the General Municipal Law, the recapture period will be the longer of: (1) the term of the Lease Agreement; or (2) five years following the project's completion date. A project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of the Project Agreement.

Adopted: June 21, 2016

## SCHEDULE 1

### FORM OF CERTIFICATION REGARDING ONGOING OBLIGATIONS UPON TERMINATION OF LEASES

#### CERTIFICATION

In December, 2021, at the request of Beacon Armory LLC ("**Beacon**"), Spilco Properties, LLC ("**Spilco**" together with Beacon, collectively, the "**Company**"), the City of Syracuse Industrial Development Agency (the "**Agency**") undertook a project (the "**Project**") consisting of: A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the "**Building**") located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the "**Land**"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the subterranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or their designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company (as defined below) pursuant to a sublease agreement.

The meaning of capitalized terms not otherwise defined herein shall have the meanings attached to them in the agency lease, dated as of December 1, 2021 between the Agency and the Company (the "**Agency Lease**").

On December \_\_\_\_, 2021 the Agency and the Company closed on a straight lease transaction with respect to the Project and the Financial Assistance (the "**Original Closing**") pursuant to which the parties executed and delivered the Company Documents and the Agency Documents (collectively the "**Lease Documents**").

Pursuant to the Company's request, the Agency terminated their leasehold interest in the Project Facility as of \_\_\_\_\_, 20\_\_ (the "**Termination**").

Pursuant to the terms of the Agency lease, the Company has ongoing obligations, including to perform certain reporting requirements to the Agency, as more particularly described below:

- (1) certain provisions and obligations of the Lease Documents survive the Termination, including: Article 4 of the Agency Lease and Sections 2.2, 8.2, 8.5, 8.12, 10.4, 11.7 and 11.14 of the Agency Lease;
- (2) in accordance with its terms, the entire Project Agreement, and the Company's obligations thereunder, shall survive the Termination;
- (3) the Company is familiar with all of the Agency's policies, including but not limited to, its Recapture Policy, and is bound thereby; and
- (4) in furtherance of (i) above, but without limiting the foregoing, the Company continues to be obligated to comply with the following reporting obligation in accordance with Article 4 of the Project Agreement:

**Section 4.01. Compliance Commitments.** The Company agrees and covenants that it shall meet and maintain the commitments set forth in (a) below beginning in the first year after completion of the Project. The Company further agrees and covenants that it shall meet and maintain the commitments set forth in (b) below with respect to retained jobs set forth in the Application starting in the first year in which Financial Assistance is claimed and/or provided; and with respect to new jobs, the Company shall create, in years one (1) through five (5) following completion of the Project the new jobs set forth in the Company's Application. The reporting of, and the commitment to, each of (a), (b) and (c) below continuing for a five (5) year period following completion of the Project (the "**Term**"):

(a) The total investment made with respect to the Project at the Project's completion date shall equal to or exceed \$9,250,000, being the total project cost as stated in the Company's Application for Financial Assistance (the "**Investment Commitment**").

(b) There were no full time equivalent ("**FTE**") employees were retained by the Project Facility as of the date of the Application for Financial Assistance. The Company's application estimated the creation of two (2) new FTEs (the "**New FTEs**") at the Project Facility within the first five (5) years following completion of the Project Facility. The Company shall be required to meet and maintain all of the foregoing employment commitments during the Term hereof (the "**Employment Commitment**").

(c) The Company shall annually provide to the Agency certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project for the Term (the "**Reporting Commitment**").

**Section 4.02. Reporting Requirement.** As part of the commitments set forth in Section 4.01, the Company shall provide annually, to the Agency, a certified statement and supporting documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the

Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. **Exhibit A** contains a form of annual certification that the Company must complete and submit to the Agency on an annual basis. The Agency reserves the right to modify such form to require additional information that the Agency must have in order to comply with its reporting requirements under the Act.

Dated as of \_\_\_\_\_, 20\_\_

**BEACON ARMORY LLC**

By: \_\_\_\_\_  
Jeffrey Appel, Managing Member

**SILCO PROPERTIES, LLC**

By: \_\_\_\_\_  
Spiro Spiliotis, Managing Member

**EXHIBIT A**  
**(to Form of Certification)**

FORM OF ANNUAL REPORTING QUESTIONNAIRE

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202

Date

COMPANY  
COMPANY ADDRESS

Dear \_\_\_\_\_:

Our auditors, \_\_\_\_\_, CPAs are conducting an audit of our financial statements for the year ended December 31, \_\_\_\_\_. In connection with that audit, we request that you furnish certain information directly to our auditor with regard to the following security issued by/through the City of Syracuse Industrial Development Agency:

Sale - Leaseback Financing

Project:

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

Please provide the following information as of December 31, [year]:

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

(If Yes, please update information in Paragraph 1 above)

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

Total cost of goods/services purchased: \$ \_\_\_\_\_

New York State Sales Tax Exemptions Claimed [year]

New York Local Sales Tax Exemptions Claimed: [year]

New York State Mortgage Recording

Tax Exemption: [year]

Form of Syracuse Industrial Development Agency — Project Jobs Data [year]

From:

To: \_\_\_\_\_, CPAs

Re:

The following jobs information is furnished to you with regard to the above cited project:

**A. Job Retention/Creation:**

**III. Construction Jobs:**

Provide the name of your general contractor: \_\_\_\_\_.

Provide the address (including county) of your general contractor: \_\_\_\_\_.

Is the general contractor MWBE qualified? \_\_\_\_\_.

Is the general contractor Service-Disabled Veteran-Owned Business Enterprises ( SDVOBE) qualified? \_\_\_\_\_.

For each contractor and/or sub-contractor, provide the following information for the reporting period:

Bid awarded to (Name/Address/County*)	Value of contract	MWBE (Yes/No)	SDVOBE (Yes/No)	Number of jobs (FTE)

**\*Must include county**

**IV. Permanent (non-construction) Jobs:**

Number of FTEs retained at the Project prior to date of application: \_\_\_\_\_.

Number of FTEs created by the Project during the reporting calendar year (*exclusive of construction jobs*): \_\_\_\_\_.



Of the jobs created by the Project during the reporting year (*exclusive of construction jobs*) identify how many are in each of the following categories:

**Professional/Managerial/Technical** - includes jobs which involve skill or competence of extraordinary degree and may include supervisory responsibilities (examples: architect, engineer, accountant, scientist, medical doctor, financial manager, programmer). **Number of jobs created in reporting year** \_\_\_\_\_.

**Skilled** - includes jobs that require specific skill sets, education, training, and experience and are generally characterized by high education or expertise level (examples: electrician, computer operator, administrative assistant, carpenter, sales representative). **Number of jobs created in reporting year** \_\_\_\_\_.

**Unskilled or Semi-Skilled** - includes jobs that require little or no prior acquired skills and involve the performance of simple duties that require the exercise of little or no independent judgment (examples: general cleaner, truck driver, typist, gardener, parking lot attendant, line operator, messenger, information desk clerk, crop harvester, retail salesperson, security guard, telephone solicitor, file clerk). **Number of jobs created in reporting year** \_\_\_\_\_.

Identify:

the average annual salary range of the FTEs (*exclusive of construction jobs*) created during the reporting year: \$\_\_\_\_\_.

the total number of jobs (*exclusive of construction jobs*) created by the Project from the date of application through the reporting date: \_\_\_\_\_.

the total number of jobs (retained and created, *but exclusive of construction jobs*) at the Project from the date of application through the reporting date: \_\_\_\_\_.

What is the annual average salary range of the FTEs (*exclusive of construction jobs*) created at the Project to date: \$\_\_\_\_\_.

**B. Geographical Hiring Data:**

3. Construction jobs:

Of the construction jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

4. FTEs hired (*exclusive of construction jobs*)

Of the FTE jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

Provide the same information reflecting FTEs hired from the date of application through the reporting date at the Project.

Comments:

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2229

## Onondaga County Clerk Recording Cover Sheet

Received From :  
BRADT LUCIANI

Return To :  
NEWMAN & LICKSTEIN  
COURTHOUSE  
PICK-UP BOX

Method Returned : MAIL

**First PARTY 1**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

**First PARTY 2**

BEACON ARMORY LLC

Index Type : Land Records

Instr Number : 2021-00062416

Book : Page :

Type of Instrument : Memorandum Of Lease

Type of Transaction : Deed Misc

Recording Fee: \$71.00

Recording Pages : 5

The Property affected by this instrument is situated in Syracuse, in the  
County of Onondaga, New York

**Real Estate Transfer Tax**

RETT # : 6119

Deed Amount : \$0.00

RETT Amount : \$0.00

Total Fees : \$71.00

State of New York

County of Onondaga

I hereby certify that the within and foregoing was  
recorded in the Clerk's office for Onondaga  
County, New York

On (Recorded Date) : 12/27/2021

At (Recorded Time) : 2:09:35 PM



Doc ID - 046109870005

*Lisa Dell*

Lisa Dell, County Clerk



This sheet constitutes the Clerks endorsement required by Section 319 of Real Property Law of the State of New York

Entered By: RSWEENIE Printed On : 12/27/2021 At : 2:13:37PM

**MEMORANDUM OF  
AGENCY LEASE AGREEMENT**

***NAME AND ADDRESS OF LESSOR:*** City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202

***NAME AND ADDRESS OF LESSEE:*** Beacon Armory LLC  
325 S. Salina Street, 3<sup>rd</sup> Floor  
Syracuse, New York 13202

Spilco Properties, LLC  
96 Locust Avenue  
New Rochelle, New York 10801

***DESCRIPTION OF LEASED PREMISES:***

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being more particularly described in **Exhibit "A"** annexed hereto, together with the improvements thereon.

***DATE OF EXECUTION OF AGENCY LEASE AGREEMENT:***


As of December 1, 2021

***TERM OF AGENCY LEASE AGREEMENT:***

The term of the Agency Lease shall commence on the date hereof and continue in full force and effect until **January 31, 2023**, unless earlier terminated as provided herein.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of December, 2021.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:  \_\_\_\_\_  
Judith DeLaney, Executive Director

**BEACON ARMORY LLC**

By: \_\_\_\_\_  
Jeffrey Appel, Managing Member

**SPILCO PROPERTIES, LLC**

By: \_\_\_\_\_  
Spiro Spiliotis, Managing Member

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of December, 2021.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Judith DeLaney, Executive Director

**BEACON ARMORY LLC**

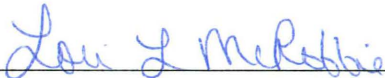
By: \_\_\_\_\_  
Jeffrey Appel, Managing Member

**SPILCO PROPERTIES, LLC**

By: \_\_\_\_\_  
Spiro Spiliotis, Managing Member

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

On this 15<sup>th</sup> day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **JUDITH DELANEY**, 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

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 2022

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

On the \_\_\_ day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **JEFFREY APPEL**, 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

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

On the \_\_\_\_\_ day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **SPIRO SPILIOTIS**, 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



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

On this 1 day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **JUDITH DELANEY**, 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

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

On the 17<sup>th</sup> day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **JEFFREY APPEL**, 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.

*Margaret D. Kirkby*  
\_\_\_\_\_  
Notary Public

MARGARET D. KIRKBY  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01K14691918  
Qualified in Oswego County 25  
Commission Expires Sep. 30, 2025

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

On the 17<sup>th</sup> day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **SPIRO SPILIOTIS**, 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.

*Margaret D. Kirkby*  
\_\_\_\_\_  
Notary Public

MARGARET D. KIRKBY  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01K14691918  
Qualified in Oswego County 25  
Commission Expires Sep. 30, 2025

## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE LAND

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Nos. 1, 2, 30, 31, 40 and 41 of Block No. 105-D, Syracuse, New York, according to a Map made by B.F. Green and filed in the Onondaga County Clerk's Office on October 11, 1850 and bounded and described as follows:

Beginning at a point in the southerly line of West Fayette Street, said point being N. 89° 44' 00" W., 208,855 feet distant, measured along said street line from the westerly line of South Clinton Street, said point being where the centerline of the west wall of the so-called Tallman and Palmer Store, now or formerly known as No. 225 West Fayette Street, intersects the south line of West Fayette Street; thence southwardly along the center of said wall and the same continued about 115.0 feet to a point in range with the north face of the north wall of the six story brick building erected by E.F. Holden on Walton Street; thence westwardly along said range line about 27/100 of a foot to the northeasterly corner of said six story building; thence southwardly along the east face of the brick wall of said building about 90.0 feet to a point in the north line of Walton Street, said point being N. 89° 45' 00" W., 208,856 feet distant, measured along the said northerly line of Walton Street, from the westerly line of South Clinton Street; thence N. 89° 45' 00" W., 64.304 feet along said northerly line of Walton Street to a point; thence N. 00° 13' 20" W., 110.08 feet to a point; thence N. 89° 44' 00" W., .54 of a foot to a point; thence N. 00° 16' 00" E., 95.0 feet to a point in the southerly line of West Fayette Street; thence S. 89° 44' 00" E., 65.045 feet along said street line to the place of beginning.

**ALSO, ALL THAT TRACT OR PARCEL OF LAND**, situate lying and being under the waters of the old channel of Onondaga Creek (now filled in), situate in the City of Syracuse, County of Onondaga and State of New York, said tract or parcel being all of the old channel of Onondaga Creek lying within the premises describe above.



Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

See Form TP-584-I, Instructions for Form TP-584, before completing this form. Print or type.

Schedule A - Information relating to conveyance

Form with sections for Grantor/Transferor and Grantee/Transferee, including fields for Name, Mailing address, City, State, ZIP code, Social Security number (SSN), and Employer Identification Number (EIN).

Location and description of property conveyed

Table with 5 columns: Tax map designation - Section, block & lot, SWIS code (six digits), Street address, City, town, or village, and County.

Type of property conveyed (mark an X in applicable box)

Form with checkboxes for property types (One- to three-family house, Residential cooperative, etc.) and a date of conveyance field (12/01/2021).

Condition of conveyance (mark an X in all that apply)

Form with multiple checkboxes (a-s) describing conditions of conveyance such as fee interest, acquisition of controlling interest, etc.

Table for recording officer's use with columns: Amount received (Schedule B, Part 1 and Part 2), Date received, and Transaction number.

**Schedule B – Real estate transfer tax return (Tax Law Article 31)**

**Part 1 – Computation of tax due**

- 1 Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, mark an X in the Exemption claimed box, enter consideration and proceed to Part 3) .....  **Exemption claimed**
- 2 Continuing lien deduction (see instructions if property is taken subject to mortgage or lien) .....
- 3 Taxable consideration (subtract line 2 from line 1) .....
- 4 Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3 .....
- 5 Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G) .....
- 6 Total tax due\* (subtract line 5 from line 4) .....

1.		0 00
2.		0 00
3.		0 00
4.		0 00
5.		0 00
6.		0 00

**Part 2 – Computation of additional tax due on the conveyance of residential real property for \$1 million or more**

- 1 Enter amount of consideration for conveyance (from Part 1, line 1) .....
- 2 Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...
- 3 Total additional transfer tax due\* (multiply line 2 by 1% (.01)) .....

1.		
2.		
3.		

**Part 3 – Explanation of exemption claimed on Part 1, line 1 (mark an X in all boxes that apply)**

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, New York State, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) ..... a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts..... d
- e. Conveyance is given in connection with a tax sale..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F ..... f
- g. Conveyance consists of deed of partition ..... g
- h. Conveyance is given pursuant to the federal Bankruptcy Act..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, § 1401(e) (attach documents supporting such claim) ..... See Schedule "A"..... k

\* The total tax (from Part 1, line 6 and Part 2, line 3 above) is due within 15 days from the date of conveyance. Make check(s) payable to the county clerk where the recording is to take place. For conveyances of real property within New York City, use Form TP-584-NYC. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

**Schedule C – Credit Line Mortgage Certificate (Tax Law Article 11)**

Complete the following only if the interest being transferred is a fee simple interest.

This is to certify that: (mark an X in the appropriate box)

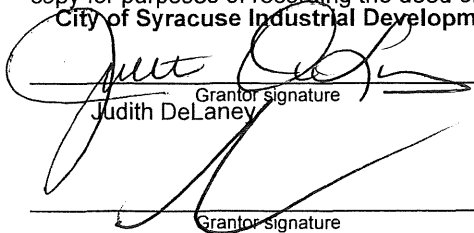
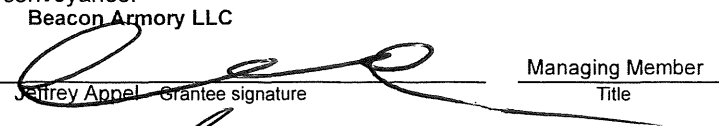
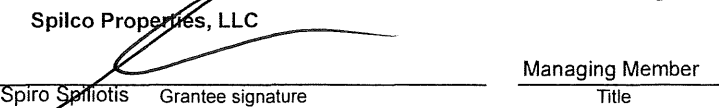
1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - a  The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
  - b  The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
  - c  The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
  - d  The maximum principal amount secured by the credit line mortgage is \$3 million or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

**Note:** for purposes of determining whether the maximum principal amount secured is \$3 million or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

- e  Other (attach detailed explanation).
3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
  - a  A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
  - b  A check has been drawn payable for transmission to the credit line mortgagee or mortgagee's agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4.  The real property being transferred is subject to an outstanding credit line mortgage recorded in \_\_\_\_\_ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is \_\_\_\_\_. No exemption from tax is claimed and the tax of \_\_\_\_\_ is being paid herewith. (Make check payable to county clerk where deed will be recorded.)

**Signature (both the grantors and grantees must sign)**

The undersigned certify that the above information contained in Schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of their knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

<p>City of Syracuse Industrial Development Agency</p>  <p>_____ Grantor signature Judith DeLaney</p>	<p>Executive Director</p> <p>_____ Title</p>	<p>Beacon Armory LLC</p>  <p>_____ Grantee signature Jeffrey Appel</p> <p>Spilco Properties, LLC</p>  <p>_____ Grantee signature Spiro Spiliotis</p>	<p>Managing Member</p> <p>_____ Title</p> <p>Managing Member</p> <p>_____ Title</p>
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**Reminder:** Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you marked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place? If no recording is required, send this return and your check(s), made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

**Schedule D – Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, § 663)**

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part 2, mark an X in the second box under *Exemption for nonresident transferors/sellers*, and sign at bottom.

**Part 1 – New York State residents**

If you are a New York State resident transferor/seller listed in Form TP-584, Schedule A (or an attachment to Form TP-584), you must sign the certification below. If one or more transferor/seller of the real property or cooperative unit is a resident of New York State, **each** resident transferor/seller must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

**Certification of resident transferors/sellers**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law § 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**Note:** A resident of New York State may still be required to pay estimated tax under Tax Law § 685(c), but not as a condition of recording a deed.

**Part 2 – Nonresidents of New York State**

If you are a nonresident of New York State listed as a transferor/seller in Form TP-584, Schedule A (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law § 663(c), mark an X in the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor/seller, that transferor/seller is not required to pay estimated personal income tax to New York State under Tax Law § 663. **Each** nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on Form TP-584-I, page 1.

**Exemption for nonresident transferors/sellers**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law § 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from \_\_\_\_\_ to \_\_\_\_\_ (see instructions).  
Date Date
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of New York State, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

## **SCHEDULE "A"**

The document being recorded for which this NYS Form TP-584 is being provided is a Memorandum of Lease between the Grantor and the Grantee. The sum of the term of the lease and any options for renewal do not exceed forty-nine (49) years, and therefore said lease is not a Conveyance within the meaning of Article 31 of the Tax Law.

## **SCHEDULE "B"**

### **Grantee/Transferee**

Spilco Properties, LLC  
96 Locust Avenue  
New Rochelle, New York 10801  
Federal EIN: 46-1869302

Beacon Armory LLC  
325 S. Salina Street, 3rd Floor  
Syracuse, New York 13202  
Federal EIN: 86-2735708





**CERTIFICATION**

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agency Lease Agreement by and between the parties dated as of December 1, 2021.

The undersigned, Jeffrey Appel, Managing Member and authorized signatory of Beacon Armory LLC and Spiro Spiliotis, Managing Member and authorized signatory of Spilco Properties, LLC (Beacon Armory LLC and Spilco Properties, LLC, collectively, the “*Company*”), do hereby certify and confirm:

(1) that the Company has reviewed and understands the Agency’s Local Access Policy (the “*Policy*”) which states as follows:

The Company understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation and equipping of the Project unless a written waiver is first received in accordance with the terms of the Policy. Failure to comply may result in the revocation or recapture of benefits awarded to the Project by the Agency.

For purposes of this Policy, the term “local” shall mean: Cayuga, Cortland, Madison, Onondaga, Oneida and Oswego Counties.

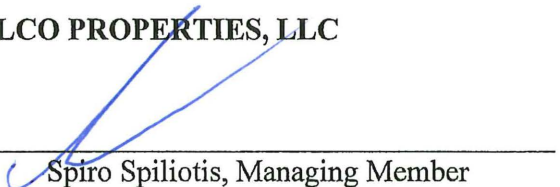
(2) that the Company has complied, and will, for so long as the Agency has an interest in the Project, continue to comply with, the Agency’s Local Labor Policy.

Dated: December 1, 2021

**BEACON ARMORY LLC**

By:   
Jeffrey Appel, Managing Member

**SPILCO PROPERTIES, LLC**

By:   
Spiro Spiliotis, Managing Member





# EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

12/14/2021

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY Eastern Shore Associates An ISU Network Member P.O. Box 480, 101 Cayuga St. Fulton NY 13069		PHONE (A/C, No, Ext): (315) 598-6000	COMPANY Acadia Insurance Company 301 Plainfield Road Suite 250 Syracuse NY 13212-4521	
FAX (A/C, No): (315) 598-1183	E-MAIL ADDRESS: tanthis@esainsurance.com			
CODE:	SUB CODE:			
AGENCY CUSTOMER ID #: 00076957		LOAN NUMBER		POLICY NUMBER CIM5469782
INSURED Beacon Armory LLC & Spilco Properties LLC 325 South Salina St, 3rd Floor  Syracuse NY 13202		EFFECTIVE DATE 12/9/2021	EXPIRATION DATE 12/9/2022	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:				

## PROPERTY INFORMATION

LOCATION/DESCRIPTION Loc# 00001 120-124 Walton St Syracuse, NY 13202
---

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

## COVERAGE INFORMATION

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Job Specific Builders Risks with Renovations - Broad form	8,000,000	25,000

## REMARKS (Including Special Conditions)

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## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

## ADDITIONAL INTEREST

NAME AND ADDRESS  City of Syracuse Industrial Development Agency 201 East Washington St 6th Floor Syracuse, NY 13202	MORTGAGEE	ADDITIONAL INSURED
	LOSS PAYEE	<input checked="" type="checkbox"/> Loss Payee & Addl Insured
	LOAN #	
AUTHORIZED REPRESENTATIVE Thomas Anthis/TIA		



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FAX (A/C, No): (315) 598-1183	E-MAIL ADDRESS: tanthis@esainsurance.com			
CODE:	SUB CODE:			
AGENCY CUSTOMER ID #: 00076957		LOAN NUMBER		POLICY NUMBER MP00009393
INSURED Beacon Armory LLC & Spilco Properties LLC 325 South Salina St, 3rd Floor  Syracuse NY 13202		EFFECTIVE DATE 12/7/2021	EXPIRATION DATE 12/7/2022	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:				

## PROPERTY INFORMATION

LOCATION/DESCRIPTION Loc# 00001/Bldg# 00001 229-37 Fayette St W Syracuse, NY 13202
---

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COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Building, Actual Cash Value, Special (Including theft) - Detail	1,920,000	10,000

## REMARKS (Including Special Conditions)

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	LOSS PAYEE	<input checked="" type="checkbox"/> Loss Payee & Addl Insured
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## REMARKS (Including Special Conditions)

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## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

## ADDITIONAL INTEREST

NAME AND ADDRESS  City of Syracuse Industrial Development Agency 201 East Washington St 6th Floor Syracuse, NY 13202	MORTGAGEE	ADDITIONAL INSURED
	LOSS PAYEE	<input checked="" type="checkbox"/> Loss Payee & Addl Insured
	LOAN #	
AUTHORIZED REPRESENTATIVE Thomas Anthis/TIA		

# **ENDORSEMENTS**



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**PRIMARY AND NONCONTRIBUTORY –  
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.



## EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### NOTICE OF CANCELLATION BY US AS REQUIRED BY CONTRACT TO ADDITIONAL INSUREDS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

#### SCHEDULE

Number Of Days: 30
--------------------

The following is added to the Cancellation condition:

We will provide written Notice of Cancellation to an additional insured stating when, not less than the number of days shown in the Schedule above, cancellation will become effective.

This condition only applies if:

1. The policy is cancelled by us;
2. Cancellation is for reasons other than:
  - a. Nonpayment of premium; or
  - b. Non-payment of any deductible reimbursement;
3. You are required by written contract to provide the additional insured with such notice; and
4. You agree to provide us with a list of the applicable additional insureds, including their complete mailing addresses, within 7 days of our request.

If notice is mailed, proof of mailing is sufficient proof of such notice.

All other terms and conditions remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED –  
MORTGAGEE, ASSIGNEE OR RECEIVER**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name(s) Of Person(s) Or Organization(s)	Designation Of Premises
City of Syracuse Developmental Agency	Per policy schedule
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to their liability as mortgagee, assignee or receiver and arising out of the ownership, maintenance or use of the premises by you and shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

**C.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.



**END-1**  
**(Ed. 7/98)**

## **ENDORSEMENT**

This endorsement forms a part of the policy shown below.

Policy No. MP 0009393 Insured Beacon Armory LLC

---

This endorsement is subject to the *terms* contained in the General Policy Provisions.

The Named Insured on the Declarations Page of this policy is amended to include the following names:

Spilco Properties LLC

**END-1**

MP 0009393 Beacon Armory LLC  
12/14/2021 3:58 PM JMF

Insured Image

Policy Period: 12/7/2021 - 12/7/2022



END-1  
(Ed. 7/98)

## ENDORSEMENT

This endorsement forms a part of the policy shown below.

Policy No. MP 0009393 Insured Beacon Armory LLC

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This endorsement is subject to the *terms* contained in the General Policy Provisions.

The Named Insured on the Declarations Page of this policy is amended to include the following names:

Spilco Properties LLC

END-1

MP 0009393 Beacon Armory LLC  
12/14/2021 3:58 PM JMF

Insured Image

Policy Period: 12/7/2021 - 12/7/2022



LS-22  
Ed. 9/02

## ADDITIONAL *INSURED*

Refer to the Supplemental Declarations if information is not shown on this form.  
*We* provide coverage under this endorsement subject to the *terms* contained in the Liability coverage.

The definition of *insured* in the Liability coverage is amended to include the person(s) or entity named as an *insured* below. This endorsement limits coverage for additional *insured(s)* to their vicarious liability arising from the hazards covered by this policy. *We* do not provide coverage for any liability arising out of any acts or omissions of any additional *insured(s)*, their *employees* or any other person or organization with which the additional *insured* has a contract or other relationship.

NAME OF PERSON(S) OR ENTITY:

City of Syracuse Industrial Development Agency  
201 East Washington St  
6th Floor  
Syracuse, NY 13202

Solvay Bank  
Isaoa  
P.o. Box 19050  
Syracuse, NY 13209

LS-22

MP 0009393. Beacon Armory LLC  
12/14/2021 3:58 PM JMF

Insured Image

Ed. 9/02

Policy Period: 12/7/2021 - 12/7/2022



**GENERAL LIABILITY COVERAGE  
BUSINESS GENERAL LIABILITY INSURANCE  
(EXTRA COVERAGE)**

**AGREEMENT**

We provide *Business* General Liability Insurance and those added coverages described in this policy during the policy period in return for payment of the premium. This agreement is subject to all the *terms* of this policy. The complete *Business* General Liability Insurance (Extra Coverage) consists of the Declarations Page, this Agreement, and other endorsements which may be added, including required state endorsements. It is important that *you* read each part of this policy carefully to understand the coverages provided; *your* policy obligations and *our* policy obligations. Each coverage part is subject to all *terms* relating to that coverage. The Table of Contents that follows shows how each coverage part is organized and it will help *you* locate the various policy sections.

**TABLE OF CONTENTS**

	Page No.
Agreement.....	1
Definitions.....	1-6
Principal Coverages.....	6-8
Supplementary Payments.....	9
Exclusions.....	9-11
What You Must Do in Case of Loss.....	11-12
How Much We Pay for Loss or Claim.....	12-13
Payment of Loss or Claim.....	13
Policy Conditions.....	13-18
Nuclear Exclusion.....	18-19

**A. DEFINITIONS**-these definitions apply to this policy:

1. The words *you* and *your* refer to the person or entity named in the Declarations, and the words *we*, *us* and *our* refer to the insurance company named in the Declarations.
2. *Advertising Injury* means injury, other than *bodily injury*, arising out of an offense committed during the policy period occurring in the course of the *named insured's business* advertising activities. The *advertising injury* must occur from libel, slander, defamation, violation of the right of privacy, misappropriation of advertising ideas or style of doing *business* or infringement of copyright, title or slogan.
3. *Automobile* means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any machinery or apparatus attached to the *automobile*. *Automobile* DOES NOT INCLUDE *mobile equipment*.
4. *Bodily Injury* means *bodily injury*, bodily sickness and/or bodily disease sustained by any person occurring during the policy period, including death resulting from the *bodily injury*, bodily sickness and/or bodily disease. The definition of *bodily injury* is amended to include *Incidental Medical Malpractice Injury*.
5. *Business* means a full or part time trade, profession, or other occupation including farming and/or the rental of property.
6. *Coverage Territory* means:
  - a. the United States of America, including its territories and possessions, Puerto Rico and Canada;
  - b. international waters or airspace, provided the *bodily injury* and/or *property damage* occurs in the course of travel or transportation to or from anyplace included in a. above;
  - c. the world, with respect to products manufactured or sold within the territory described in a. above; and
  - d. the world, with respect to activities of a person temporarily away from the coverage territory described in a. above, while he/she is conducting *your business*.
7. *Covered Policy* means a policy of commercial risk insurance, professional liability insurance or public entity insurance.

8. **Elevator** means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances pertaining to the **elevator**, including any car, platform, shaft, hoistway, stairway, runway, power equipment and machinery; THIS DOES NOT INCLUDE:
- an **automobile** servicing hoist;
  - a hoist without a platform outside a building if without mechanical power or if it is not attached to building walls;
  - a hod or material hoist used in alteration, construction or demolition operations;
  - an inclined conveyor used exclusively for carrying property; or
  - a dumbwaiter used exclusively for carrying property and having a compartment height not exceeding four feet.
9. **Employee** includes leased **employees** but does not include temporary **employees**.
10. **Impaired property** means tangible property (other than **your product** or **your work**):
- whose usefulness has been decreased:
    - because it includes **your product** or **your work** that is, or is thought to be, defective, deficient or dangerous; or
    - because **you** failed to comply with the **terms** of a contract or agreement; and
  - whose usefulness can be restored:
    - by the repair, replacement, adjustment or removal of **your product** or **your work**; or
    - by **your** compliance with the **terms** of the contract.
11. **Incidental Medical Malpractice Injury** means **bodily injury** arising out of the rendering of or failure to render the following services during the policy period:
- medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection with such services; or
  - the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

**Incidental Medical Malpractice Injury** does not apply to:

- expenses incurred by the **insured** for first-aid to others at the time of an accident;
- any **insured** engaged in the **business** or occupation of providing any of the services described in 11 a. or b. above; or
- injury caused by any person the **insured** has agreed to indemnify if he/she is engaged in the **business** or occupation of providing any of the services described in 11 a. or b. above.

12. **Insured** means that each of the following is an **insured** under the conditions and limitations set forth below:
- if the **named insured** is an individual, both the individual and his/her spouse are **insureds** but only with respect to the conduct of a **business** of which he/she is the sole proprietor.
  - if the **named insured** is a partnership or joint venture, any partner or member and their spouses is an **insured** but only with respect to the conduct of the **business**.
  - if the **named insured** is an organization, the executive officers, members of the board of trustees, directors, and governors are **insureds** while acting within the scope of their duties as officers and directors. Stockholders are also **insureds** but only with respect to their liability as stockholders.
  - if the **named insured** is a limited liability company, the members and managers are **insureds** while acting within the scope of their duties as members and managers.
  - any person (other than an **employee** of the **named insured**) or organization while acting as real estate manager for the **named insured**.
  - with respect to the operation, for the purpose of locomotion upon a public highway, of **mobile equipment** registered under any motor vehicle registration law:
    - an **employee** of the **named insured** while operating any such equipment in the course of his/her employment; and
    - any other person while operating with the permission of the **named insured** any such equipment registered in the name of the **named insured** and any other person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization;
 provided that no person or organization shall be an **insured** under this paragraph f. with respect to:
    - bodily injury** to any co-employee of the person driving the equipment; or
    - property damage** to property owned by, rented to, in charge of or occupied by the **named insured** or the employer of any person described in subparagraph 2).
  - each of the following is also an **insured**:
    - any person or organization having proper temporary custody of **your** property if **you** die, but only:
      - with respect to liability arising out of the maintenance or use of that property; and
      - until **your** legal representative has been appointed.



2) *your* legal representative if *you* die, but only with respect to duties as such. That representative will have all *your* rights and duties under this General Liability coverage.

This insurance DOES NOT APPLY to liability arising out of the conduct of any partnership, joint venture, or limited liability company of which the *insured* is a partner or member and which is not designated in this policy as a *named insured*.

h. as respects *bodily injury, property damage, personal injury* and *advertising injury* coverages under the definition of *Insured*, the following are added as an *insured*:

any *employee* of the *named insured* while acting within the scope of his/her duties, BUT the insurance afforded to such *employee* DOES NOT APPLY:

- 1) to *bodily injury* or *personal injury* to another *employee* of the *named insured* arising out of or in the course of his/her employment;
- 2) to *bodily injury* or *personal injury* arising out of his or her providing or failing to provide professional health care services;
- 3) to *personal injury* or *advertising injury* to the *named insured* or, if the *named insured* is a partnership or joint venture, any partner or member or the spouse of any partner or member.

This insurance DOES NOT APPLY to *bodily injury* or *property damage* arising out of the conduct of any current or past partnership or joint venture of which the *insured* is a partner or member and which is not designated in this policy as a *named insured*.

i. **Automatic Coverage-Newly Acquired Organizations (90 days).**

The word *insured* shall include as *named insured* any organization which is acquired or formed by the *named insured* and over which the *named insured* maintains ownership or majority interest, other than a joint venture, provided this insurance DOES NOT APPLY to *bodily injury, property damage, personal injury* or *advertising injury* with respect to which such new organization under this policy is also an *insured* under any other similar liability or indemnity policy or would be an *insured* under any such policy BUT for exhaustion of its limits of liability. The insurance afforded *you* shall terminate 90 days from the date any such organization is acquired or formed or the end of the policy period whichever is earlier.

Coverage L does not apply to *bodily injury* or *property damage* that occurred before *you* acquired or formed the new organization.

Coverage P does not apply to *personal injury* or *advertising injury* arising out of an offense committed before *you* acquired or formed the new organization.

13. **Insured Contract** means any written:

- a. leases of premises;
- b. easement agreements, except those concerning construction or demolition operations abutting railroad property;
- c. obligation to insure a municipality required by law or ordinance, except in connection with *work* for the municipality;
- d. sidetrack agreements;
- e. *elevator* maintenance agreements;
- f. easements or license agreements in connection with vehicle or pedestrian private railroad crossings at grade;
- g. that part of any other contract or agreement pertaining to *your business* under which *you* assume the tort liability of another to pay damages because of *bodily injury* and/or *property damage* to a third person or organization. That contract or agreement must be made prior to the *bodily injury* and/or *property damage* and *your* tort liability must result from *your* negligence. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An *insured contract* does not include that part of any contract or agreement:

- a. that indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - 1) preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs, specifications and other related services; or
  - 2) giving directions or instructions, or failing to give them, if that is a cause of the injury or damage;
- b. under which the *insured*, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the *insured's* rendering or failing to render *professional services*, including those listed in a. above and supervisory, inspection or engineering services; or
- c. that indemnifies any person or organization for damage by fire to premises rented or loaned to *you*.

14. **Medical Expense** means expenses for necessary medical, surgical, x-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services.

15. **Mobile Equipment** means any of the following types of land vehicles, including any attached machinery or equipment:

- a. bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

- b. vehicles maintained for use solely on or next to premises *you* own or rent;
  - c. vehicles that travel on crawler treads;
  - d. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - 1) power cranes, shovels, loaders, diggers or drills; or
    - 2) road construction or resurfacing equipment such as graders, scrapers or rollers;
  - e. vehicles not described in a., b., c., or d. above, that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - 1) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - 2) cherry pickers and similar devices used to raise or lower workers;
  - f. vehicles not described in a., b., c., d., or e. above, maintained primarily for purposes other than the transportation of persons or cargo.  
 However, self-propelled vehicles with the following types of permanently attached equipment are not *mobile equipment* but will be considered *automobiles*:
    - 1) equipment designed primarily for:
      - a) snow removal;
      - b) road maintenance, but not construction or resurfacing; or
      - c) street cleaning;
    - 2) cherry pickers and similar devices mounted on *automobile* or truck chassis and used to raise or lower workers; and
    - 3) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. **Named Insured** means the person or entity named in the Declarations.
17. **Named Insured's Products** means *business* personal property or products manufactured, sold, handled, distributed or disposed of by the *named insured*, or by others trading under his/her name, or a person or organization whose *business* or assets *you* have acquired.  
 Products includes:
- a. warranties or representations made at any time with respect to the fitness, quality, durability, or performance of the *named insured's products*; and
  - b. provision of or failure to provide warnings, instructions or other sales support information; and
  - c. containers (other than vehicles), materials, parts or equipment furnished in connection with such *business* personal property or products.
- Products does not include:
- a. vending machines;
  - b. property that is rented to or placed for the use of others, but not sold; or
  - c. real property.
18. **Nonpayment of Premium** means the failure of the *named insured* to discharge any obligation in connection with the payment of premiums on a policy of insurance or any installment of such premium, whether the premium is payable directly to the insurer or its agent, or indirectly under any premium finance plan or extension of credit. Payment to the insurer, or to an agent or broker authorized to receive such payment, shall be timely if made within fifteen days after the mailing to the *insured* of a notice of cancellation for *nonpayment of premium*.
19. **Occurrence** means an accident including continuous or repeated exposure to substantially similar conditions.
20. **Personal Injury** means injury, other than *bodily injury* arising out of one or more of the following offenses committed in the conduct of *your business*, occurring during the policy period:
- a. false arrest, detention, imprisonment, or malicious prosecution;
  - b. wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupied;
  - c. a publication or utterance which:
    - 1) libels or slanders a person or organization or disparages a person's or organization's goods, *products* or services;
    - 2) is in violation of an individual's right of privacy;
21. **Pollution** means *bodily injury* and/or *property damage* arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants:
- a. at or from premises owned, rented, loaned or occupied by the *named insured*;
  - b. at or from any site or location used by or for the *named insured* or others for the handling, storage, disposal, processing or treatment of *waste*;
  - c. which are at any time transported, handled, stored, treated, disposed of, or processed as *waste* by or for the *named insured* or any person or organization for whom the *named insured* may be legally responsible; or

- d. at or from any site or location on which the *named insured* or any contractors or subcontractors working directly or indirectly on behalf of the *named insured* are performing operations:
- 1) if the pollutants are brought on or to *your* site or location in connection with such operations; or
  - 2) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants.

For the purpose of this definition, a pollutant means any solid, liquid, gaseous, thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and *waste*. *Waste* includes materials to be recycled, reconditioned or reclaimed.

22. **Products/Completed Operations Hazard.**

a. **Products hazard** means *bodily injury* and/or *property damage* occurring away from premises *you* own or rent and arising out of *your product* after physical possession of it has been relinquished to others.

b. **Completed operations hazard** means *bodily injury* and/or *property damage* arising out of *your work*. *Your work* does not include incomplete or abandoned *work*.

*Your work* is completed at the earliest of the following times:

- 1) when all *work* specified in *your* contract has been done;
- 2) when all *work* to be done at a job site has been completed if *your* contract includes *work* at more than one site; or
- 3) when *your work* at a job site has been put to its intended use by someone other than another contractor or subcontractor working on the same job site.

*Work* which requires further service, maintenance, correction, repair or replacement because of a defect or deficiency, but which is otherwise complete, shall be considered completed.

c. Neither the **products hazard** nor **completed operations hazard** includes *bodily injury* and/or *property damage* arising out of:

- 1) the transport of property, aboard a vehicle not owned or operated by *you*, unless injury or damage occurs from a condition that was created by *your* loading or unloading of the vehicle;
- 2) the presence of tools, uninstalled equipment, abandoned or unused materials; or
- 3) products or *work* for which the classification on the Declarations/schedule states "including **Products/Completed Operations**".

23. **Professional Service** means:

a. the rendering or failure to render:

- 1) any professional service including but not limited to any cosmetic, body piercing, tonsorial, massage therapy, physical therapy, podiatry, hearing aid, optical or optometrical services or treatments; or
- 2) any service or treatment conducive to health or of a professional nature including but not limited to the furnishing or dispensing of drugs, medical, dental, veterinarian or surgical supplies and services or the handling or performing of autopsies or necropsies.

24. **Property Damage** means:

- a. physical injury to tangible property occurring during the policy period, including the loss of use resulting from such physical injury;
- b. loss of use of tangible property which has not been physically injured provided such loss of use is caused by a covered *occurrence* during the policy period; or
- c. *property damage*, but it does not include loss or damage to intangible electronic data stored or used in an electronic format in the random access memory (RAM) of a computer or computer system including storage media such as floppy discs, hard drives, CD-Rom discs and similar electronic storage devices.

25. **Renewal or to Renew** means the issuance or offer to issue by an insurer of a policy superceding a policy previously issued and delivered by the same insurer, or another insurer within the same group or under common management, or the issuance or delivery of a certificate or notice extending the term of a policy beyond its policy period or term. However, any policy with a policy period or term of less than one year shall be considered as if written for a policy period or term of one year, and any policy with no fixed expiration date or with a policy period or term of more than one year shall be considered as if written for successive policy periods or terms of one year.

26. **Required Policy Period** means a period of one year from the date as of which a *covered policy* is renewed or first issued.

27. **Suit** means a civil proceeding in which damages because of *bodily injury*, *property damage*, *personal injury* and/or *advertising injury* to which this insurance applies are alleged. **Suit** includes an arbitration proceeding alleging such damages to which *you* must submit or submit with *our* consent. However, **suit** does not mean that *we* shall have the duty to respond to any process designating *you* as a potentially responsible party (PRP) in connection with any *pollution* matter.

28. **Terms** as used in this policy means provisions, limitations, exclusions, definitions and conditions of *your* policy.

29. **Your Work** means:
- work* or operations performed by *you* or on *your* behalf;
  - materials, parts and equipment *you* supply for such *work* or operations;
  - written warranties or representations made at any time regarding quality, fitness, durability or performance of any of the foregoing ; and
  - the provision of or failure to provide instructions and/or warnings.
30. **"X" Explosion** means damage to covered property resulting from detonation or blast EXCEPT *property damage*:
- arising out of the *explosion* of air or steam vessels, piping under pressure, prime movers, machinery or power transmission equipment;
  - arising out of operations performed for the *named insured* by independent contractors;
  - included within the *completed operations hazard* or the *underground property damage hazard*; or
  - for which liability is assumed by the *insured* under an *Insured contract*.
31. **"C" Collapse** means the *collapse* of or structural injury to a building or structure due to:
- grading of land, excavating, burrowing, filling, back-filling, tunneling, pile driving, cofferdam *work* or caisson *work*; or
  - moving, shoring, under-pinning, razing or demolition of any building or structure, or removal or rebuilding of any structural support.
- The *collapse hazard* DOES NOT INCLUDE *property damage*:
- arising out of operations performed for the *named insured* by independent contractors;
  - included within the *completed operations hazard* or the *underground property damage hazard*; or
  - for which liability is assumed by the *insured* under an *insured contract*.
32. **"U" Underground property damage** means *property damage* to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and an apparatus in connection with them, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, burrowing, filling, back-filling, pile driving or any similar operations. The *underground property damage hazard* DOES NOT INCLUDE *property damage*:
- arising out of operations performed for the *named insured* by independent contractors;
  - included within the *completed operations hazard*; or
  - for which liability is assumed by the *insured* under an *Insured contract*.

## B. PRINCIPAL COVERAGES

### Coverage L-Bodily Injury and/or Property Damage.

*We* provide *bodily injury* or *property damage* coverage if a limit of liability is shown on the Declarations page, the Supplemental Declarations page, or on any endorsement attached to this policy. The *bodily injury* and/or *property damage* must be caused by an *occurrence*. The *occurrence* must take place in the *coverage territory* during the policy period.

### WHAT WE PAY FOR-COVERAGE L

*We* pay up to the limit of liability all sums when the *insured* is legally obligated to pay damages because of *bodily injury* and/or *property damage* caused by an *occurrence* to which this coverage applies. *We* will not accept any obligations or liability to pay sums or to perform acts or services unless the coverage is specifically provided for in the Supplementary Payments. *We* shall have the right and duty to defend the *insured* against any *suit* seeking covered damages, even if any of the allegations of the *suit* are groundless, false or fraudulent, provided the *suit* originates from *bodily injury* and/or *property damage* not otherwise excluded. *We* may make any investigation and settle any claim or *suit* that *we* decide is appropriate. *We* are not obligated to provide a defense, after *we* have paid, either by judgment or settlement, an amount equal to *our* limit of liability.

Coverage L applies to:

- Bodily injury* including covered damages claimed by any person or organization for care, loss of services or death resulting at any time from the *bodily injury*.
- Property damage* including loss of use of tangible property that is not physically injured and which shall be deemed to occur at the time of the *occurrence* that caused it.

### Coverage M-Medical Payments.

*We* provide *medical payments* coverage for the limit shown on the Declarations page or the Supplemental Declarations page.

## WHAT WE PAY FOR-COVERAGE M

We will pay reasonable medical expenses for care or treatment of *bodily injury* to each injured person caused by an accident occurring within the coverage territory and within the policy term. Such injury must be incurred and reported to us within one year of the date of the accident, and it must arise from one of the following:

- a. a condition on the *premises you* own or rent;
- b. on ways next to *premises you* own or rent;
- c. operations with respect to which the *named insured* is afforded coverage for *bodily injury* liability under the policy;

We will make these medical payments regardless of fault. These payments will not exceed the applicable limit of liability.

THE FOLLOWING EXCLUSIONS APPLY TO COVERAGE M-MEDICAL PAYMENTS COVERAGE.

### WHAT WE DO NOT PAY FOR

We do not pay for *bodily injury*:

1. to any *insured*, tenant, or other person regularly residing on the *insured premises* or any person hired by or on behalf of any *insured* to do *work* for an *insured*;
2. to any person if the *bodily injury* occurs on that part of the premises *you* own or rent that the person normally occupies;
3. to any person while engaged in maintenance, repair, alteration, demolition or construction at the *insured* premises;
4. to any person if any benefits for *bodily injury* are required to be provided under any workers' compensation, unemployment compensation, disability benefits law, or any similar law;
5. to any person practicing, instructing or participating in any physical training, sport or athletic activity;
6. included within the *products/completed operations hazard*;
7. excluded under Coverage L;
8. due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution; or
9. for any *medical expense* for services by the *named insured*, any employee or any person or organization under contract to the *named insured* to provide such services.

### Coverage N-Products/Completed Operations

We provide *bodily injury* and/or *property damage* coverage if a limit of liability is shown on the Declarations page, the Supplemental Declarations page or any endorsement attached to this policy. The *bodily injury* and/or *property damage* must be caused by an *occurrence*. The *occurrence* must take place in the *coverage territory* during the policy period.

## WHAT WE PAY FOR-COVERAGE N

We pay, up to the limit of liability, all sums when the *insured* is legally obligated to pay damages because of *bodily injury* and/or *property damage* arising out of the *Products/Completed Operations Hazard*. We will not accept obligations or liability to pay sums or to perform acts or services unless the coverage is specifically provided for in the Supplementary Payments. We shall have the right and duty to defend any *suit* seeking damages, even if any of the allegations of the *suit* are groundless, false or fraudulent, provided the *suit* resulted from *bodily injury* and/or *property damage* not excluded under this coverage. We may make any investigation and settle any claim or *suit* that we decide is appropriate. We are not obligated to provide a defense after we have paid, either by judgment or settlement, an amount equal to our limit of liability.

### Coverage O-Fire Legal Coverage-Real Property.

We pay those sums you are legally obligated to pay for direct loss caused by *property damage* to tangible property of others in your care or custody.

The limit for each *occurrence* is \$50,000 unless otherwise stated on the Declarations page or Supplemental Declarations page.

The exclusions applicable to *property damage* do not apply to this coverage.

## WHAT WE DO NOT PAY FOR

We do not pay for:

1. liability from any contract to indemnify any person or organization for damages by fire to the premises; or
2. liability from *property damage* expected, directed or intended by an *insured*.

## Coverage P-Personal Injury and Advertising Injury Coverage

Coverage is extended to include *Personal Injury* and *Advertising Injury Coverage*.

### WHAT WE PAY FOR.

*We* pay up to the limit of liability, all sums when the *insured* is legally obligated to pay damages because of *personal injury* or *advertising injury* caused by an offense to which this coverage applies. *We* will not accept any obligations or liability to pay sums or to perform acts or services is covered unless specifically provided for under Supplementary Payments. *We* shall have the right and duty to defend any *suit* seeking damages, even if any of the allegations of the *suit* are groundless, false or fraudulent, provided the suit originates from *personal injury* or *advertising injury* not otherwise excluded. *We* may make any investigation and settle any claim or *suit* that *we* decide is appropriate. *We* are not obligated to provide a defense, after *we* have paid, either by judgment or settlement, an amount equal to *our* limit of liability.

1. This insurance applies to *personal injury* only if caused by an offense:
  - a. committed in the *coverage territory* during the policy period; and
  - b. arising out of the conduct of *your business*, excluding advertising, publishing, broadcasting or telecasting done by or for *you*.
2. This insurance applies to *advertising injury* only if caused by an offense committed:
  - a. in the *coverage territory* during the policy period; and
  - b. in the course of advertising *your* goods, *products* or services.

### THE FOLLOWING EXCLUSIONS APPLY TO COVERAGE P-PERSONAL INJURY AND ADVERTISING INJURY COVERAGE.

#### WHAT WE DO NOT PAY FOR

1. *Personal injury* or *advertising injury*:
  - a. arising out of oral or written publication of material, by or at the direction of an *insured* who has knowledge of its falsity;
  - b. arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
  - c. arising out of the violation of a penal statute or ordinance committed by an *insured* or with his/her knowledge; or
  - d. for which the *insured* has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the *insured* would have in the absence of the contract or agreement.
2. *Advertising injury* arising out of:
  - a. breach of contract, other than misappropriation of advertising ideas under an implied contract;
  - b. the failure of goods, products or services to conform with advertised quality or performance;
  - c. the wrong description of the price of goods, products or services; or
  - d. an offense committed by an *insured* whose *business* is advertising, broadcasting, publishing or telecasting.

#### ORDERLY TRANSFER OF DUTIES

1. When *we* have paid an amount equal to the limits of liability shown, *we* will notify the first *named insured* in writing, as soon as practicable, that the applicable limit of liability has been exhausted. The notice will confirm that *our* duty to defend *suits* has terminated.
2. *We* will initiate and cooperate in the orderly transfer of control to any appropriate *insured*. *We* will take such steps as *we* deem appropriate to avoid a default in or to continue the defense of such *suits* until the transfer to a cooperating *insured* is complete. *We* will not defend any other *suits* subject to those limits of liability which have been exhausted.
3. The *insured* must take control of the *suit*, at their expense, within the agreed upon time or as soon as practicable in the absence of any agreement.
4. The first *named insured* is obliged to reimburse *our* expenses incurred in continuing the defense during the transition period referred to in 2. above. Reimbursement will be payable for all expenses *we* incur after providing the written notice referred to in 1. above.
5. The exhaustion of *our* limit of liability by payment of judgments or settlements, and the resulting termination of *our* duty to defend, will not be waived by *our* failure to comply with any of the provisions of 1. through 4. above.

### C. SUPPLEMENTARY PAYMENTS

These supplementary payments are subject to the *terms* of the Principal Coverages and they do not increase the limit of liability stated for the principal coverages except: Claims and Defense Expense Coverage.

1. **Claims and Defense Expense Coverage**-We pay these expenses incurred in connection with a *suit* defended by *us* under the *bodily injury, property damage, personal injury* and *advertising injury* liability coverages:
  - a. costs charged to the *insured*;
  - b. expenses incurred by *us*;
  - c. proven loss of earnings by an *insured*, up to \$100 per day, for time away from *work* at *our* request;
  - d. other necessary expenses incurred at *our* request;
  - e. prejudgment interest awarded against the *insured* on that part of the judgment *we* pay. If *we* make an offer to pay the applicable limit of liability, *we* will not pay any prejudgment interest based on that period of time after the offer;
  - f. interest accruing after entry of a judgment but ending when *we* tender or pay up to the applicable limit of liability;
  - g. premiums on appeal bonds or attachment bonds up to *our* limit of liability; and
  - h. premiums up to \$500 per bail bond required of any *insured* because of an accident or traffic law violation arising out of the use of any vehicle to which this insurance applies.
2. **First Aid Coverage**-We pay the expenses incurred for first aid to others at the time of an accident and for *bodily injury* to which this insurance applies.

### D. EXCLUSIONS

Exclusions that apply to *Bodily Injury* and *Property Damage*:

We do not pay for loss resulting directly or indirectly from the following, unless specific coverage is added to *your* policy.

#### WE DO NOT PAY FOR:

1. *Bodily injury* and/or *property damage* expected or intended from the standpoint of the *insured*. This exclusion does not apply to *bodily injury* resulting from the use of reasonable force to protect persons or property;
2. Liability assumed by the *insured* under any contract or agreement except an *insured contract*. This exclusion does not apply to liability for damages that the *insured* would have in the absence of the contract or agreement;
3. *Bodily injury* and/or *property damage* arising out of the ownership, maintenance, operation, use, entrusting, loading or unloading of:
  - a. any *automobile*, aircraft or watercraft owned or operated by or rented or loaned to any *insured*; or
  - b. any other *automobile*, aircraft or watercraft operated by any person in the course of his/her employment by any *insured*.

#### This exclusion DOES NOT APPLY:

- 1) to the parking of an *automobile* on the premises, if such *automobile* is not owned by, rented or loaned to any *insured*;
- 2) to *bodily injury* and/or *property damage* arising out of the operations of *mobile equipment*. *Mobile equipment* includes devices mounted on *automobile* or truck chassis and used to raise or lower workers; and air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment;
- 3) to liability assumed under an *insured contract* with respect to ownership of *automobiles*, aircraft or watercraft; and
- 4) to watercraft while ashore on the *insured premises*.
4. To *bodily injury* or *property damage* arising out of:
  - a. and in the course of transportation of *mobile equipment* by an *automobile* owned, operated by, rented or loaned to any *insured*;
  - b. the ownership, maintenance, operation, use, entrusting, loading or unloading of any *mobile equipment* while being used in any prearranged or organized racing, speed, demolition contest, in any stunting activity, or in practice or preparation for any such contest or activity; or
  - c. the operation or use of any snowmobile or trailer designed for use with a snowmobile;
5. *Bodily injury* and/or *property damage* included within the *pollution* definition. We do not pay for any loss, cost or expense resulting from any request or demand that a *named insured* test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants or any defense and/or indemnity of any *suit* or other action resulting from such *pollution*.

This exclusion does not apply:

- a. to ***bodily injury*** and/or ***property damage*** caused by heat, smoke or fumes from a hostile fire. For the purpose of this exclusion, hostile fire means a fire which becomes uncontrollable or breaks out from its intended confines;
  - b. to ***bodily injury*** sustained within a covered building caused by the release or escape of smoke, soot, vapor or fumes from faulty operation of heating equipment in such building; and
  - c. to ***bodily injury*** and/or ***property damage*** resulting from the accidental escape of fuels, lubricants or other operating fluids from their intended confines within vehicles or ***mobile equipment*** operated on the covered premises.
6. ***Bodily injury*** and/or ***property damage*** due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution
7. ***Bodily injury*** and/or ***property damage*** for which the ***named insured*** or others for whom coverage is included in this policy may be held liable:
- a. as a person or organization engaged in the manufacture, distribution, sale or serving of alcoholic beverages; and
    - 1) when an ***insured*** serves or provides alcoholic beverages at a fee; whether for profit or otherwise and whether a license is required or not; or
    - 2) when an ***insured*** serves or provides alcoholic beverages free; if a license is required for such activities.
  - b. if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed:
    - 1) by, or because of the violation of any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage; or
    - 2) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

But, part b.2) of this exclusion does not apply with respect to liability of an ***insured*** as owner or lessor described in b. above;
8. Any obligation of the ***insured*** under a workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
9. ***Bodily injury***:
- a. to any employee of the ***insured*** arising out of and in the course of his/her employment by the ***insured*** for which the ***insured*** may be liable as an employer or in any other capacity;
  - b. sustained by a spouse, child, parent, or sibling of an employee of the ***insured*** as a consequence of ***bodily injury*** to such employee arising out of and in the course of his/her employment by the ***insured***;
  - c. resulting from any obligation of the ***insured*** to indemnify or contribute with another because of damages arising out of such injury.
- This exclusion applies to all claims and ***suits*** by any person or organization for damages because of ***bodily injury*** including damages for care and loss of services.
- This exclusion DOES NOT APPLY to liability assumed by the ***insured*** under an ***insured contract***,
10. ***Property damage*** to:
- a. property ***you*** own, rent, or occupy including costs ***you*** incur to remediate, replace or restore such property. This includes expenses ***you*** incur in efforts to avoid injury or to mitigate damage to the property of others;
  - b. premises ***you*** sell, give away or abandon, if the ***property damage*** arises out of any part of those premises. However, this exclusion does not apply if the premises are ***your work*** and were never occupied, rented or held for rental by ***you***.
  - c. property loaned to ***you*** and property in ***your*** care, custody or control;
  - d. the part(s) of real property on which ***you***, or contractors working on ***your*** behalf, are conducting on-going operations and such ***property damage*** results from those operations; and
  - e. the part(s) of any property requiring repair or restoration because of the improper performance of ***your work*** on that property. However, this exclusion does not apply to ***property damage*** included in the ***products/completed operations*** hazard
- Paragraphs c., d., and e. of this exclusion do not apply to liability assumed under a sidetrack agreement.
- Paragraphs c., d. and e. of this exclusion do not apply with respect to ***property damage*** (other than to ***elevators***) arising out of the use of an ***elevator*** at the ***insured's premises***;
11. ***Property damage to impaired property*** or tangible property that has not been physically injured or destroyed resulting from:
- a. a delay in or lack of performance by or on behalf of the ***named insured***, of any contract or agreement,
  - b. the failure of the ***named insured's products*** or ***work*** to meet the level of performance, quality, fitness or durability warranted or represented by the ***named insured***; or
  - c. a production deficiency resulting in inadequacies or defects in ***your product*** or ***your work***.



This exclusion DOES NOT APPLY to loss of other tangible property resulting from the sudden and accidental physical injury to or destruction of the *named insured's products* or *work* performed by or on behalf of the *named insured*, after such *products* or *work* have been put to use by any person or organization other than an *insured*;

12. *Property damage* to the *named insured's products* arising out of such products or any part of such products including packaging, instructions and warnings;
13. *Property damage* to *work* performed by or on behalf of the *named insured* arising out of the *work*, any portion of the *work*, out of materials, parts or equipment furnished in connection with the *work*;
14. *Bodily injury* and/or *property damage* due to the rendering of or failure to render any *professional service*. This exclusion does not apply to injury defined in the definition of *Incidental Medical Malpractice Injury*;
15. *Property damage* included within:
  - a. the *explosion* definition;
  - b. the *collapse* definition; or
  - c. the *underground property damage* definition;
16. *Bodily injury* and/or *property damage*:
  - a. resulting directly or indirectly from the transmission of a communicable disease by an *insured* or employee of an *insured*;
  - b. arising directly or indirectly out of instances, *occurrences* or allegations of sexual abuse or sexual harassment of any person by an *insured* or employees of an *insured*;
  - c. arising directly or indirectly out of instances, *occurrences* or allegations of criminal activity by an *insured* or by employees of an *insured*;
17. Damages claimed for any loss, cost or expense incurred by *you* or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:
  - a. *your* product;
  - b. *your work*; or
  - c. *impaired property*;if such product, *work* or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.
18. *bodily injury* and/or *property damage* resulting from an *occurrence* of loss or damage discovered prior to the inception of this policy.
19. Punitive damages, exemplary damages or damages other than compensatory damages.

#### **E. WHAT YOU MUST DO IN CASE OF LOSS**

1. **Notice.**
  - a. In case of an *occurrence* or if *you* become aware of anything that indicates there might be a claim under this policy, *you* must give *us* or *our* agent notice (in writing if requested) as soon as practicable;
  - b. The notice to *us* must state:
    - 1) *your* name, policy number and the time, place and circumstances of the *occurrence*; and
    - 2) names and addresses of any potential claimants and witnesses.
2. **Cooperation-You** must cooperate with *us* in performing all acts required by this policy.
3. **Volunteer Payments-You** must not, except at *your* own cost, voluntarily make any payments, assume any obligations, or incur any other expenses except first aid to others at the time of *bodily injury*.
4. **Additional Duties Bodily Injury and/or Property Damage Coverages**-In the event of an *occurrence* which might result in a claim for *bodily injury* and/or *property damage* liability under this policy, *you* must also do the following:
  - a. promptly forward to *us* copies of all notices, demands or legal papers received in connection with the *occurrence*; and
  - b. at *our* request, assist in:
    - 1) making settlements;
    - 2) the conduct of *suits* including attending trials and hearings;
    - 3) enforcing any right of contribution or indemnification against any party who may be liable to any *insured* for the injury or damage;
    - 4) securing and giving evidence; and
    - 5) obtaining the attendance of witnesses.
5. **Medical Reports; Proof and Payment of Claim.**

As soon as practicable, the injured person or someone on his/her behalf shall give to *us* written proof of claim, under oath if required, and shall, after each request from *us*, execute authorization to enable *us* to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by

*us* when and as often as *we* may reasonably require. *We* may pay the injured person or any person or organization rendering the services and the payment shall reduce the amount payable for such injury. Payment shall not constitute an admission of liability by any person or by *us*.

## F. HOW MUCH *WE* PAY FOR LOSS OR CLAIM

For the purpose of determining *our* limit of liability, all *bodily injury* and/or *property damage* arising out of continuous or repeated exposure to substantially the same general condition(s) shall be considered as arising out of one *occurrence*.

1. The limit of liability stated on the Declarations page, the Supplemental Declarations page or attached endorsements and the conditions set forth below fix the maximum amounts *we* will pay for loss regardless of the number of:
  - a. persons insured under this policy;
  - b. persons or organizations who sustain *bodily injury* and/or *property damage*; or
  - c. claims made or *suits* brought.
2. The Each *Occurrence* limit, subject to the aggregate limit of liability, is the most *we* pay for the total of:
  - a. damages under Coverages L and P; and
  - b. *medical expenses* under Coverage M; due to all *bodily injury* and/or *property damage* arising out of a single *occurrence*.
3. The *Products/Completed Operations* each *Occurrence* limit, subject to the *Products/Completed Operations* aggregate limit of liability, is the most *we* will pay for the total of damages under Coverage N due to all *bodily injury* and/or *property damage* arising out of a single *occurrence*.
4. The policy period shown on the Declarations page, the Supplemental Declarations page or other endorsements added to this policy may be for a period of one year or longer. HOWEVER, for the purpose of determining any or all aggregate limits of liability described in this section, or in endorsements attached to this policy, policy period means a one year period beginning with the inception date of the policy (and for each subsequent one year period if applicable).
5. These agreements are extended to include an increase in the aggregate limit of liability in proportion to any policy extension whether required by the issuance of a late or incomplete conditional renewal notice, late non-renewal notice or other reason. The aggregate limit of liability is the most *we* will pay during a policy period for the sum of:
  - a. all damages under Coverage L and P;
  - b. all *medical expenses* under Coverage M.
6. The *Products/Completed Operations Hazard* aggregate limit of liability is the most *we* will pay during a policy period under Coverage N for damages due to injury or damage included under the *Products/Completed Operations Hazard*.
7. Subject to the aggregate limit of liability and the Each *Occurrence* limit, *our* limit of liability for *property damage* covered under Coverage O-Fire Legal Liability is \$50,000 for each *occurrence* unless otherwise indicated on the Declarations page, the Supplemental Declarations page or an endorsement attached to this policy.
8. Under Coverage M-Medical Payments, the limit of liability stated on the Declarations page or Supplemental Declarations page as applicable to *each person* is the limit of *our* liability for all *medical expenses* for *bodily injury* to any one person as the result of any one accident. *Our* total liability for all *medical expenses* for *bodily injury* to two or more persons as the result of any one accident will not exceed the limit of liability stated on the Declarations page or Supplemental Declarations page as applicable to *each accident*.
9. The aggregate limit of liability and the aggregate limit shown for *Products/Completed Operations* apply separately to each consecutive 12-month period beginning with the inception date of the General Liability Coverage shown on the Declarations page, the Supplemental Declarations page or attached endorsements. The aggregate limits apply separately to any remaining policy period of less than twelve months, unless the General Liability coverage has been extended after it was written. In that case, the additional period will be considered part of the last preceding period for the purpose of determining limits.
10. Insurance Under More Than One Policy.
  - a. insurance under this General Liability Coverage is primary except as provided under paragraph 10c. below, or unless otherwise stated in this policy. The amount of *our* liability is not reduced because of other insurance which applies to the loss on an excess basis.
  - b. if the other insurance is also primary, *we* will share in the loss as follows:
    - 1) If the other insurance provides for contribution by equal shares, *we* will pay equal amounts with other insurers until:
      - a) the lowest applicable limit under any one policy is reached; or

- b) the full amount of the loss is paid. If part of the loss remains unpaid, *we* will pay an equal share with the other insurers until the full amount of the loss is paid, or until *we* have paid *our* limit of liability in full.
- 2) If the other insurance does not provide for contribution by equal shares, *we* will pay that proportion of the loss to which *our* applicable limit under this policy bears to the total applicable limit for all insurance covering the loss.
- c. insurance under this General Liability Coverage is excess over any other insurance:
  - 1) if the other insurance, whether primary, excess, contingent or on any basis, provides:
    - a) fire, extended coverage, builders' risk, installation risk or similar coverage for *your work*; or
    - b) fire insurance for the premises rented to *you*; or
  - 2) if the other insurance applies to any loss arising out of the maintenance or use of aircraft, *autos* or watercraft which may be covered by this policy.
- d. When this insurance is excess over any other insurance:
  - 1) *we* will have no duty to defend any claim or *suit* that any other insurer has a duty to defend. If no other insurer defends, *we* will do so. However, *we* will be entitled to the *insured's* rights against all those other insurers.
  - 2) *we* will pay *our* share of the amount of loss, if any, that exceeds the sum of:
    - a) the total amount that all such other insurance would pay for the loss in the absence of this insurance; and
    - b) the total of all deductibles and self-insured amounts required by such other insurance.

*We* will share the remaining loss with any other insurance that is not described in this excess insurance provision and that does not specifically apply in excess of the limits of insurance shown on the Declarations page, the Supplemental Declarations page or attached endorsements of this General Liability Coverage.

## G. PAYMENT OF LOSS OR CLAIM

Any person, who has secured a judgment against an *insured* for a covered loss or has liability established by a written agreement between the claimant, an *insured* and *us*, is entitled to recover under this policy to the extent of the coverage provided.

## H. POLICY CONDITIONS

In addition to the policy *terms* which are contained in other sections of this policy, the following conditions also apply:

1. **Assignment**-Assignment of this policy is not valid without *our* written consent.
2. **Cancellation.**
  - a. by *You-You* may cancel this policy at any time by giving *us* written notice or returning the policy to *us* and stating when thereafter the cancellation is to be effective.
  - b. by *Us-We* may cancel this policy by written notice delivered to or mailed to *you* at the address shown in the policy (and to *your* authorized agent or broker if required). Proof of delivery or mailing is sufficient proof of notice. This notice must be delivered or mailed the required number of days prior to the effective date of the cancellation. For a description of the number of days of required notice, refer to: (1) *Nonpayment of Premium*, (2) *New Policy* or (3) *All Other Situations*.
- c. **When We May Cancel-We** may cancel this policy under the following conditions:
  - 1) *Nonpayment of Premium*-If the premium has not been paid when due, *we* may cancel at any time by delivering or mailing to *you* the required notice at least fifteen days before cancellation is effective. Payment by *you* to the insurer, or to an agent or broker authorized to receive such payment, shall be considered timely if made within fifteen days after mailing to *you* of a notice of cancellation for *nonpayment of premium*.
  - 2) *New Policy*-If this is a new policy which has been in effect less than sixty days, *we* may cancel for any reason by delivering or mailing the required notice to the first *named insured* at the mailing address shown in the policy at least twenty days before cancellation is effective. If upon review during this time period, *we* find that a statutory provision/provisions for cancellation applies/apply, *we* may cancel this policy by mailing written notice to the first *named insured* at the mailing address shown in the policy at least fifteen days before cancellation is effective.
  - 3) *All Other Situations*-After a *covered policy* has been in effect for sixty days, or upon the effective date if such policy is a *renewal*, no notice of cancellation shall become effective until fifteen days after notice is delivered or mailed to the *insured* and such cancellation is based on one or more of the following statutory provisions:
    - a. *nonpayment of premium*;

- b. conviction of a crime arising out of acts increasing the hazard insured against;
  - c. discovery of fraud or misrepresentation in the obtaining of the policy or in the presentation of a claim thereunder;
  - d. after issuance of the policy or after the last *renewal* date, discovery of an act or omission, or a violation of any policy condition, that substantially or materially increases the hazard insured against and which occurred subsequent to inception of the current policy period;
  - e. material physical change in the property insured, occurring after issuance or last annual *renewal* anniversary date of the policy, which results in the property becoming uninsurable in accordance with the insurer's objective, uniformly applied underwriting standards in effect at the time the policy was issued or last *renewed*; or material change in the nature or extent of the risk, occurring after issuance or last *renewal* anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last *renewed*;
  - f. required pursuant to a determination by the superintendent that continuation of the present premium volume of the insurer would jeopardize that insurer's solvency or be hazardous to the interests of policyholders of the insurer, its creditors or the public;
  - g. a determination by the superintendent that the continuation of the policy would violate or would place the insurer in violation of the law;
  - h. where the insurer has reason to believe, in good faith and with sufficient cause, that there is a probable risk or danger that the *insured* will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds, provided, however, that:
    - 1) a notice of cancellation on this ground shall inform the *insured* in plain language that the *insured* must act within ten days if review by the Insurance Department of the ground for cancellation is desired pursuant to item 3) of this subparagraph h.; and
    - 2) notice of cancellation on this ground shall be provided simultaneously by the insurer to the Insurance Department; and
    - 3) upon written request of the *insured* made to the department within ten days from the *insured's* receipt of notice of cancellation on this ground, the Insurance Department shall undertake a review of the ground for cancellation to determine whether or not the insurer has satisfied the criteria for cancellation specified in this subparagraph; if after such review the department finds no sufficient cause for cancellation on this ground, the notice of cancellation on this ground shall be deemed null and void.
  - i. with respect to professional liability insurance policies, revocation or suspension of the *insured's* license to practice his/her profession or, if the *insured* is a hospital, it no longer possesses a valid operating certificate under applicable law.
- d. *We* refund the premium for the unexpired policy period on a pro rata basis.
  - e. **Refund of Premium**-Payment or tender of unearned premium is not a condition of cancellation. If the unearned premium is not refunded with the cancellation notice, it will be sent to *you* within a reasonable time.
  - f. **Loss Notice**-The company must advise the first *named insured* that he/she is entitled to loss information upon written request.
  - g. **Conditional Reinstatement**-If *we* issue a cancellation notice because *you* didn't pay the required premium when due and *you* then tender payment by check, draft or other remittance which is not honored on presentation, *your* policy will terminate on the date and time shown on the cancellation notice and notice *we* issue which waives the cancellation or reinstates the policy is void. This means *we* will not be liable under this policy for claims or damages after the date and time indicated on the cancellation notice. *We* will give *you* notice of the dishonor of *your* remittance as soon as practicable but this shall not interrupt the cancellation of this policy.
3. **Renewal/Nonrenewal.**
- a. **Nonrenewal**-*We* may elect not to *renew* or continue this policy by delivering or mailing to *you* and *your* authorized agent or broker written notice of *our* intent not to *renew*.
    - 1) Such notice must:
      - a) be given at least sixty but not more than one hundred twenty days in advance of the end of the *required policy period*.
      - b) state *our* specific reason(s) for *nonrenewal*.
      - c) be delivered or mailed to *you* at the address shown in the policy and to *your* authorized agent or broker. Proof of delivery or mailing is sufficient proof of notice.

- d) Loss Notice-The company must advise the first *named insured* that he/she is entitled to loss information upon written request.
- e) requirements for *nonrenewal* shall not apply if the *named insured*, or an agent or broker authorized by the *named insured*, or another insurer of the *named insured* has delivered or mailed written notice that the policy has been replaced or is no longer desired.
- 2) Prior to the expiration date of this policy, in the event that a late *nonrenewal* notice is provided by the insurer, the coverage under this policy shall remain in effect:
- at the same *terms* and conditions contained in the expiring policy; and
  - at the lower of the current rates or at the prior period's rates until sixty days after the notice is delivered or mailed unless the *insured* elects to cancel sooner.
- 3) In the event that a timely and substantially complete notice is not provided by the insurer prior to the expiration date of the policy, coverage shall remain in effect:
- on the same *terms* and conditions of the expiring policy;
  - for another *required policy period*; and
  - at the lower of the current rates or the prior period's rates.
- However, if the insurer has established the standards and procedures required by the law relating to notice requirements and the failure to comply with these standards and procedures is a result of inadvertence or clerical mistake, then the rates applicable to the remainder of the additional *required policy period* shall be the insurer's current rates at the *terms* and conditions of the expiring policy.
- 4) The issuance of a late or incomplete *nonrenewal* notice by the insurer shall not create a new annual aggregate liability limit (if any) for the *covered policy*, except that the annual aggregate limit of the expiring policy shall be increased in proportion to the policy extension, including any additional *required policy period*, caused by the late or incomplete notice of *nonrenewal*.
- 5) If the insurer provides a timely notice of *nonrenewal* and thereafter the insurer extends the policy for ninety days or less, an additional notice of *nonrenewal* is not required with respect to the extension period.
- b. **Conditional Renewal**-We may elect to *renew* or continue this policy under certain conditions. We may do so by delivering or mailing to *you* and *your* authorized agent or broker written notice.
- This notice must:
    - be delivered or mailed to *you* at least sixty but not more than one hundred twenty days in advance of the end of the *required policy period*;
    - contain specific reason(s) for the conditional *renewal*;
    - set forth the amount of any premium change if the increase is in excess of 10% unless the increase is due to increased insured values and/or increased coverage or is due to experience rating, retrospective rating or audit;
    - set forth the nature of any proposed change(s) in the policy such as change(s) in limits, change(s) in type(s) of coverage(s), reduction(s) in coverage(s), increased deductible or the addition of an exclusion or exclusions;
    - be delivered or mailed to the *named insured* at the address listed in the policy and to an authorized agent or broker of the *insured*. Proof of delivery or mailing is sufficient proof of notice; and
    - include a statement advising the first *named insured* that upon written request the company will provide loss information.
  - Prior to the expiration date of the policy, in the event that an incomplete or late conditional *renewal* notice is provided by the insurer, the coverage under this policy shall remain in effect at:
    - the same *terms* and conditions of the expiring policy, and
    - the lower of the current rates or the prior period's rates
 until sixty days after the notice is delivered or mailed unless the *insured* elects to cancel sooner. However, if the *insured* elects to accept the *terms*, conditions and rates of the conditional *renewal* notice and renews the policy on that basis, then such *terms*, conditions and rates shall govern the policy upon expiration of such sixty-day period.
  - In the event that a timely and substantially complete conditional *renewal* notice is not provided by the insurer prior to the expiration date of the policy, then coverage under the policy:
    - remains in effect for an additional *required policy period*;
    - remains at the same *terms* and conditions as the expiring policy; and
    - the rates for the additional *policy period* will be the lower of the current rates or the previous period's rates.
 However, if the insurer has established the standards and procedures required by law relating to notice requirements, and the failure to comply with these standards and procedures is a result of inadvertence

or clerical mistake, then the rates applicable to the remainder of the additional *required policy period* shall be the *insured's* current rates at the *terms* and conditions of the expiring policy.

- 4) The issuance of a late or incomplete conditional *renewal* notice by the insurer shall not create a new annual aggregate limit (if any) for the *covered policy*, except that the annual aggregate limit of the expiring policy shall be increased in proportion to the policy extensions including any additional *required policy period*, caused by the late or incomplete conditional *renewal* notice.

However, if the *insured* accepts the *terms* of a conditional *renewal* offer, a new annual aggregate shall become effective as of the inception date of the *renewal*

- c. **Alternate Renewal Notice Procedure**-During the period of time the insurer is assessing its option(s) as to whether to nonrenew or conditionally renew a policy, the insurer must notify the *insured* and his/her authorized agent or broker.

This notice must contain the following:

- 1) The notice must be delivered or mailed at least sixty days prior to the expiration date of the policy;
- 2) The notice must be delivered or mailed to the *named insured* at the address in the policy and to an authorized agent or broker of the *insured*;
- 3) The notice must advise the *insured* that the policy will be either nonrenewed or renewed at different *terms*, conditions or rates;
- 4) The notice must advise the *insured* that a **SECOND NOTICE** will be sent at a later date;
- 5) The notice must advise the *insured* that coverage will continue at the same *terms*, conditions and rates until the later of:
  - a) the expiration date, or
  - b) 60 days after the **SECOND NOTICE** is delivered or mailed.
- 6) The **SECOND NOTICE** sent to the *insured* must advise the *insured*:
  - a) of the specific reason or reasons for *nonrenewal* or conditional *renewal*; and
  - b) of the amount of any premium increase if the increase is in excess of 10% and the nature of any other proposed changes.
- 7) The **SECOND NOTICE** must advise the first *named insured* that he/she is entitled to loss information upon written request.
- 8) If a substantially complete **SECOND NOTICE** is not delivered or mailed until after the expiration date of the policy, the *insured* is entitled to coverage under the policy:
  - a) for an additional *required policy period*;
  - b) at the same *terms* and conditions as the existing policy; and
  - c) at the lower of the current rates or the rates of the previous period.

However, if the insurer has established the standards and procedures required by law relating to notice requirements and the failure to comply with these standards and procedures is a result of inadvertence or clerical mistake, then the rates applicable to the remainder of the additional *required policy period* shall be the *insured's* current rates at the *terms* and conditions of the expiring policy.

- 9) No notice is necessary if the insurer receives a written notice from the *insured*, his/her authorized agent or broker, or another insurer that the policy is no longer desired or has been replaced.

- d. **Policies Written For A Term Of Less Than One Year**-For policies issued to an *insured* for a seasonal purpose or to a policy issued to cover a particular project that will be performed in less than one year, the following provisions apply:

- 1) During the first sixty days such policy is in effect, no cancellation shall become effective until twenty days after written notice is delivered or mailed to the *insured* at the mailing address shown in the policy;
- 2) After a policy has been in effect for sixty days, no notice of cancellation shall become effective until fifteen days after notice is delivered or mailed and such cancellation is based on one or more of the statutory provisions set forth in this form.
- 3) After a policy has been in effect for sixty days, no premium increase for the term of the policy shall be made to become effective unless due to and commensurate with insured value added, subsequent to issuance pursuant to the policy or at the *insured's* request.

4. **Change, Modification, or Waiver of Policy Terms**-A waiver or change of any *terms* of this policy must be issued by *us* in writing to be valid.

5. **Conformity with Statute-Terms** of this policy, in conflict with the statutes of the state where the premises described in the Declarations are located, is amended to conform to such statutes.

6. **Misrepresentation, Concealment or Fraud**-There is no coverage, whether before or after a loss;

- a. if an *insured* has willfully concealed or misrepresented:
  - 1) any material fact or circumstance concerning this insurance; or

- 2) an *insured's* interest.
  - b. if there has been fraud or false swearing by an *insured* regarding any matter relating to this insurance or the subject of this insurance.
7. **Inspection and Audit**-*We* are permitted but not obligated to inspect *your* property and operations. *Our* inspection or any resulting advice or report does not warrant that *your* property or operations are safe, healthful or in compliance with any law, rule or regulation.

*We* may examine and audit the *named insured's* books and records at any time during the policy period, and extensions of the policy period and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

These conditions apply:

- a. An audit to determine final premium under which the initial premium is based on an estimate of the *insured's* exposure base shall be conducted within one hundred eighty (180) days after expiration of *your* policy, and may not be waived except in the following circumstances:
    - 1) the total annual premium attributable to the auditable exposure base is not reasonably expected to exceed \$1500;
    - 2) the policy requires notification to *us* with specific identification of any additional exposure units for which coverage is requested;
    - 3) the policy is a commercial umbrella for which the rate or premium is determined by the application of a factor to the rate or premium of an auditable underlying policy.
  - b. *We* shall, as soon as practicable following an audit, refund or credit *your* account for any return premium due or bill *you* and make a good faith effort to collect any additional premium due *us* as a result of the audit.
  - c. If *you* fail to cooperate with *us* in *our* attempt to conduct such audit, including *your* failure to return any questionnaires or self-audit worksheets, *we* shall non-renew *your* policy upon completion of the current policy term, in accordance with applicable insurance law, due to our inability to establish the proper premium for *your* account.
8. **Subrogation.**
- a. if *we* make a payment under this policy, *we* may require that the *insured* assign to *us* his/her right of recovery against any person for the loss to the extent of the payment. The *insured* must do everything necessary to make this assignment and to secure *our* rights.
  - b. *we* are not liable for any loss if an *insured* does anything after the loss occurs to impair *our* right to recover. *You* may waive *your* right of recovery in writing before a loss occurs without voiding the coverage.
  - c. If *we* pay a loss to or on behalf of an *insured* and the *insured* recovers damages from another person for the same loss, the *insured* shall hold the amount recovered in trust for *us* and shall reimburse *us*.
9. **Suit Against Us**-No *suit* may be brought against *us* to recover amounts due for *bodily injury* and/or *property damage* liability unless:
- a. the *terms* of this policy have been fully complied with; and
  - b. the amount of any *insured's* liability has been conclusively fixed:
    - 1) by a final judgment against the *insured*; or
    - 2) by written agreement of the *insured*, the claimant and *us*.
- No person shall have any right under this policy to join or implead *us* in any action brought to determine an *insured's* liability.
10. **Bankruptcy of an Insured**-Bankruptcy or insolvency of any *insured* or his/her estate does not relieve *us* of any obligations under this policy.
11. **Policy Period**-This policy applies only to *bodily injury* and/or *property damage* which occurs during the policy period.
12. **Liberalization Clause**-If *we* change any form attached to *your* policy, *you* will benefit by any coverage that is broadened or extended. The liberalization clause does not apply if there is any additional premium for the broadened or extended coverage. This change must occur during the policy period or within 45 days prior to the effective date of coverage.
13. **Premium**-All premium for this insurance shall be computed in accordance with *our* rules, rates, rating plans, premiums and minimum premiums applicable to the insurance. Premium designated in this policy as "provisional premium" is a deposit premium only, which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each policy period, the earned premium shall be computed and upon notice to the *named insured* the earned premium shall become due and payable. If the total earned premium for the policy period is less than the premium previously paid, *we* shall return the unearned portion to the *named insured*. The *named insured* shall maintain records of such information for premium computation and shall send copies of such records to *us* at the end of the policy period and at such times during the policy period as *we* may request.

14. **Financial Responsibility Laws**-When this policy is certified as proof of financial responsibility under the provisions of any motor vehicle financial responsibility law, the insurance afforded by this policy for *bodily injury* and/or *property damage* liability shall comply with the provisions of the law to the extent of the coverage and limits of liability required by the law. The *insured* agrees to reimburse *us* for any payment which *we* would not have been obligated to make under the policy except for the agreement contained in this paragraph.
15. In accordance with the applicable Insurance Law and on *your* written request, *we* shall furnish *you* or *your* designated representative a copy of any written estimate(s) of damages to *your* real property. *We* are not obliged to furnish an estimate unless *we* prepared one or had one prepared. *We* will respond within thirty days after the request or preparation, whichever is later. *We* will show all real property deductions under consideration.

## H. NUCLEAR EXCLUSION:

1. This policy does not apply:
  - a. Under any Liability Coverage, to *bodily injury* and/or *property damage*
    - 1) with respect to which an *insured* under this policy is also an *insured* under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, The Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada or any of their successors, or would be an *insured* under any such policy but for its termination upon exhaustion of its limit of liability; or
    - 2) resulting from the *hazardous properties of nuclear material* and with respect to which (a. any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any amending law, or (b) the *insured* is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any U.S. agency, under any agreement entered into by the United States of America, or any U.S. agency, with any person or organization.
  - b. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to *bodily injury* resulting from the *hazardous properties of nuclear material* and arising out of the operation of a *nuclear facility* by any person or organization.
  - c. Under any Liability Coverage, to *bodily injury* and/or *property damage* resulting from the *hazardous properties of nuclear material*, if
    - 1) the *nuclear material* (a) is at any *nuclear facility* owned by, or operated by or on behalf of an *insured*, or (b) has been discharged or dispersed;
    - 2) the *nuclear material* is contained in *spent fuel* or *waste* at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an *insured*; or
    - 3) the *bodily injury* and/or *property damage* arises out of the furnishing by an *insured* of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any *nuclear facility* but if such facility is located within the United States of America, its territories or possessions, or Canada, this exclusion (3) applies only to *property damage* to such *nuclear facility* and any property thereat.
2. Definitions Applicable to the Nuclear Energy Liability Exclusion
  - a. *Hazardous Properties*-include radioactive, toxic or explosive properties.
  - b. *Nuclear Material*-means *source material*, *special nuclear material* or *by-product material*.
  - c. *Source Material*, *Special Nuclear Material* and *By-product Material*-have the meanings given them in the Atomic Energy Act of 1954, or in any law amendatory thereof.
  - d. *Spent Fuel*-means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a *nuclear reactor*.
  - e. *Waste*-means any *waste* material:
    - 1) containing *by-product material* other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its *source material* content; and
    - 2) resulting from the operation by any person or organization of any *nuclear facility* included under the first two paragraphs of the definition of *nuclear facility*.
  - f. *Nuclear Facility*-means:
    - 1) any *nuclear reactor*.
    - 2) any equipment or device designed or used for:
      - a) separating the isotopes of uranium or plutonium;
      - b) processing or utilizing *spent fuel*; or
      - c) handling, processing or packaging *waste*.
    - 3) any equipment or device used for the processing, fabricating or alloying of *special nuclear material* if at any time the total amount of such material in the custody of the *insured* at the premises where such



equipment or device is located consists of or contains more than 25 grams of plutonium or uranium-233 or any combination thereof, or more than 250 grams of uranium-235.

- 4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of *waste*; and includes the site on which any of the foregoing is located, all operations conducted on such sites, and all premises used for such operations.

g. ***Nuclear Reactor***-means any apparatus designed or used:

- 1). to sustain nuclear fission in a self-supporting chain reaction; or
- 2) to contain a critical mass of fissionable material.

h. ***Property Damage***-includes all forms of radioactive contamination of property.



## ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

**THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT** (the "*Agreement*") is made as of the 1<sup>st</sup> day of December, 2021, between **BEACON ARMORY LLC ("BEACON")**, **SPILCO PROPERTIES, LLC ("SPILCO")** and together with Beacon, collectively, the "*Indemnitor*" or the "*Company*", for the benefit of the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "*Agency*").

### RECITALS

**WHEREAS**, the Agency has undertaken at the request of the Company, a project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the "*Building*") located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0), as more fully described on **Schedule A** annexed hereto (the "*Land*"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the subterranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "*Facility*"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Land and the Facility are connected to an adjacent building located at 229-37 West Fayette Street, Syracuse, New York (the land and building collectively referred to as the "*Adjacent Building*"), as more fully described on **Schedule A** annexed hereto, which is owned in fee by the Company.

**WHEREAS**, the Company is the fee owner of the Land and Facility; and

**WHEREAS**, to satisfy certain lender requirements, the Adjacent Building is being pledged as collateral to support a note to cover, among other things, the construction costs of the Project and the Company requested, and the Agency agreed, to spread its interest in the Project Facility to include the Adjacent Building.

**NOW, THEREFORE**, in consideration of the premises, Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Indemnitor, intending to be legally bound, hereby agrees as follows:

1. **Recitals; Definitions.**

(a) The foregoing recitals are incorporated into this Agreement by this reference.

(b) Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Table of Definitions attached to the Agency Lease as Exhibit "C."

2. **Representations and Warranties.**

(a) Except as disclosed in Schedule B annexed hereto, Indemnitor represents and warrants that it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of oil, petroleum or chemical liquids or solids, liquid or gaseous products or any hazardous wastes or hazardous substances (collectively, "*Hazardous Substances*"), as those terms are used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or in any other federal, state or local law governing hazardous substances, as such laws may be amended from time to time (collectively, the "*Hazardous Waste Laws*"), at, upon, under or within the Project Facility, the Adjacent Building or any contiguous real estate, and (ii) it has not caused or permitted to occur, and shall not permit to exist, any condition which may cause a discharge of any Hazardous Substances at, upon, under or within the Project Facility, the Adjacent Building or on any contiguous real estate.

(b) Except as disclosed in the reports listed on Schedule B annexed hereto, Indemnitor further represents and warrants that (i) it has not been nor will be involved in operations at or near the Project Facility or the Adjacent Building which operations could lead to (A) the imposition of liability on Indemnitor or on any subsequent or former owner of the Project Facility or the Adjacent Building or (B) the creation of a lien on the Project Facility or the Adjacent Building under the Hazardous Waste Laws or under any similar laws or regulations; and (ii) it has not permitted, and will not permit, any tenant or occupant of the Project Facility or the Adjacent Building to engage in any activity that could impose liability under the Hazardous Waste Laws on such tenant or occupant, on Agency, the Indemnitor or on any other owner of any of the Project Facility or the Adjacent Building.

3. **Covenants.**

(a) Indemnitor shall comply strictly and in all respects with the requirements of the Hazardous Waste Laws and related regulations and with all similar laws and regulations and shall notify Agency immediately in the event of any discharge or discovery of any Hazardous Substance at, upon, under or within the Project Facility or the Adjacent Building which is not otherwise already disclosed in Schedule B. Indemnitor shall promptly forward to Agency copies of all orders, notices, permits, applications or other communications and reports in connection with any discharge or the presence of any Hazardous Substance or any other matters relating to the Hazardous Waste Laws or any similar laws or regulations, as they may affect the Project Facility or the Adjacent Building.

(b) Promptly upon the written request of Agency, Indemnitor shall provide Agency, at Indemnitor's expense, with an environmental site assessment or environmental audit report prepared by an environmental engineering firm acceptable to the requesting Person, to assess with a reasonable degree of certainty the presence or absence of any Hazardous Substances and the potential costs in connection with abatement, cleanup or removal of any Hazardous Substances found on, under, at or within the Project Facility or the Adjacent Building.

4. **Indemnity.**

(a) Indemnitor shall at all times indemnify and hold harmless Agency against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges, and expenses, of any nature whatsoever suffered or incurred by Agency, whether as contract vendor, owner, mortgagee, as mortgagee in possession, or as successor-in-interest to Indemnitor by foreclosure deed or deed in lieu of foreclosure, under or on account of the Hazardous Waste Laws or any similar laws or regulations, including the assertion of any lien thereunder, with respect to:

(1) any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility or the Adjacent Building whether or not the same originates or emanates from the Project Facility, the Adjacent Building or any contiguous real estate including any loss of value of the Project Facility as a result of any of the foregoing;

(2) any costs of removal or remedial action incurred by the United States Government or any costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss incurred pursuant to any Hazardous Waste Laws;

(3) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Project Facility or the Adjacent Building; and/or

(4) any other environmental matter affecting the Project Facility or the Adjacent Building within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state or local agency.

The obligations of Indemnitor under this Agreement shall arise whether or not the Environmental Protection Agency, any other federal agency or any state or local agency has taken or threatened any action in connection with the presence of any Hazardous Substances.

(b) In the event of any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility or the Adjacent Building, whether or not the same originates or emanates from the Project Facility, the Adjacent Building or any contiguous real estate, and/or if Indemnitor shall fail to comply with any of the requirements of the Hazardous Waste Laws or related regulations or any other environmental law or regulation, Agency may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the

Project Facility or the Adjacent Building and/or take any and all other actions as Agency shall deem necessary or advisable in order to abate the discharge of any Hazardous Substance, remove the Hazardous Substance or cure the noncompliance of Indemnitor.

(c) Indemnitor acknowledges that Agency has relied upon the representations, warranties, covenants and indemnities of Indemnitor in this Agreement. All of the representations, warranties, covenants and indemnities of this Agreement shall survive the repayment of Indemnitor's obligations under the Agency Lease or other Company Documents.

5. **Attorney's Fees.** If Agency retains the services of any attorney in connection with the subject of the indemnity herein, Indemnitor shall pay Agency's costs and reasonable attorneys' fees thereby incurred. Agency may employ an attorney of its own choice.

6. **Interest.** In the event that Agency incurs any obligations, costs or expenses under this Agreement, Indemnitor shall pay such Person immediately on demand, and if such payment is not received within ten (10) days, interest on such amount shall, after the expiration of the ten-day period, accrue at the interest rate set forth in the Agency Lease until such amount, plus interest, is paid in full.

7. **No Waiver.** Notwithstanding any terms of the Company Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Company Documents; (ii) any sale, assignment or foreclosure of the Agency Lease or any sale or transfer of all or part of the Project Facility or the Adjacent Building; (iii) the accuracy or inaccuracy of the representations and warranties made by Indemnitor under any of the Company Documents; or (iv) the release of Indemnitor or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Company Documents by operation of law, Agency's voluntary act, or otherwise; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

8. **Waiver by Indemnitor.** Indemnitor waives any right or claim of right to cause a marshalling of Indemnitor's assets or to cause Agency to proceed against any of the security for the Agency Lease before proceeding under this Agreement against Indemnitor or to proceed against Indemnitor in any particular order; Indemnitor agrees that any payments required to be made hereunder shall become due on demand; Indemnitor expressly waives and relinquishes all rights and remedies (including any rights of subrogation) accorded by applicable law to indemnitors or guarantors.

9. **Releases.** Any one or more of Indemnitor and any other party liable upon or in respect of this Agreement or the Agency Lease may be released without affecting the liability of any party not so released.

10. **Amendments.** No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

11. **Joint and Several Liability.** In the event that this Agreement is executed by more than one party as Indemnitor, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against each Indemnitor, whether or not an action is brought against any other person or whether or not any other person is joined in such action or actions.

12. **Consent to Jurisdiction.** Indemnitor consents to the exercise of personal jurisdiction over Indemnitor by any federal or state court in the State of New York and consent to the laying of venue in any jurisdiction or locality in the City of Syracuse. Service shall be effected by any means permitted by the court in which any action is filed.

13. **Notices.** All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

(a) If to the Agency, to: City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202  
Attention: Chairman

With a copy to: City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202  
Attn: Corporation Counsel

and

Bousquet Holstein PLLC  
110 West Fayette Street, Suite 1000  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

(b) To the Company: Beacon Armory LLC  
325 S. Salina Street, 3<sup>rd</sup> Floor  
Syracuse, New York 13202  
Attn: Jeffrey Appel

and

Spilco Properties, LLC  
96 Locust Avenue  
New Rochelle, New York 10801  
Attn: Spiro Spiliotis

With a copy to: Newman & Lickstein  
109 South Warren Street, Suite 404  
Syracuse, New York 13202  
Attn: Scott A. Lickstein, Esq.

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.

14. **Waivers.** The parties waive trial by jury in any action brought on, under or by virtue of this Agreement. Indemnitor waives any right to require Agency at any time to pursue any remedy in such Person's power whatsoever. The failure of Agency to insist upon strict compliance with any of the terms hereof shall not be considered to be a waiver of any such terms, nor shall it prevent Agency from insisting upon strict compliance with this Agreement or any other Company Document at any time thereafter.

15. **Severability.** If any clause or provisions herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision shall be held for naught as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

16. **Inconsistencies Among the Company Documents.** Nothing contained herein is intended to modify in any way the obligations of Indemnitor under the Agency Lease or any other Company Document. Any inconsistencies among the Company Documents shall be construed, interpreted and resolved so as to benefit Agency.

17. **Successors and Assigns.** This Agreement shall be binding upon Indemnitor's successors, assigns, heirs, personal representatives and estate and shall inure to the benefit of Agency and its successors and assigns.

18. **Controlling Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.



IN WITNESS WHEREOF, Indemnitor has executed this Agreement as of the date first above written.

**BEACON ARMORY LLC**

By: [Signature]  
Jeffrey Appel, Managing Member

**SPILCO PROPERTIES, LLC**

By: [Signature]  
Spiro Spiliotis, Managing Member

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

On the 17<sup>th</sup> day of December, in the year 2021 before me, the undersigned, a notary public in and for said state, personally appeared **Jeffrey Appel**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

[Signature]  
Notary Public  
MARGARET D. KIRKBY  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01K14691918  
Qualified in Oswego County  
Commission Expires Sep. 30, 2028

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

On the 17<sup>th</sup> day of December, in the year 2021 before me, the undersigned, a notary public in and for said state, personally appeared **Spiro Spiliotis**, 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 hi capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

[Signature]  
Notary Public

MARGARET D. KIRKBY  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01K14691918  
Qualified in Oswego County  
Commission Expires Sep. 30, 2028

## SCHEDULE "A"

### LEGAL DESCRIPTION

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Nos. 1, 2, 30, 31, 40 and 41 of Block No. 105-D, Syracuse, New York, according to a Map made by B.F. Green and filed in the Onondaga County Clerk's Office on October 11, 1850 and bounded and described as follows:

Beginning at a point in the southerly line of West Fayette Street, said point being N. 89° 44' 00" W., 208.855 feet distant, measured along said street line from the westerly line of South Clinton Street, said point being where the centerline of the west wall of the so-called Tallman and Palmer Store, now or formerly known as No. 225 West Fayette Street, intersects the south line of West Fayette Street; thence southwardly along the center of said wall and the same continued about 115.0 feet to a point in range with the north face of the north wall of the six story brick building erected by E.F. Holden on Walton Street; thence westwardly along said range line about 27/100 of a foot to the northeasterly corner of said six story building; thence southwardly along the east face of the brick wall of said building about 90.0 feet to a point in the north line of Walton Street, said point being N. 89° 45' 00" W., 208.856 feet distant, measured along the said northerly line of Walton Street, from the westerly line of South Clinton Street; thence N. 89° 45' 00" W., 64.304 feet along said northerly line of Walton Street to a point; thence N. 00° 13' 20" W., 110.08 feet to a point; thence N. 89° 44' 00" W., .54 of a foot to a point; thence N. 00° 16' 00" E., 95.0 feet to a point in the southerly line of West Fayette Street; thence S. 89° 44' 00" E., 65.045 feet along said street line to the place of beginning.

**ALSO, ALL THAT TRACT OR PARCEL OF LAND**, situate lying and being under the waters of the old channel of Onondaga Creek (now filled in), situate in the City of Syracuse, County of Onondaga and State of New York, said tract or parcel being all of the old channel of Onondaga Creek lying within the premises describe above.

**SCHEDULE "B"**

**EXCEPTIONS**

**NONE**



## CLOSING RECEIPT

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY LEASE/SUBLEASE TRANSACTION BEACON ARMORY LLC - BENTLEY LOFTS PROJECT

**CLOSING RECEIPT** executed December 22, 2021 by the City of Syracuse Industrial Development Agency (the "**Agency**") and Beacon Armory LLC and Spilco Properties, LLC (collectively, the "**Company**") in connection with a certain project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the "**Building**") located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the "**Land**"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

In addition to the foregoing, and to facilitate with the financing of the Project, the Company has also leased its interest in a building adjacent to the Land and Facility located at 229-37 West Fayette Street, Syracuse, New York (the land and building collectively referred to as the "**Adjacent Building**") which is owned by the Company.

#### WITNESSETH:

(1) The Agency has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party, and acknowledges receipt from the Company of its administrative fee.

(2) The Company has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party. The Company acknowledges that it is responsible for remitting, at closing, all of the Agency's legal fees associated with the Project and the Company Documents to date.

(Signature page to Closing Receipt)

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:  \_\_\_\_\_  
Judith DeLaney, Executive Director

**BEACON ARMORY LLC**

By: \_\_\_\_\_  
Jeffrey Appel, Managing Member

**SPILCO PROPERTIES, LLC**

By: \_\_\_\_\_  
Spiro Spiliotis, Managing Member

(Signature page to Closing Receipt)

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Judith DeLaney, Executive Director

**BEACON ARMORY LLC**

By: \_\_\_\_\_  
Jeffrey Appel, Managing Member

**SFILCO PROPERTIES, LLC**

By: \_\_\_\_\_  
Spiro Spiliotis, Managing Member





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**City of Syracuse**  
**Industrial Development Agency**  
City Hall Commons, 6<sup>th</sup> Floor  
201 East Washington Street  
Syracuse, NY 13202  
Tel (315) 448-8100 Fax (315) 435-3669

---

December 1, 2021

Beacon Armory LLC  
325 S. Salina Street, 3rd Floor  
Syracuse, New York 13202  
Attn: Jeffrey Appel, Managing Member

Spilco Properties, LLC  
96 Locust Avenue  
New Rochelle, New York 10801  
Attn: Spiro Spilco, Managing Member

Re: City of Syracuse Industrial Development Agency  
Beacon Armory LLC – Bentley Lofts Project  
Sales Tax Appointment Letter

Dear Mr. Appel:

Pursuant to a resolution duly adopted on September 30, 2021, the City of Syracuse Industrial Development Agency (the “**Agency**”) appointed Beacon Armory LLC and Spilco Properties, LLC (collectively, the “**Company**”) the true and lawful agent of the Agency to undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the “**Building**”) located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the “**Land**”); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the “**Facility**”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction,

renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved by the Agency for the benefit of the Project shall not exceed **\$200,000**.

This appointment includes, and this letter evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Project Facility and the following activities as they relate to any renovation, improvement, equipping and completion of any of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with renovation, improvement and equipping; (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with renovation, improvement and equipping; and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in, upon or under such building or facility, including all repairs and replacements of such property, and with respect to such specific purchases or rentals, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York.

This agency appointment includes the power to delegate such agency, in whole or in part, to a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "*Additional Agents*"). Additional Agents must be specifically appointed by the Company in accordance and compliance with the terms of the Agency Lease dated as of December 1, 2021 by and between the Agency and the Company (the "*Agency Lease*"). The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for itself and each Additional Agent who provide materials, equipment, supplies or services to the Project Facility and deliver said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment. The Agency's obligation to execute any Form ST-60 relative to an Additional Agent is subject to the satisfaction of the conditions in the Agency Lease relative to such appointments.

The Company agrees, whenever requested by the Agency, to provide, or cause its Additional Agents to provide and certify, or cause to be certified, such information regarding use of local labor, job creation, exemptions from State and local sales and use tax, real property taxes and mortgage recording taxes 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, including but not limited to those required by §875 of the Act.

The Company acknowledges and agrees that pursuant to Section 875(3) of the Act, and in conjunction with the Agency's Recapture of Benefits Policy (the "***Recapture Policy***") dated as of June 21, 2016 and the Project Agreement between the Agency and the Company dated as of December 1, 2021, the Agency shall, and in some circumstances may, recover, recapture, receive or otherwise obtain from the Company some or all of the Financial Assistance (the "***Recapture Amount***").

The Company further acknowledges and agrees that none of the State and local sales and use tax exemption benefits comprising the Financial Assistance approved by the Agency for the benefit of the Project shall be used on the Adjacent Building (as defined in the Agency Lease).

Each supplier or vendor should identify the Project Facility on each bill or invoice and indicate thereon which of the Company or its Additional Agents acted as agent for the Agency in making the purchase.

In order to be entitled to use this exemption, you and each Additional Agent should present to the supplier or other vendor of materials for the Project Facility, a completed "IDA Agent or Project Operator Exempt Purchase Certificate" (Form ST-123).

In addition, General Municipal Law §874(8) requires you to file an Annual Statement with the New York State Department of Taxation and Finance ("***NYSDTF***") on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions you and your Additional Agents have claimed pursuant to the agency we have conferred on you with respect to this Project. The penalty for failure to file such statement is the removal of your authority to act as our agent. In addition, you must provide a copy of the completed Form ST-340 to the Agency within ten (10) days of the date it is due to be filed with the NYSDTF.

The agency created by this letter is limited to the Project Facility and will expire on **December 31, 2022**, unless the Agency Lease is terminated early in accordance with its terms in which case this appointment shall terminate at that time.

This letter is provided for the sole purpose of evidencing, in part, the exemption from New York State Sales and Use Taxes **for this project only**. No other principal/agent relationship is intended or may be implied or inferred by this letter.

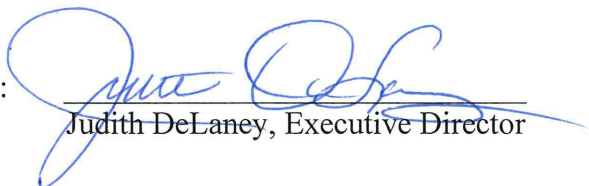
The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole

Beacon Armory LLC  
Spilco Properties, LLC  
December 1, 2021  
Page 4

party liable thereunder. By acceptance of this letter, the vendor hereby acknowledges the limitations on liability described herein.

Very truly yours,

CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Judith DeLaney, Executive Director





Department of Taxation and Finance

# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

# ST-60

(1/18)

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

### IDA information

Name of IDA City of Syracuse Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 31022106
Street address 201 E. Washington Street, 6th Floor			Telephone number (315 ) 473-3275
City Syracuse	State NY	ZIP code 13202	Email address (optional)

### Project operator or agent information

Name of IDA project operator or agent Beacon Armory LLC		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer Identification or Social Security number 86-2735708
Street address 325 S. Salina Street		Telephone number ( 917 ) 848-0152	Primary operator or agent? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
City Syracuse	State NY	ZIP code 13202	Email address (optional)

### Project information

Name of project Beacon Armory LLC - Bentley Lofts Project			
Street address of project site 120-24 Walton Street			
City Syracuse	State NY	ZIP code	Email address (optional)
Purpose of project other - commercial			

Description of goods and services intended to be exempted from New York State and local sales and use taxes building materials, equipment, fixtures and furnishings installed in and around the Project Facility			
Date project operator or agent appointed (mmdyy) 120121	Date project operator or agent status ends (mmdyy) 123122	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>	
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 2,500,000.00		Estimated value of New York State and local sales and use tax exemption provided: 200,000.00	

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA Judith DeLaney		Print title Executive Director	
Signature 		Date 12-21-21	Telephone number ( 315 ) 448-8127



Department of Taxation and Finance

# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

# ST-60

(1/18)

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

### IDA information

Name of IDA City of Syracuse Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 31022106
Street address 201 E. Washington Street, 6th Floor			Telephone number (315 ) 473-3275
City Syracuse	State NY	ZIP code 13202	Email address (optional)

### Project operator or agent information

Name of IDA project operator or agent Spilco Properties, LLC		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or Social Security number 46-1869302
Street address 96 Locust Avenue		Telephone number ( 917 ) 848-0152	Primary operator or agent? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
City New Rochelle	State NY	ZIP code 10801	Email address (optional)

### Project information

Name of project Beacon Armory LLC - Bentley Lofts Project			
Street address of project site 120-24 Walton Street			
City Syracuse	State NY	ZIP code	Email address (optional)
Purpose of project other - commercial			

Description of goods and services intended to be exempted from New York State and local sales and use taxes building materials, equipment, fixtures and furnishings installed in and around the Project Facility			
Date project operator or agent appointed (mmdyyy) 120121	Date project operator or agent status ends (mmdyyy) 123122	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>	
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 2,500,000.00		Estimated value of New York State and local sales and use tax exemption provided: 200,000.00	

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA Judith DeLaney	Print title Executive Director
Signature 	Date 12-21-21
Telephone number ( 315 ) 448-8127	



# BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET • ONE LINCOLN CENTER • SUITE 1000 • SYRACUSE, NEW YORK 13202 • PH: 315.422.1500 • FX: 315.422.3549

December 23, 2021

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
7016 1370 0000 9380 5967

New York State Tax Department  
IDA Unit  
Building 8, Room 738  
W.A. Harriman Campus  
Albany, New York 12227

Re: IDA Appointment of Project Operator or Agent for Sales Tax Purposes  
City of Syracuse Industrial Development  
Beacon Armory LLC – Bentley Lofts Project, IDA Project No. 31022106

Dear Ladies and Gentlemen:

Enclosed for filing on behalf of the City of Syracuse Industrial Development Agency, please find two form ST-60s in connection with the appointment by the IDA of Beacon Armory LLC and Spilco Properties, LLC as its agents for sales tax purposes in connection with the IDA project identified therein.

Please do not hesitate to contact me with any questions. Thank you.

Very truly yours,

Susan R. Katzoff

SRK:llm  
Enclosures

5535847\_1



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

New York State Tax Department  
 IDA Unit  
 Building 8, Room 738  
 W.A. Harriman Campus  
 Albany, New York 12227



9590 9402 5128 9092 7653 52

2. Article Number (Tracking)

7016 1370 0000 9380 5967

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

ALBANY, NY 12227

DEC 27 2011

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

7016 1370 0000 9380 5967

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com).

**ADDITIONAL USE**

Postmark Here 0491 17

Certified Mail Fee	\$3.75	\$7.05
Extra Services & Fees (check box, add fee as appropriate)		
<input type="checkbox"/> Return Receipt (hardcopy)	\$4.00	\$11.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00	\$0.00
Postage	\$0.53	\$0.53
Total Postage	\$7.28	\$15.58

Sent To: New York State Tax Department  
 IDA Unit  
 Building 8, Room 738  
 W.A. Harriman Campus  
 Albany, New York 12227

City, State, ZIP+4®: Albany, NY 12227

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions



Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2229

## Onondaga County Clerk Recording Cover Sheet

Received From :  
BRADT LUCIANI

Return To :  
NEWMAN & LICKSTEIN  
COURTHOUSE  
PICK-UP BOX

Method Returned : MAIL

**First PARTY 1**

BEACON ARMORY LLC

**First PARTY 2**

SOLVAY BANK

Index Type : Land Records

Instr Number : 2021-00062417

Book : Page :

Type of Instrument : Mortgage

Type of Transaction : Mtg Type A

Recording Fee: \$181.50

Recording Pages : 27

The Property affected by this instrument is situated in Syracuse, in the County of Onondaga, New York

**Mortgage Taxes**

Property Located : Syracuse

Serial Number : DM14679

Mortgage Amount : \$6,562,500.00

Basic Tax : \$0.00

Local Tax : \$0.00

Additional Tax : \$16,406.25

Transportation Auth Tax : \$0.00

SONYMA : \$0.00

County Tax : \$0.00

Total : \$16,406.25

Total Fees : \$16,587.75

State of New York

County of Onondaga

I hereby certify that the within and foregoing was recorded in the Clerk's office for Onondaga County, New York

On (Recorded Date) : 12/27/2021

At (Recorded Time) : 2:09:37 PM



Doc ID - 046109890027

*Lisa Dell*  
Lisa Dell, County Clerk



This sheet constitutes the Clerks endorsement required by Section 319 of Real Property Law of the State of New York

Entered By: RSWEENIE Printed On : 12/27/2021 At : 2:13:39PM

## MORTGAGE AND SECURITY AGREEMENT

**\$6,562,500.00**

**THIS MORTGAGE AND SECURITY AGREEMENT**, made the 22<sup>nd</sup> day of December, 2021 by **BEACON ARMORY LLC**, a New York limited liability company, with a mailing address of 325 South Salina Street, 3<sup>rd</sup> Floor, Syracuse, New York 13202 and **SPILCO PROPERTIES, LLC**, A New York limited liability company, with a mailing address of 96 Locus Avenue, Apt. A, New Rochelle, New York 10801 (collectively, the "Mortgagor") and the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency, with a mailing address of 201 East Washington St., 6<sup>th</sup> Floor, Syracuse, NY 13202 (the "Agency"), to **SOLVAY BANK**, a banking corporation with its principal office located at with an address of P.O. Box 19050, Syracuse, New York 13209-4050 (the "Mortgagee").

**WITNESSETH**, that to secure the payment of an indebtedness evidenced by a certain note bearing even date herewith in the principal sum of *Six Million Five Hundred Sixty Two Thousand Five Hundred and 00/100 (\$6,562,500.00) Dollars* lawful money of the United States, as the same may be modified, renewed or extended (the "Note") which sum, with interest thereon is to be paid by Mortgagor to Mortgagee in accordance with the terms of said Note, and also to secure the payment by Mortgagor to Mortgagee of all sums expended or advanced by Mortgagee pursuant to any covenant, term or provision of this Mortgage or any other Loan Document (as that term is defined in the Note), and to secure the performance of each covenant, term and provision by Mortgagor to be performed pursuant to this Mortgage or any other Loan Document, Mortgagor and Agency hereby mortgage to Mortgagee, its successors and assigns their respective interest in, the following described property, excepting therefrom the Agency's Unassigned Rights (as that term is defined in the Agency Lease (as defined herein)) (collectively, the "Mortgaged Property") whether now owned or held or hereafter acquired:

**ALL THAT TRACT OR PARCEL OF LAND** situate in the County of Onondaga, State of New York, and being the same premises described in Schedule "A" hereto annexed and made a part hereof (the "Premises").

**ALL THE RESPECTIVE RIGHT, TITLE AND INTEREST** of Mortgagor and Agency in and to any and all buildings, structures and improvements, including without limitation, the foundations and footings thereof, now or at any time hereafter erected, constructed or situated upon the Premises or any part thereof (the "Improvements").

**TOGETHER** with all fixtures, chattels and articles of personal property now or hereafter attached to or used in connection with the Premises, together with any and all replacements thereof and additions thereto (the "Chattels"). This Mortgage shall be considered a financing statement pursuant to the provisions of the Uniform Commercial Code, covering fixtures which are affixed to the Premises. The types of collateral covered hereby are described in this paragraph. The debtor

is **BEACON ARMORY LLC** and **SPILCO PROPERTIES, LLC**. The secured party is **SOLVAY BANK**. Their addresses are set forth above.

**TOGETHER** with all the respective right, title and interest, if any, of Mortgagor and Agency of, in and to the bed of any street, road or avenue, opened or proposed, in front of, adjoining or abutting upon the Premises to the center line thereof.

**TOGETHER** with any and all awards heretofore and hereafter made to the present and all subsequent owners of the Premises by any governmental or other lawful authorities for the taking by eminent domain of the whole or any part of the Premises, or any easement therein, including any awards for any changes of grade of streets, which said awards are hereby assigned to Mortgagee, who is hereby authorized to collect and receive the proceeds of any such awards from such authorities and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the amount owing on account of this Mortgage and the Note, notwithstanding the fact that the amount owing thereon may not then be due and payable.

**TO HAVE AND TO HOLD** the Mortgaged Property unto the Mortgagee, its successors and assigns, **PROVIDED ALWAYS** that if Mortgagor shall pay or cause to be paid to Mortgagee, its successors and assigns, said principal sum of money and other charges mentioned and set forth in this Mortgage and in the Note, together with interest thereon, then and from thence forth, the Mortgaged Property and the estate hereby granted shall cease, determine and be void.

**AND** Mortgagor and, where specifically noted, Agency covenants with Mortgagee as follows:

1. **REPRESENTATIONS.** Agency (as to subsection (a) only and with respect thereto the Agency's representations are solely as they relate to the Agency and no other party and are limited solely to this Mortgage and the Assignment of Leases and Rents and no other Loan Documents) and Mortgagor hereby represents and warrants to Mortgagee as follows:

(a) That the Loan Documents (as that term is defined in the Note) are in all respects valid and legally binding obligations, enforceable in accordance with their respective terms.

(b) That the execution and delivery of the Loan Documents by Mortgagor, Agency and any guarantor do not, and the performance and observance by Mortgagor and any guarantor of their obligations thereunder will not, contravene or result in a breach of (i) if Mortgagor or any guarantor purports to be a corporation, any provision of Mortgagor's or any guarantor's corporate charter or by-laws, or, if Mortgagor or any guarantor purports to be partnership, any provision of Mortgagor's or any guarantor's partnership agreement or certificate, or (ii) any governmental requirements, or (iii) any decree or judgement binding on Mortgagor or any guarantor, or (iv) any agreement or instrument binding on Mortgagor or any guarantor or any of their respective properties, nor will the same result in the creation of any lien or security interest under any such agreement or instrument.

(c) That there are no actions, suits, investigations or proceedings pending, or, to the knowledge of Mortgagor, threatened against or affecting Mortgagor (or any general partner of Mortgagor), any guarantor or the Mortgaged Property, or involving the validity or enforceability of any of the Loan Documents or the priority of the lien thereof, or which will affect Mortgagor's ability to repay the Note, at law or in equity or before or by any governmental authority.

(d) That Mortgagor has no knowledge of any violations or notices of violations of any requirements.

(e) If Mortgagor (or any general partner of Mortgagor if Mortgagor is a partnership) or any guarantor purports to be a corporation, that (i) it is a corporation duly organized, validly existing and in good standing under the laws of the state in which it is incorporated, (ii) if required by the laws of the state in which the Premises is located, it is duly qualified to do business and is in good standing therein, (iii) it has the corporate power, authority and legal right to own and operate its properties and assets, carry on the business now being conducted and proposed to be conducted by it, and to engage in the transactions contemplated by the Loan Documents, and (iv) the execution and delivery of the Loan Documents to which it is a party and the performance and observance of the provisions thereof have been duly authorized by all necessary corporate actions.

If Mortgagor (or any general partner of Mortgagor if Mortgagor is a partnership) or any guarantor is a partnership, that (i) it is duly formed and validly existing under the laws of the state in which it is formed, (ii) if required by the laws of the state in which the Premises is located, it is fully qualified to do business therein, (iii) it has the power, authority and legal right to own and operate its properties and assets, to carry on the business conducted and proposed to be conducted by it, and to engage in the transactions contemplated by the Loan Documents, and (iv) the execution and delivery of the Loan Documents to which it is a party and the performance and observance of the provisions thereof have all been duly authorized by all necessary actions of its partners.

(f) That all utility services necessary and sufficient for the construction, development and operation of the Mortgaged Property for its intended purposes are presently available to the Premises (or the boundaries thereof if this Mortgage is executed in conjunction with a construction loan) through dedicated public rights of way or through perpetual private easements, approved by Mortgagee, with respect to which the Mortgage creates a valid, binding and enforceable second lien, including, but not limited to, water supply, storm and sanitary sewer, gas, electric and telephone facilities, and drainage.

(g) That neither the Mortgaged Property nor any portion thereof is now damaged or injured as result of any fire, explosion, accident, flood or other casualty or has been the subject of any taking, and to the knowledge of Mortgagor, no taking is pending or contemplated.

(h) That any brokerage commissions due in connection with the transactions contemplated hereby have been paid in full and that any such commissions coming due in the

future will be promptly paid by Mortgagor. Mortgagor agrees to and shall indemnify Mortgagee from any liability, claims or losses arising by reason of any such brokerage commissions. This provision shall survive the repayment of the Note and shall continue in full force and effect so long as the possibility of such liability, claims or losses exists.

(i) That the financial statements of Mortgagor and any guarantor previously delivered to Mortgagee are true and correct in all respects, have been prepared in accordance with generally accepted accounting principles consistently applied, and fairly present the respective financial conditions of Mortgagor and any guarantor as of the respective dates thereof and the results of their operations for the periods covered thereby; that no adverse change has occurred in the assets, liabilities, or financial conditions reflected therein since the respective dates thereof; and that no additional borrowings have been made by Mortgagor or any guarantor since the date thereof other than the borrowing contemplated hereby.

(j) That all federal, state and other tax returns of Mortgagor and any guarantor required by law to be filed have been filed, that all federal, state and other taxes, assessments and other governmental charges upon Mortgagor and any guarantor or their respective properties which are due and payable have been paid, and that Mortgagor and any guarantor have set aside on their books provisions reasonably adequate for the payment of all taxes for periods subsequent to the periods for which such returns have been filed.

(k) That Mortgagor has made no contract or arrangement of any kind or type whatsoever (whether oral or written, formal or informal), the performance of which by the other party thereto could give rise to a lien or encumbrance on the Mortgaged Property, except for contracts (all of which have been disclosed in writing to Mortgagee) made by Mortgagor with parties who have executed and delivered lien waivers to Mortgagee, and which, in the opinion of Mortgagee's counsel, will not create rights in existing or future lien claimants which may be superior to the lien of the Mortgage.

(l) That the rights of way for all roads necessary for the full utilization of the Improvements for their intended purposes have either been acquired by the Mortgagor, the appropriate governmental authority or have been dedicated to public use and accepted by such governmental authority, and all such roads shall have been completed, or all necessary steps shall have been taken by Mortgagor and such governmental authority to assure the complete construction and installation thereof prior to the date upon which access to the Mortgaged Property via such roads will be necessary. All curb cuts, driveway permits and traffic signals necessary for access to the Mortgaged Property are existing or have been fully approved by the appropriate governmental authority.

(m) That no Event of Default (hereinbelow defined) exists and no event which but for the passage of time, the giving of notice or both would constitute an Event of Default has occurred.

2. **THE INDEBTEDNESS.** Mortgagor will pay the indebtedness as provided in the Note or in any modification, renewal or extension of the Note.

3. **INSURANCE.** At all times that the Note is outstanding, including without limitation during any construction period (a "Construction Period"), Mortgagor shall maintain insurance with respect to the Premises the Improvements and the Chattels against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including but not limited to:

(a) Prior to completion of construction of the Improvements, if the same have not been completed, builder's risk all risk (or equivalent coverage) insurance upon any work done or material furnished in connection with construction of the Improvements, issued to Mortgagor and Mortgagee and written in non-reporting completed form in the principal amount of the Note and with respect to the Improvements and at such time that builder's risk insurance shall not be available due to completion of the construction of the Improvements, or if all Improvements have been completed, insurance protecting the interests of the Mortgagor and Mortgagee as their interests may appear against loss or damage to the Improvements by fire, lightning, flood and other casualties normally insured against, with a uniform standard extended coverage endorsement, such insurance at all times to be in an amount of the Note or the total cash replacement value of the Improvements not covered by builder's risk insurance, as determined at least once every three years by a recognized appraiser or insurer selected by the Mortgagor and approved by the Mortgagee.

(b) Boiler and machinery insurance covering physical damage to the Improvements and to the major components of any central heating, air conditioning or ventilation systems and such other equipment as Mortgagee shall designate.

(c) Business income insurance in an amount sufficient to prevent Mortgagor from becoming a co-insurer within the terms of the applicable policies and sufficient to recover one (1) year's gross receipts from all sources of income for the Mortgaged Property, including, without limitation, rental income (such rental income to be based upon the Mortgaged Property being occupied at a ninety five (95%) percent or more occupancy rate), plus the amount of real estate taxes assessed against the Mortgaged Property for the year prior to the issuance of the policy.

(d) Workers' compensation insurance, disability benefits insurance, and such other form of insurance which the Mortgagor is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of Mortgagor who are located at or assigned to the Premises or who are responsible for the construction of the Improvements.

(e) Insurance protecting Mortgagor and Mortgagee against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by accident or occurrence, in such amounts as may be designated from time to time by Mortgagee, excluding liability imposed upon the Mortgagor by any applicable workers' compensation law, or such other amounts as may be required in writing by the Mortgagee; and a blanket excess liability policy in an amount reasonably satisfactory to the Mortgagee protecting Mortgagor and Mortgagee against any loss or liability or damage for personal injury or property damage.



4. **OTHER INSURANCE PROVISIONS.** All insurance required under this Mortgage shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Mortgagor and authorized to write such insurance in the State of New York and acceptable to the Mortgagee. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other entities engaged in businesses similar in size, character and other respects to those in which the Mortgagor is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses to Mortgagor and Mortgagee as their respective interests may appear, and (ii) at least thirty (30) days written notice to Mortgagor and Mortgagee prior to cancellation, reduction in policy limits or material change in coverage thereof. The insurance required by Section 3(a) shall contain a New York Standard mortgagee endorsement in favor of Mortgagee. All insurance required hereunder shall be in form, content and coverage satisfactory to the Mortgagee. The original policy, or a certified duplicate copy thereof, for all insurance required hereby shall be delivered to Mortgagee. The proceeds of any insurance which are paid to the Mortgagee may be applied by the Mortgagee toward the payment of any monies secured by this Mortgage, or, may be paid over, wholly or in part, to the Mortgagor for the repair of the Improvements or for any other purpose or object satisfactory to the Mortgagee. Mortgagor shall deliver to Mortgagee at least thirty (30) days prior to the expiration date of any insurance coverages required hereunder, a certificate reciting that there is in full force and effect, with a term covering at least the next succeeding year, insurance in the amounts and of the types required hereunder.

5. **ALTERATIONS.** No Improvements shall be structurally altered, except as set forth in the Agency Lease, removed or demolished without the prior written consent of Mortgagee.

6. **APPOINTMENT OF RECEIVER.** Mortgagee in any action to foreclose this Mortgage shall be entitled, without notice and as a matter of right and without regard to the adequacy of any security of the indebtedness or the solvency of Mortgagor, upon application to any court having jurisdiction, to the appointment of a receiver of the rents, income and profits of the Mortgaged Property.

If an Event of Default (hereinbelow defined) occurs under this Mortgage, as a matter of right and without regard to the adequacy of any security for the Note, the Mortgagor and Agency, upon demand of the Mortgagee, shall surrender the possession of, and it shall be lawful for Mortgagee, by such officer or agent as it may appoint, to take possession, of all or any part of the Mortgaged Property together with the books, papers, and accounts of the Mortgagor pertaining thereto, and to hold, operate and manage the same, and from time to time to make all needed repairs and improvements as Mortgagee shall deem wise; and, if Mortgagee deems it necessary or desirable, to complete construction and equipping of any Improvements and in the course of such construction or equipping to make such changes to the same as it may deem desirable; and Mortgagee may sell the Mortgaged Property or any part thereof, or institute proceedings for the complete or partial foreclosure of the lien of this Mortgage on the Mortgaged Property, or lease the Premises or any part thereof in the name and for the account of the Mortgagor or Mortgagee and collect, receive and sequester the rents, revenues, earnings, income, products and profits therefrom, and out of the same and any other monies received hereunder pay or provide for the payment of, all proper costs and expenses of taking, holding, leasing, selling and managing the

same, including reasonable compensation to Mortgagee, its agents and counsel, and any charges of Mortgagee hereunder, and any taxes and other charges prior to the lien of this Mortgage which Mortgagee may deem it wise to pay.

7. **PAYMENT OF TAXES.** Mortgagor shall pay all taxes imposed pursuant to Article 11 of the Tax Law or any other statute, order or regulation, whether said tax is imposed at the time of recording or subsequent thereto. This obligation shall survive the satisfaction or other termination of this Mortgage. Mortgagee shall pay the tax imposed by Section 253 1-a(a), if applicable, if the Mortgaged Property consists of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential units, each dwelling unit having its own separate cooking facilities.

8. **PAYMENT OF MORTGAGE TAXES.** Mortgagor shall pay all taxes imposed pursuant to Article 11 of the Tax Law or any other statute, order or regulation, whether said tax is imposed at the time of recording or subsequent thereto. This obligation shall survive the satisfaction or other termination of this Mortgage. Mortgagee shall pay the tax imposed by Section 253 1-a(a), if applicable, if the Mortgaged Property consists of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential units, each dwelling unit having its own separate cooking facilities.

9. **STATEMENT OF AMOUNT DUE.** Mortgagor, within five (5) days upon request in person or within fifteen (15) days upon request by mail, will furnish a written statement duly acknowledged of the amount due on this Mortgage and whether any offsets or defenses exist against the said indebtedness.

10. **NOTICES.** Any notices required or permitted to be given hereunder shall be: (i) personally delivered or (ii) given by registered or certified mail, postage prepaid, return receipt requested, or (iii) forwarded by overnight courier service, in each instance addressed to the addresses set forth at the head of this Mortgage, or such other addresses as the parties may for themselves designate in writing as provided herein for the purpose of receiving notices hereunder. All notices shall be in writing and shall be deemed given, in the case of notice by personal delivery, upon actual delivery, and in the case of appropriate mail or courier service, upon deposit with the U.S. Postal Service or delivery to the courier service.

11. **WARRANTY OF TITLE.** Mortgagor warrants the title to the Premises, Improvements and Chattels.

12. **SALE IN ONE PARCEL.** In case of a sale, the Premises may be sold in one parcel together with the Improvements and Chattels. Should the Premises consist of more than one parcel, in the event of a foreclosure of this Mortgage or any mortgage at any time consolidated with this Mortgage, Mortgagor and Agency agree that Mortgagee shall be entitled to a judgment directing the referee appointed in the foreclosure proceeding to sell all of the parcels constituting the Premises at one foreclosure sale, either as a group or separately and that the Mortgagor and Agency expressly waive any right that it may now have or hereafter acquire to (i) request or require that the parcels be sold separately or (ii) request, if Mortgagee has elected to sell parcels separately,

that there be a determination of any deficiency amount after any such separate sale or otherwise require a calculation of whether said parcel or parcels separately sold were conveyed for their "fair market value".

13. **ASSIGNMENT OF RENTS AND LEASES.** The rents, income, security deposits and profits of the Premises and all leases, excepting therefrom the Agency Lease by and between the Mortgagor as lessee and the Agency as lessor (the "Agency Lease") and Company Lease by and between the Mortgagor as lessor and the Agency as lessee (the "Company Lease" and together with the Agency Lease, collectively the "Agency Leases"), each dated as of December 1, 2021, at any time existing are hereby assigned to Mortgagee as further security for the payment of said indebtedness, and Mortgagor and Agency shall, on demand, surrender possession of the Premises and Improvements and Chattels to Mortgagee, and hereby consents that, at any time after such demand, Mortgagee may enter upon and take possession of the Premises and Improvements and Chattels and let the same and collect all rents, income and profits therefrom which are due or to become due and apply the same, after payment of all charges and expenses, on account of any part of said indebtedness, whether matured or not, but Mortgagee hereby waives the right to enter upon and take possession of the Premises and Improvements and Chattels for the purpose of collecting said rents, income and profits, and Mortgagor shall be entitled to collect and receive said rents, income and profits (except as might be otherwise provided in any assignment of rents and leases executed in connection with this Mortgage), until the occurrence of an Event of Default. If an Event of Default occurs, Mortgagee, by virtue of such right to possession, or as the agent of Mortgagor and Agency may dispossess, by the usual summary proceedings, any tenant then or thereafter in default in the payment of any rent, and Mortgagor and Agency hereby irrevocably appoints Mortgagee the agent of Mortgagor and Agency for such purpose. In the event that Mortgagor and Agency are an occupant of the Premises or the Improvements, Mortgagor and Agency agree to surrender possession of the Premises or Improvements so occupied as Mortgagee may demand and in default of so doing, Mortgagor and Agency may also be dispossessed by the usual summary proceedings. Mortgagor and Agency make these covenants for the benefit of Mortgagee and any subsequent owner of the Mortgaged Property and these covenants shall become effective immediately after the happening of any Event of Default solely on the determination of Mortgagee, provided Mortgagee shall give notice of such determination to Mortgagor and Agency. In case of foreclosure and the appointment of a receiver of rents, the covenants herein contained shall inure to the benefit of such receiver.

14. **NEGATIVE COVENANTS.** Mortgagor will not (i) execute an assignment of the rents, income or profits, or any part thereof from the Mortgaged Property except to Mortgagee, or (ii) except where the tenant is in default thereunder, terminate or consent to the cancellation or surrender of any lease of the Premises or Improvements or of any part thereof, now existing or hereafter to be made, having an unexpired term of two (2) years or more, except that any lease may be canceled provided that promptly after the cancellation or surrender thereof a new lease is entered into with a new tenant having a credit standing, in the judgment of the Mortgagee, at least equivalent to that of the tenant whose lease was canceled, on substantially the same terms as the terminated or canceled lease, or modify any such lease so as to shorten the unexpired term thereof or so as to decrease the amount of the rents payable thereunder, or (iii) accept prepayments of any sums to become due under such leases, except prepayments of rent for more than one (1) month

in advance or prepayments in the nature of security for the performance of the tenants thereunder, (iv) in any other manner impair the value of the Mortgaged Property or the security of this Mortgage or (v) further encumber, alienate, hypothecate, grant a security interest in or grant any other interest whatsoever in the Mortgaged Property. Restrictions (ii) and (iii) are made with reference to Section 291-f of the Real Property Law and actions in violation of those provisions shall be voidable at the option of the Mortgagee. No rent reserved under any lease of the Premises or Improvements has been assigned or anticipated, other than the Mortgagee, and no rent for any period subsequent to the date hereof has been collected in advance of the due date thereof. Mortgagor will not execute any lease of all or a substantial portion of the Premises or Improvements except for actual occupancy by the tenant thereunder, and will at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all leases of the Premises or Improvements now or hereafter existing, on the part of the landlord thereunder to be kept and performed and will at all times do all things necessary to compel performance by the tenant under each lease of all obligations, covenants and agreements by such tenant to be performed thereunder. If any of such leases provide for the giving by the tenant of certificates with respect to the status of such leases, Mortgagor shall exercise its right to request such certificates within five (5) days of any demand therefor by Mortgagee. Mortgagor shall furnish to Mortgagee, upon request of Mortgagee to do so, a written statement containing the names of all tenants of the Premises or Improvements, the terms of their respective leases, the space occupied and the rentals payable thereunder.

15. **APPRAISAL; LOAN TO VALUE RATIO.** For the purposes of this Section, the following terms shall be defined as follows:

(a) "Appraisal" shall mean an appraisal of the fair market value of the Mortgaged Property prepared by an Appraiser.

(b) "Appraiser" shall mean an appraiser selected by Mortgagor and approved by Mortgagee.

(c) "Loan To Value Ratio" shall mean the percentage obtained by dividing the then outstanding principal balance under the Note by the fair market value of the Premises set forth in the Appraisal.

(d) "Target Loan To Value Ratio" shall mean seventy five percent (75%) or less of the "as complete and stabilized" value of the Premises.

Within ninety (90) days from the date Mortgagee has mailed a written notice to Mortgagor requesting the same, Mortgagor shall provide Mortgagee, at Mortgagor's expense, with an Appraisal of the Mortgaged Property. An Appraisal may be required not more frequently than once every twelve (12) months except that it may also be required prior to any extension or renewal of the Note.

When Mortgagee receives the Appraisal, it will determine the Loan To Value Ratio and if the Loan To Value Ratio is greater than the Target Loan To Value Ratio, the Mortgagor must, within thirty (30) days after receipt of the Appraisal, do one of the following:

(e) Provide Mortgagee with collateral in addition to the Mortgaged Property (and any other collateral for the Note) which is in all respects acceptable to the Mortgagee which will reduce the Loan To Value Ratio to the Target Loan To Value Ratio; or

(f) Make such principal payments (which will be accepted by Mortgagee without the payment of any prepayment penalty chargeable under the Note) as will reduce the principal balance of the Note to an amount which will reduce the Loan To Value Ratio to the Target Loan To Value Ratio; or

(g) Pay all sums due Mortgagee under the Note or any other Loan Document (as that term is defined in the Note).

16. **BOOKS AND RECORDS.**

(a) In addition to any requirements elsewhere in the Loan Documents, Mortgagor shall keep and maintain at all times at Mortgagors' addresses stated in this Mortgage, or such other place as Mortgagee may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Mortgaged Property and copies of all written contracts, leases and other instruments which affect the Mortgaged Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Mortgagee.

(b) Upon request of Mortgagee in writing, Mortgagor shall promptly provide Mortgagee with all documents reasonably requested by Mortgagee prepared in the form and manner called for in such request and as may reasonably relate to the operation or condition thereof, or the financial condition of Mortgagor or any party obligated on the Note or under any guaranty, including, without limitation, all leases or leasehold interests granted to or by Mortgagor, rent rolls and tenant lists, rent and damage deposit ledgers, operating statements, profit and loss statements and balance sheets, personal financial statements of Mortgagor or income tax returns (including quarterly returns), any or all of which documents shall be audited or certified as true and accurate by a certified public accountant, if requested by Mortgagee, and shall cover such period or periods as may be specified by Mortgagee.

(c) In addition, Mortgagor shall promptly furnish or cause to be furnished to Mortgagee, to the extent any tenant prepares the same or the same are required by any tenant's lease, annual financial statements of any tenant of the Mortgaged Property where such tenant leases fifteen (15%) percent or more of the gross leasable area of the Improvements, each such statement to be delivered as soon as practicable following the end of each fiscal year of such tenant, but in any event within one hundred twenty (120) days thereafter, and each such statement to include balance sheets, statements of operations and statements of changes in financial position as of the end of such year.

17. **FUTURE LAWS.** In the event of the passage after the date of this Mortgage of any federal, state or municipal law, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way, the laws for the taxation of mortgages or debts secured by mortgages, or the manner of collection of any such taxes, so as to affect Mortgagee, this Mortgage, or said indebtedness, Mortgagee shall have the right to give thirty (30) days' written notice to Mortgagor requiring the payment of said indebtedness. If such notice be given, said indebtedness shall become due, payable and collectible at the expiration of said thirty (30) days.

18. **PROVISIONS REGARDING USE OF MORTGAGED PROPERTY.**  
Mortgagor warrants and represents that:

(a) Mortgagor is not responsible for any action or omission, and does not know of any action or omission by any prior owner, that would cause the Mortgaged Property to be subject to forfeiture pursuant to any law, rule or regulation (a "Forfeiture").

(b) The Mortgaged Property has not been acquired with any proceeds from a transaction or an activity that would cause the Mortgaged Property to be subject to Forfeiture.

Mortgagor covenants that Mortgagor will not use, and will not permit any third party to use, the Mortgaged Property or any portion thereof or interest therein for any purpose or activity that would cause a Forfeiture thereof.

19. **ACTIONS AND PROCEEDINGS.** If any action or proceeding be commenced to which action or proceeding Mortgagee is made a party and in which it becomes necessary in the opinion of Mortgagee to defend or uphold the lien of this Mortgage, all sums paid by Mortgagee for the expense of any litigation to prosecute and defend the rights and lien created by this Mortgage, including reasonable counsel fees, costs and allowances, shall, together with interest thereon be a lien on the Mortgaged Property and secured by this Mortgage and shall be collectible in like manner as said indebtedness and shall be paid by Mortgagor on demand.

20. **SECURITY INTEREST UNDER THE UNIFORM COMMERCIAL CODE.** Mortgagee is authorized to sign as the agent of Mortgagor such agreement in addition to this Mortgage as Mortgagee at any time may deem necessary or proper or require to grant to Mortgagee a perfected security interest in the Chattels. Mortgagor and Agency hereby authorize Mortgagee to file financing statements (as such term is defined in said Uniform Commercial Code) with respect to the Chattels, at any time, without the signature of Mortgagor. Mortgagor will, however, at any time upon request of Mortgagee, sign such financing statements. Mortgagor will pay all filing fees for the filing of such financing statements and for the refiling thereof at the times required, in the opinion of Mortgagee, by said Uniform Commercial Code. If the lien of this Mortgage be subject to any security agreement covering the Chattels, then in the event of any default under this Mortgage, all the right, title and interest of Mortgagor in and to any and all of the Chattels is hereby assigned to Mortgagee, together with the benefit of any deposits or payments now or hereafter made thereof by Mortgagor or the predecessors or successors in title of Mortgagor in the Mortgaged Property.

21. **CONDEMNATION.** Any and all awards heretofore and hereafter made to Mortgagor and all subsequent owners of the Mortgaged Property by any governmental or other lawful authorities for the taking by eminent domain of the whole or any part of the Mortgaged Property or any easement therein, including any awards for any changes of grade of streets, are hereby assigned to Mortgagee, who is hereby authorized to collect and receive the proceeds of any such awards from such authorities, to give proper receipts and acquittances therefor and to apply the same toward the payment of the amount owing on account of this Mortgage and said indebtedness, notwithstanding the fact that the amount owing thereon may not then be due and payable; and Mortgagor hereby covenants and agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid awards to Mortgagee free, clear and discharged of any and all encumbrances of any kind or nature whatsoever. Mortgagor shall continue to make all payments required by the Note until any such award shall have been actually received by Mortgagee and any reduction in said indebtedness resulting from the application by Mortgagee of such award shall be deemed to take effect only on the date of such receipt.

Notwithstanding the foregoing, if any one or more of the portions of the Mortgaged Property described in subparagraphs (a), (b) and (c) below shall be damaged or taken through condemnation, either temporarily or permanently, then the entire balance due under the Note and any other Loan Documents shall, at the option of Mortgagee, become immediately due and payable:

(a) Any portion or portions of the Improvements or the support or foundation of any portion or portions of the Improvements; or

(b) Ten (10%) percent or more of any parking area; or

(c) Any portion or portions of the Premises which, when so damaged or taken, would result either in (i) an impairment of access to the Improvements from the publicly dedicated rights of way now adjoining the Premises, or (ii) the failure of the Improvements to comply with any building code, zoning or other governmental laws or regulations, lease or other agreement to which the Mortgaged Property is subject.

Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney in fact for Mortgagor, to commence, appear in and prosecute in Mortgagor's or Mortgagee's name, any action or proceeding relating to any condemnation or other taking of the Mortgaged Property and to settle or compromise any claim in connection with such condemnation or other taking.

22. **TITLE TO MORTGAGED PROPERTY.** Mortgagor is now the owner of the Mortgaged Property upon which this Mortgage is a valid second lien for the amount above specified, with interest thereon at the rate set forth in the Note and there are no defenses or offsets to this Mortgage or to the said indebtedness.

23. **LEASES OF THE MORTGAGED PROPERTY.** Mortgagor will not lease all or any portion of the Mortgaged Property or amend, modify or terminate any now existing or future

lease of the Mortgaged Property without the prior written consent of Mortgagee. Notwithstanding the foregoing, all leases, excepting therefrom the Agency Leases, covering more than fifteen percent (15%) of the gross leasable area of the Mortgaged Property (if the Mortgaged Property is improved rental property) must require the tenant thereunder to provide Mortgagee with annual financial statements of the tenant certified to by an independent certified public accountant. Mortgagor, at Mortgagee's request, shall furnish Mortgagee with executed copies of all leases hereafter made of all or any part of the Mortgaged Property, and all leases now or hereafter entered into will be in form and substance subject to the approval of Mortgagee. Upon Mortgagee's request, Mortgagor shall make a separate and distinct assignment to Mortgagee, as additional security, of all leases hereafter made a part of the Mortgaged Property.

24. **TRANSFER OF MORTGAGED PROPERTY.** In the event of the sale, conveyance or transfer, by deed, any other voluntary or involuntary act or by operation of law or otherwise (including the entry into any land sale contract or other similar agreement) of any interest in any of the stock of Mortgagor, if Mortgagor be a corporation, or partnership interest, if Mortgagor be a partnership, or of the Mortgaged Property or a part thereof, while this Mortgage shall remain a lien thereon, the full balance of the indebtedness then remaining unpaid, with interest, shall, at the option of the Mortgagee, or its assigns, be immediately due and payable without notice or demand unless the prior written consent of the Mortgagee to such sale, conveyance, or transfer shall have been obtained. A mortgage of the Mortgaged Property to any mortgagee other than the Mortgagee shall be deemed a conveyance for the purpose of this Section. For avoidance of doubt, the termination of the Agency Leases shall not be considered a transfer hereunder.

25. **ACCESS.** Mortgagee, by its employees or agents, shall at all times have the right to enter upon the Mortgaged Property during reasonable business hours for the purpose of examining and inspecting the same.

26. **REAL PROPERTY LAW.** All covenants hereof, which are in addition to those set forth in Sections 254 and 291-f of the Real Property Law, shall be construed as affording to Mortgagee rights additional to, and not exclusive of, the rights conferred under the provisions of said Sections 254 and 291-f.

27. **PERFORMANCE OF MORTGAGOR'S COVENANTS BY MORTGAGEE.** In the event of any default in the performance of any of the covenants, terms, or provisions of Mortgagor under this Mortgage, Mortgagee may, at the option of Mortgagee, perform the same and the cost thereof, with interest, shall immediately be due from Mortgagor to Mortgagee and secured by this Mortgage.

28. **REMEDIES NOT EXCLUSIVE.** Mortgagee shall have the right from time to time, to take action to recover any amounts of past due principal indebtedness and interest thereon, or any installment of either, or any other sums required to be paid under the covenants, terms and provisions of this Mortgage or the Note, as the same become due, whether or not the principal indebtedness secured, or any other sums secured by the Note or this Mortgage shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any



other action, for default or defaults by Mortgagor existing at the time such earlier action was commenced.

29. **ADDITIONAL ACTS AND DOCUMENTS.** Mortgagor covenants that it will do, execute, acknowledge, deliver, file and/or record, or cause to be recorded every and all such further acts, deeds, conveyances, advances, mortgages, transfers and assurances, in law as Mortgagee shall require for the better assuring, conveying, transferring, mortgaging, assigning and confirming unto Mortgagee all and singular the Mortgaged Property.

30. **REMEDIES CUMULATIVE.** The rights and remedies herein afforded to Mortgagee shall be cumulative and supplementary to and not exclusive of any other rights and remedies afforded the holder of this Mortgage and the Note.

31. **SUCCESSORS.** All of the provisions of this Mortgage shall inure to the benefit of Mortgagee and of any subsequent holder of this Mortgage and shall be binding upon Mortgagor and each subsequent owner of the Mortgaged Property.

32. **EFFECT OF RELEASES.** Mortgagee, without notice, may release any part of the security described herein, or any person or entity liable for any indebtedness secured hereby without in any way affecting the lien hereof upon any part of the security not expressly released, and may agree with any party obligated on said indebtedness or having any interest in the security described herein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not in any way release or impair the lien hereof, but shall extend the lien hereof as against the title of all parties having any interest in said security, which interest is subject to said lien, and no such release or agreement shall release any person or entity obligated to pay any indebtedness secured hereby.

33. **WAIVERS.** Any failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the covenants, terms and provisions of this Mortgage shall not be deemed to be a waiver of any of the covenants, terms and provisions of this Mortgage, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all of the covenants, terms and provisions of this Mortgage to be performed by Mortgagor. Neither Mortgagor nor any other person or entity now or hereafter obligated for the payment of the whole or any part of said indebtedness shall be relieved of such obligation by reason of (i) the failure of Mortgagee to comply with any request of Mortgagor, or of any other person or entity so obligated, (ii) the failure of Mortgagee to take action to foreclose this Mortgage or otherwise enforce any of the covenants, terms and provisions of this Mortgage or the Note, (iii) the release, regardless of consideration, of the whole or any part of the security held for payment of said indebtedness or (iv) any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Mortgagee modifying the covenants, terms and provisions of this Mortgage or the Note without first having obtained the consent of Mortgagor or such other person or entity. In the last mentioned event, Mortgagor and all such other persons or entities shall continue liable to make such payments according to the terms and provisions of any such agreement or extension or modification unless expressly released and discharged in writing by Mortgagee. Mortgagee may release, regardless of consideration, any part of the security held

for payment of said indebtedness without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. Mortgagee may resort for the payment of said indebtedness to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

34. **INTEREST ON ADVANCES.** Wherever, under the provisions of this Mortgage or by law, Mortgagee is entitled to interest on advances made or expenses incurred, such interest shall be computed at a rate per annum which shall be the interest rate payable under the Note.

35. **MORTGAGEE NOT OBLIGATED.** Nothing herein contained shall be construed as making the payment of any insurance premiums, taxes or assessments obligatory upon Mortgagee, although Mortgagee may pay same, or as making Mortgagee liable in any way for loss, damage or injury, resulting from the non-payment of any such insurance premiums, taxes or assessments.

36. **LIEN LAW.** Mortgagor will, in compliance with Section 13 of the Lien Law, receive the advances secured by this Mortgage and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

37. **ENVIRONMENTAL WARRANTIES AND COVENANTS.**

(a) Warranties. Mortgagor makes the following representations and warranties: (i) Mortgagor (or the present owner of the Mortgaged Property, if different) is in compliance in all respects with all applicable federal, state and local laws and regulations, including, without limitation, those relating to toxic and hazardous substances and other environmental matters (the "Laws"), (ii) no portion of the Mortgaged Property is being used or has been used at any previous time, for the disposal, storage, treatment, processing or other handling of any hazardous or toxic substances, in a manner not in compliance with the Laws, (iii) the soil and any surface water and ground water which are a part of the Mortgaged Property are free from any solid wastes, toxic or hazardous substance or contaminant and any discharge of sewage or effluent; and (iv) neither the federal government nor the State of New York Department of Environmental Conservation or any other governmental or quasi governmental entity has filed a lien on the Mortgaged Property, nor are there any governmental, judicial or administrative actions with respect to environmental matters pending, or to the best of the Mortgagor's knowledge, threatened, which involve the Mortgaged Property.

(b) Inspection. Mortgagor agrees that Mortgagee or its agents or representatives may, at any reasonable time and at Mortgagor's expense inspect Mortgagor's books and records and inspect and conduct any tests on the Mortgaged Property including taking soil samples in order to determine whether Mortgagor is in continuing compliance with the Laws.

(c) Agreement to Comply. If any environmental contamination is found on the Mortgaged Property for which any removal or remedial action is required pursuant to Law,

ordinance, order, rule, regulation or governmental action, Mortgagor agrees that it will at its sole cost and expense, take such removal or remedial action promptly and to Mortgagee's satisfaction.

(d) Indemnification. Mortgagor agrees to defend, indemnify and hold harmless Mortgagee, its employees, agents, officers and directors from and against any claims, actions, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, attorney and consultant fees, investigations and laboratory fees, court costs and litigation expenses of whatever kind or nature known or unknown, contingent or otherwise) arising out of or in any way related to: (i) the past or present disposal, release or threatened release of any hazardous or toxic substances on the Mortgaged Property; (ii) any personal injury (including wrongful death or property damage, real or personal) arising out of or related to such hazardous or toxic substances; (iii) any lawsuit brought or threatened, settlement reached or government order given relating to such hazardous or toxic substances; and/or (iv) any violation of any law, order, regulation, requirement, or demand of any government authority, or any policies or requirements of Mortgagee, which are based upon or in any way related to such hazardous or toxic substances.

(e) Other Sites. Mortgagor knows of no on-site or off-site locations where hazardous or toxic substances from the operation of any Improvement or otherwise have been stored, treated, recycled or disposed of.

(f) Leases. Mortgagor agrees not to lease or permit the sublease of the Mortgaged Property to a tenant or subtenant whose operations may result in contamination of the Mortgaged Property with hazardous or toxic substances.

(g) Non-Operation by Mortgagee. Mortgagor acknowledges that any action Mortgagee takes under this Mortgage shall be taken to protect Mortgagee's security interest only; Mortgagee does not hereby intend to be involved in the operations of the Mortgagor.

(h) Compliance Determinations. Mortgagor acknowledges that any determinations Mortgagee makes under this Section regarding compliance with environmental laws shall be made for Mortgagee's benefit only and are not intended to be relied upon by any other party.

(i) Survival of Conditions. The provisions of this Section shall be in addition to any other obligations and liabilities Mortgagor may have to Mortgagee at common law, and shall survive the transactions contemplated herein.

(j) Other Insurance. Mortgagee may, at its option, require Mortgagor to carry adequate insurance to fulfill Mortgagor's obligations under this Section.

(k) Definitions. The term "hazardous substance" shall include, without limit, any substance or material defined in 42 U.S.C. Section 9601 (as the same may be amended from time to time), the Hazardous Materials Transportation Act (as amended from time to time), and the New York Environmental Conservation Law or the Resource Conservation And Recovery Act (as each

may be amended from time to time) and in any regulations adopted or publications promulgated pursuant to any of the foregoing.

38. **EVENTS OF DEFAULT.** The whole of the principal sum of the indebtedness secured hereby and interest thereon, and all other sums due and payable hereunder shall become due, at the option of Mortgagee, if one or more of the following events (an "Event of Default") shall happen:

- (a) The occurrence of an "Event of Default" under the Note; or
- (b) If Mortgagor defaults in the payment of any tax, water rate or sewer rent or payment under any Pilot Agreement against the Mortgaged Property for fifteen (15) days after the same become due and payable or fails to exhibit to Mortgagee, within fifteen (15) days after demand, receipts showing payment of all taxes, water rates or sewer rents; or
- (c) The actual or threatened removal, demolition or structural alteration, in whole or in part, of any Improvement, without the prior written consent of Mortgagee; or the removal, demolition or destruction in whole or in part, of any Chattels without replacing the same with Chattels at least equal in quality and condition to those replaced, free from any security interest or other encumbrance thereon and free from any reservation of title thereto; or the commission of any waste in respect to the Mortgaged Property; or
- (d) Failure of Mortgagor to pay within fifteen (15) days after notice and demand any installment of any assessment made against the Premises for local improvements, heretofore or hereafter made, which assessment is, or may become, a lien on the Premises prior to the lien of this Mortgage, notwithstanding the fact that such installment be not due and payable at the time of such notice and demand; or
- (e) Failure of Mortgagor to pay the said indebtedness secured by this Mortgage within (30) days after notice and demand, in the event of the passage after the date of this Mortgage of any federal, state or municipal law deducting from the value of land for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages, or of debts secured by mortgages, or the manner of collection of any such taxes, so as to affect Mortgagee, this Mortgage or the indebtedness which is secured, notwithstanding that Mortgagor, before or after such notice, may have the option to pay or contest the payment of such tax; or
- (f) Failure of Mortgagor to maintain the Improvements on the Premises in a rentable or tenantable state of repair to the satisfaction of Mortgagee, for thirty (30) days after notice of such failure has been given to Mortgagor, or to comply with any order or requirement of any municipal, state, federal or other governmental authority having jurisdiction of the Premises within thirty (30) days after such order or requirement shall have been issued by any such authority; or failure of Mortgagor or of any tenant holding under Mortgagor, to comply with any and all and singular the statutes, requirements, orders or decrees of any federal, state or municipal authority relating to the use of the Mortgaged Property, or of any part thereof; or failure of Mortgagor to observe and timely perform all of the covenants, terms and provisions contained in any lease now

or hereafter affecting the Premises or the Improvements or any portion thereof, on the part of the landlord to be observed and performed; or

(g) Failure of Mortgagor, in the event of the entry of a final judgment for the payment of money against Mortgagor, to discharge such judgment or to have it stayed pending appeal within thirty (30) days from the entry thereof, or if such judgment shall be affirmed on appeal, the failure to discharge such judgment within thirty (30) days from the entry of such affirmance; or

(h) Failure of Mortgagor to pay within fifteen (15) days after notice and demand any filing or refiling fees required hereunder; or

(i) Failure of Mortgagor or any occupant of the Mortgaged Property, to allow or permit Mortgagee, or its duly authorized agent, to inspect said Mortgaged Property at any time and from time to time during reasonable business hours; or

(j) Default for ten (10) days after notice and demand in the observance or performance of any other covenant or agreement under this Mortgage.

39. **INTEREST TO ACCRUE.** If the whole of the principal sum evidenced by the Note and interest, shall become due by exercise of the option of the Mortgagee after default by the Mortgagor under any of the terms, covenants and conditions of this Mortgage and/or the Note, or if the whole of said principal sum and interest shall mature and become due under the terms, covenants and conditions of this Mortgage and the Note regardless of default, if any, on the part of the Mortgagor, then interest on said principal sum shall continue to accrue at the rate provided for in the Note, and in this Mortgage, until said principal sum is fully paid.

40. **FLOOD INSURANCE.** In addition to the terms and provisions of this Mortgage with regard to insurance, in the event the Premises are determined to be in a special flood hazard area as determined by any governmental agency, Mortgagor further covenants and agrees to fully insure the Premises and Improvements against loss or damage by flood, with coverage as is therein provided for by fire and other specified perils to the same extent and effect as if such flood insurance was therein specifically set forth.

41. **COSTS, EXPENSES AND ATTORNEY'S FEES.** Should one or more Events of Default occur hereunder, and should an action be commenced for the foreclosure of this Mortgage, Mortgagee shall be entitled to recover all sums due hereunder, statutory costs, and any additional allowances made pursuant to Section 8303(a) of the Civil Practice Law and Rules of the State of New York, and in addition thereto, reasonable attorneys' fees in such proceeding and in all proceedings related thereto necessary to and related to the foreclosing proceeding, and such amount shall be added to the principal balance and interest then due and shall be a lien on the Mortgaged Property prior to any right or title to, interest in or claim upon the Mortgaged Property attaching and accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and the indebtedness which it secures.

42. **INTERVENING LIENS.** Should any agreement be hereafter entered into modifying or changing the terms of this Mortgage or the Note secured hereby in any manner, the rights of the parties to such agreement shall be superior to the rights of the holder of any intervening lien.

43. **TERMS.** It is understood and agreed that the words, "Mortgagor" and "Mortgagee" herein shall include the respective heirs, successors and assigns of Mortgagor and Mortgagee.

44. **ENTIRE AGREEMENT.** This Mortgage and the other Loan Documents constitute the entire understanding between Mortgagor, any guarantors, and Mortgagee and to the extent that any writings not signed by Mortgagee or oral statements or conversations at any time made or had shall be inconsistent with the provisions of this Mortgage and the other Loan Documents, the same shall be null and void.

45. **GOVERNING LAW; SEVERABILITY.** This Mortgage shall be governed by the law of the jurisdiction in which the Mortgaged Property is located. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end, the provisions of this Mortgage and the Note are declared to be severable.

46. **TIME OF THE ESSENCE.** Time is of the essence with respect to each and every covenant, agreement and obligation of Mortgagor under this Mortgage, the Note and any and all other Loan Documents.

47. **INDEMNIFICATION; SUBROGATION; WAIVER OF OFFSET.**

(a) Mortgagor shall indemnify, defend and hold Mortgagee harmless against: (i) any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Mortgaged Property or the loan which is the subject of the Note, and (ii) against any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs, and expenses (including its reasonable attorneys' fees, together with reasonable appellate counsel fees, if any) of whatever kind or nature which may be imposed on or incurred by Mortgagee at any time pursuant either to a judgment or decree or other order entered into by a court or administrative agency or to a settlement reasonably approved by Mortgagor, which judgment, decree, order or settlement relates in any way to or arises out of the offer, sale or lease of the Mortgaged Property and/or the ownership, use, occupation or operation of any portion of the Mortgaged Property.

(b) If Mortgagee is made a party defendant to any litigation concerning the loan which is the subject of the Note, this Mortgage, the Mortgaged Property, or any part thereof, or any interest therein, or the occupancy thereof, then Mortgagor shall indemnify, defend and hold Mortgagee harmless from all liability by reason of said litigation, including reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses incurred by Mortgagee in any such litigation, whether or not any such litigation is prosecuted to judgment. If Mortgagee

commences an action against Mortgagor to enforce any of the terms hereof or to prosecute any breach by Mortgagor of any of the terms hereof or to recover any sum secured hereby, Mortgagor shall pay to Mortgagee such reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses. The right to such attorneys fees (together with reasonable appellate counsel fees, if any) and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Mortgagor breaches any term of this Mortgage, Mortgagee may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Mortgagor, Mortgagor shall pay Mortgagee reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses incurred by Mortgagee, whether or not an action is actually commenced against Mortgagor by reason of such breach.

(c) A waiver of subrogation shall be obtained by Mortgagor from its insurance carrier and, consequently, Mortgagor waives any and all right to claim or recover against Mortgagee, its officers, employees, agents and representatives, for loss of or damage to Mortgagor, the Mortgaged Property, Mortgagor's property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

(d) All sums payable by Mortgagor hereunder shall be paid without notice (except as may otherwise be provided herein), demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged or otherwise affected by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title superior or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in such proceeding; (v) any claim which Mortgagor has, or might have, against Mortgagee; (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured hereby and payable by Mortgagor.

48. **WAIVER OF JURY TRIAL.** The Mortgagor and the Mortgagee hereby waive trial by jury in any litigation in any court with respect to, in connection with, or arising out of this Mortgage or any other Loan Document, or any instrument or document delivered in connection with the loan which is the subject of the Note, or the validity, protection, interpretation, collection or enforcement thereof, or the relationship between Mortgagor and Mortgagee as Mortgagor and Mortgagee, or any other claim or dispute howsoever arising between the Mortgagor and Mortgagee.

49. **TAX LAW SECTION 253 STATEMENT.** Check one box only.

- This Mortgage covers real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having their own separate cooking facilities.
- This Mortgage does not cover real property improved as described above.

Where used herein, the word, "Mortgagor" may be read "Mortgagors" where applicable but in no instance shall "Mortgagor" or "Mortgagors" or "guarantor" be interpreted to include the Agency.

50. This Mortgage is executed by the Agency solely for the purpose of subjecting its interest in the Mortgaged Property, and in the event of a default, the holder of this Mortgage shall look, only with respect to the Agency, solely to the Mortgaged Property described in this Mortgage in satisfaction of the indebtedness evidenced under the Note and will not seek or obtain any deficiency or personal judgment against the Agency or any members or officers thereof except such judgment or decree as may be necessary to foreclose its interest in the Mortgaged Property as pledged hereunder and all other property mortgaged, pledged, conveyed or assigned to secure payment under the Note.

51. **Mortgagor's Obligations To Comply With Company Lease and the Agency Lease.** Mortgagor shall (i) pay all other sums of money due and payable at any time and from time to time under the Company Lease and the Agency Lease, as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Company Lease and/or the Agency Lease for the payment of any such sum, and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Company Lease and the Agency Lease to be performed, observed or complied with by Mortgagor as lessor under the Company Lease and lessee under the Agency Lease, as applicable. If the Company Lease and/or the Agency Lease do not provide for a grace period for the payment of a sum of money, Mortgagor shall make the payment on or before the date on which the payment becomes due and payable. Mortgagor shall deliver evidence of the payment to Mortgagee within ten (10) days after receipt of a written request from Mortgagee for evidence of the payment.

52. **Agency Executing at the Direction of Mortgagor.** The Mortgagor directs the Agency to execute and deliver this Mortgage to the Mortgagee, and further agrees to indemnify the Agency (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Mortgage, including but not limited to attorney's fees and costs.

53. **Recourse Against Agency.** The general credit of the Agency is not obligated or available for the payment of the loan or any amount due and owing under any loan document or this Mortgage. The Mortgagor will not look to the Agency or any principal, member, director, officer, agent or employee of the Agency with respect to the indebtedness secured by this Mortgage or the Loan Documents or any covenant, stipulation, promise, agreement or obligation contained herein or therein. In enforcing its rights and remedies under this Mortgage or the Loan Documents,



the Mortgagor will look solely to the collateral covered by the security interest granted by this Mortgage and/or the Mortgagor for the payment of the indebtedness secured by this Mortgage or the Loan Documents and for the performance of the provisions hereof or thereof. The Mortgagee will not seek a deficiency or other money judgment against the Agency or any principal, member, director, officer, agent or employee of the Agency (except the Mortgagor) and will not institute any separate action against the Agency by reason of any default that may occur in the performance of any of the terms and conditions of this Mortgage or the loan documentation. This agreement on the part of the Mortgagee shall not be construed in any way so as to effect or impair the lien of this Mortgage or the Mortgagee's right to foreclose or collect hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Mortgagee in any foreclosure or collection proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants, stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Mortgagor) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent (except the Mortgagor) of the Agency or any natural person executing this Mortgage on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York or the City of Syracuse, New York and neither the State of New York nor the City of Syracuse, New York shall be liable on any covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Agency.

No order or decree of specific performance with respect, to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than thirty days, shall have failed to institute and diligently pursue action to cause compliance with such request within such thirty day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Mortgagor) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents (other than the Mortgagor) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Mortgagor) and employees against all liability expected to be incurred as a result of compliance with such request.

54. **Hold Harmless Provisions.** The Mortgagor hereby acknowledges that the terms of the Agency Lease, as amended and restated from time to time, is in full force and effect, including but not limited to the “Hold Harmless Provisions” contained in Section 8.2 thereof and incorporates same in this instrument and makes same applicable hereto as if fully set forth herein.

55. **Recordation of Mortgage.** The Agency covenants that it will record or cause this Mortgage to be duly recorded in all offices where recordation thereof is necessary.

56. **Miscellaneous Provision.**

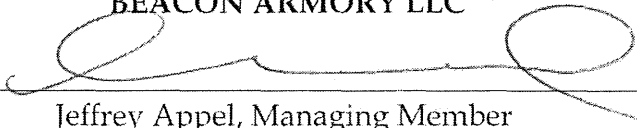
(a) The Mortgagor and the Mortgagee hereto, by accepting this Mortgage, acknowledge that the Agency is executing this Mortgage solely to subject its interest in the Mortgaged Property, if any, to this Mortgage. Notwithstanding anything herein to the contrary, the Mortgagee acknowledges and agrees that their sole recourse against the Agency for any default hereunder shall be solely with respect to the Agency’s interest in the Mortgaged Property.

(b) The Mortgagor and Mortgagee acknowledge that the Agency's obligations hereunder shall be for only so long as the Agency Leases are in effect.

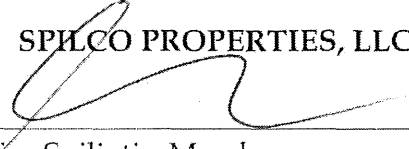
[End of text. Signature page follows.]

IN WITNESS WHEREOF, this Mortgage has been duly executed by Mortgagor and Agency.

BEACON ARMORY LLC

By:   
Jeffrey Appel, Managing Member

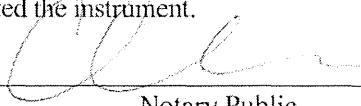
SPILCO PROPERTIES, LLC

By:   
Spiro Spiliotis, Member

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

On the 22<sup>nd</sup> day of December in the year 2021 before me, the undersigned, a notary public in and for said state, personally appeared **JEFFREY APPEL** 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.

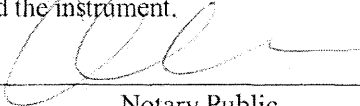
ALEXANDRA S. LOCKE  
Notary Public – State of New York  
No. 01LO6288933  
Qualified in Onondaga County  
Commission Expires September 16, 2025

  
Notary Public

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

On the 22<sup>nd</sup> day of December in the year 2021 before me, the undersigned, a notary public in and for said state, personally appeared **SPIRO SPILIOTIS** 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.

ALEXANDRA S. LOCKE  
Notary Public – State of New York  
No. 01LO6288933  
Qualified in Onondaga County  
Commission Expires September 16, 2025

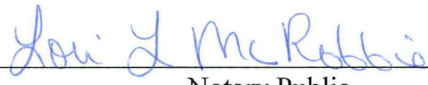
  
Notary Public

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Judith DeLaney, Executive Director

STATE OF NEW YORK     )  
COUNTY OF ONONDAGA    )

On the 15<sup>th</sup> day of December, 2021, before me, the undersigned, a notary public in and for said state, personally appeared **JUDITH DELANEY**, 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

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 22

## SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga and State of New York being part of Lots Nos. 1, 2, 30, 31, 40 and 41 of Block No. 105-D Syracuse, New York, according to a map made by B.F. Green and filed in the Onondaga County Clerk's Office Oct. 11, 1850 and bounded and described as follows: Beginning at a point in the southerly line of West Fayette St., said point being North 89° 44' West, 208-855/1000 feet distant measured along said street line from the westerly line of South Clinton St., said point being where the centerline of the west wall of the so-called Tallman and Palmer Store, now known as Number 225 West Fayette St., intersects the south line of West Fayette St.; thence southwardly along the center of said wall and the same continued about 115 feet to a point in range with the north face of the north wall of the six-story brick building erected by E.F. Holden on Walton St.; thence westwardly along said range line about 27/100 of a foot to the northeasterly corner of said six-story building; thence southwardly along the east face of the brick wall of said building about 90 feet to a point in the north line of Walton St., said point being North 89° 45' West, 208-856/1000 feet distant, measured along the said northerly line of Walton St. from the westerly line of South Clinton St.; thence North 89° 45' West, 64-304/1000 feet along said northerly line of Walton St. to a point; thence north 0° 13' 20" West, 110-8/100 feet to a point; thence North 89° 44' West, 54/100 of a foot to a point; thence north 0° 16' East, 95 feet to a point in the southerly line of West Fayette St.; thence South 89° 44' East, 65-45/1000 feet along said street line to the place of beginning.

ALSO ALL THAT TRACT OR PARCEL OF LAND situate, lying and being under the waters of the old channel of Onondaga Creek (now filled in), situate in the City of Syracuse, County of Onondaga and State of New York, said tract or parcel being all of the old channel of Onondaga Creek lying within the premises described above.



Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2229

## Onondaga County Clerk Recording Cover Sheet

Received From :  
BRADT LUCIANI

Return To :  
NEWMAN & LICKSTEIN  
COURTHOUSE  
PICK-UP BOX

Method Returned : MAIL

**First PARTY 1**

BEACON ARMORY LLC

**First PARTY 2**

SOLVAY BANK

Index Type : Land Records

Instr Number : 2021-00062418

Book : Page :

Type of Instrument : Assignment Of Rent

Type of Transaction : Assignment Of Rents And Leases

Recording Fee: \$102.00

Recording Pages : 11

### Recorded Information

State of New York

County of Onondaga

I hereby certify that the within and foregoing was  
recorded in the Clerk's office for Onondaga  
County, New York

On (Recorded Date) : 12/27/2021

At (Recorded Time) : 2:09:38 PM



Doc ID - 046109900011

*Lisa Dell*  
Lisa Dell, County Clerk



This sheet constitutes the Clerks endorsement required by Section 319 of Real Property Law of the State of New York

Entered By: RSWEENIE Printed On : 12/27/2021 At : 2:13:40PM

## ASSIGNMENT OF RENTS AND LEASES

**THIS ASSIGNMENT**, made this 22<sup>nd</sup> day of December, 2021, by **BEACON ARMORY LLC**, a New York limited liability company, with a mailing address of 325 South Salina Street, 3<sup>rd</sup> Floor, Syracuse, New York 13202 and **SPILCO PROPERTIES, LLC**, A New York limited liability company, with a mailing address of 96 Locus Avenue, Apt. A, New Rochelle, New York 10801 (collectively "**Assignor**") and the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency, with a mailing address of 201 East Washington St., 6<sup>th</sup> Floor, Syracuse, NY 13202, ("**Agency**") to **SOLVAY BANK**, a banking corporation with its principal office located at with an address of P.O. Box 19050, Syracuse, New York 13209-4050 ("**Assignee**").

### W I T N E S S E T H :

For and in consideration of Ten (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Agency hereby transfers, assigns and sets over to Assignee, its successors and assigns all of Assignor's and Agency's right, title and interest in and to (a) all leases (but excluding therefrom that certain company lease agreement, dated as of December 1, 2021, by and between Assignee and Agency (the "**Company Lease**") and that certain agency lease dated as of December 1, 2021, by and between Agency and Mortgagor (the "**Agency Lease**"), subleases, licenses, rental contracts and other agreements relating to the occupancy now existing or hereafter entered into and affecting that certain real property located in the City of Syracuse, County of Onondaga, and State of New York, as more fully described in Schedule "A" attached hereto and made a part hereof (the "**Property**" or "**Premises**"), together with all guarantees, modifications, extensions and renewals thereof which now exist or may hereafter be made (collectively, the "**Leases**"), and (b) all rents, issues, profits, income and proceeds due or to become due from tenants of the Property, including but not limited to, rentals under all present and future Leases, together with all deposits of tenants thereunder, including, without limitation, security deposits, now or hereafter held by Assignor in connection with the Property (the "**Rents**"), but specifically excluding from all of the foregoing the Agency's Unassigned Rights as that term is defined in the Agency Lease.

In connection with and as part of the foregoing assignment, Assignor hereby makes the following grants, covenants, agreements, representations and warranties:

1. Assignor (a) is the sole and absolute owner of the entire landlords or lessors interest in the Leases and the Rents (b) has made no prior assignment of the Leases or with respect to any of said Rents, (c) has neither done any acts or omitted to do any act which might prevent Assignee from, or limit Assignee in, acting under any of the provisions of this Assignment, (d) through its execution and delivery of this Assignment or any of the Leases, the performance of each and every covenant of Assignor under this Assignment and the Leases and the meeting of each and every condition contained in this Assignment, neither conflicts with nor constitutes a breach or default under, any agreement, indenture or other instrument to which Assignor is a party, or any law, ordinance, administrative regulation or court decree which is applicable to Assignor, (e) has not been made the subject of any action or, as far as is known to Assignor, been threatened with any action, which would interfere in any way with the right of



Assignor to execute this Assignment and to perform all of Assignor's obligations contained in this Assignment and in the Leases, (f) is not in default in the fulfillment, performance or observance of any of the terms, conditions or covenants of landlord in any of the Leases, and, to the best of Assignor's knowledge, no default exists on the part of any tenant in the fulfillment, performance or observance of any of the terms, conditions or covenants of Tenant contained in any of the Leases.

2. Assignee shall have the right, power and authority to take any and all actions which Assignee deems necessary or appropriate in connection with (a) entering upon, taking possession of and operating the Property, as defined herein; (b) leasing all or any part of the Property; and (c) collecting all or any of the Rents and enforcing the rights of the lessor under all or any of the Leases, including, without limitation, bringing, prosecuting, defending or settling legal proceedings against tenants. Notwithstanding anything herein to the contrary, Assignee shall not be obligated to perform or discharge, and Assignee does not undertake to perform or discharge, any obligation, duty or liability with respect to the Leases or the Rents under or by reason of this Assignment. This Assignment shall not operate to place responsibility for the control, care, maintenance or repair of the Property upon Assignee, or to make Assignee responsible or liable for any waste committed on the Property by any tenant or other person, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property.

3. Assignee shall have the right, power and authority to use and apply any Rents received hereunder (a) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this Assignment or the rights of Assignee hereunder, and collecting any Rents; and (b) for the operation and maintenance of the Property and the payment of all costs and expenses in connection therewith including, without limitation, the payment of (i) rentals and other charges payable by Assignor under any ground lease affecting the Property, (ii) interest, principal or other amounts with respect to any and all loans (the "Indebtedness") secured by that certain Mortgage dated on even date herewith (the "Mortgage"), (iii) taxes, assessments, water charges and sewer rents and other governmental charges levied, assessed or imposed against the Property or any part thereof, (iv) insurance premiums, (v) costs and expenses with respect to any litigation affecting the Property, the Leases or the Rents, and (vi) wages and salaries of employees, commissions of agents and attorneys' fees. After the payment of all such costs and expenses and after Assignee shall have set up such reserves as it, in its sole discretion, shall deem necessary for the proper management of the Property, Assignee shall apply all remaining Rents collected and received by it to the reduction of the indebtedness secured by the Mortgage. The term "Property" used herein shall have the same definition as the term "Mortgaged Property" as defined in the Mortgage. Exercise or non-exercise by Assignee of the rights granted in this Assignment, or collection and application of Rents, by Assignee or its agent shall not be a waiver of any default by Assignor under this Assignment, the Mortgage, any note or notes referred to therein (collectively, if more than one, the "Note") or any other document or agreement relating thereto (the "Loan Documents"). Subject only to the provisions of Paragraph 6 hereof, no action or failure to act by Assignee with respect to any of the obligations of Assignor evidenced by the Loan Documents, to any security or guarantee given for the payment or performance thereof, or to any other document or instrument evidencing or relating to such obligations, shall in any manner affect, impair or prejudice any of Assignee's rights and privileges under this Assignment or discharge, release or modify any of Assignor's

duties or obligations hereunder. This Assignment is intended by Assignor and Assignee to create, and shall be construed to create, an absolute assignment to Assignee, subject only to the terms and provisions hereof, and not as an assignment as security for the performance of the obligations evidenced by the Loan Documents, or any other indebtedness of Assignor.

4. Assignor shall have a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents. Such license may be revoked by Assignee, without notice to Assignor, upon the occurrence of an Event of Default (hereinbelow defined). Unless and until such license is so revoked, Assignor agrees to apply the proceeds of Rents to the payment of debt service on the Property and of taxes, assessments, water rates, sewer rents, and to operation and maintenance charges relating to the Property which are due and payable at the time of collection and of such proceeds of Rents before using such proceeds for any other purpose. Assignor shall (a) observe and perform faithfully every obligation which Assignor is required to perform under the Leases; (b) enforce, or secure the performance of, at its sole cost and expense, every obligation to be performed by the tenant under the Leases; (c) promptly give notice to Assignee of any notice of default received by Assignor from any Lessee under the Leases, together with a copy of such notice; (d) not collect any Rents for more than one (1) month in advance of the time when the same shall become due, or anticipate any payments under any of the Leases, except for bona fide security deposits not in excess of an amount equal to two (2) month's rent; (e) except with Assignee's prior written consent, not further assign any of the Leases or the Rents; (f) except with Assignee's prior written consent, not waive, condone or in any manner discharge any tenants from their obligations under the Leases; (g) except with Assignee's prior written consent, not cancel, abridge or accept the sublease, assignment, surrender or termination of any of the Leases unless Assignor shall have entered into a Lease for the space to be vacated as a result thereof upon terms (including, without limitation, rentals and term) at least as favorable to Assignor, commencing within thirty (30) days after such cancellation, abridgement, surrender or termination; (h) except with Assignee's prior written consent, not modify or amend, by sufferance or otherwise, any of the Leases or any of the terms, provisions or covenants thereof, other than in the ordinary course of business and in a manner which will not decrease the value of the property; (i) except with Assignee's prior written consent, not enter into any new Leases or other occupancy agreements with regard to the Property; (j) provide in all future Leases that any cancellation, abridgement, surrender, modification or amendment of such Leases, without the prior written consent of Assignee, except as permitted by the provisions of this Assignment or the Mortgage, shall be voidable as against Assignee, at its option; (k) comply with all laws, rules, orders, ordinances and requirements of all governmental authorities relating to the Property; (l) deliver copies of all Leases to Assignee; (m) appear in and defend against, at Assignor's sole cost and expense, any action or proceeding arising under, or in any manner connected with the Leases, the Rents or the obligations, duties or liabilities of the lessor, tenants or guarantors thereunder; (n) not agree to subordinate any of the Leases to any other mortgage or other encumbrance; or (o) not modify the terms or terminate any guaranty of any Lease.

5. This Assignment shall continue in full force and effect until (a) all sums due and payable under the Loan Documents shall have been fully paid and satisfied, together with any and all other sums which may become due and owing under this Assignment, and (b) all other obligations of Assignor under the Loan Documents have been satisfied. At such time this Assignment and the authority and powers herein granted by Assignor to Assignee shall cease and terminate and Assignor shall assume payment of all unmatured or unpaid charges, expenses or

obligations incurred or undertaken by Assignee, if any, in connection with the management of the Property.

6. Assignor hereby irrevocably constitutes and appoints Assignee its true and lawful attorney in fact, with an interest, to undertake and execute any or all of the rights or powers described herein with the same force and effect as if undertaken or executed by Assignor, and Assignor hereby ratifies and confirms any and all things done or omitted to be done by Assignee, its agents, servants, employees or attorneys in, to or about the Property.

7. The term "Event of Default" wherever used in this Assignment shall mean one or more of the following events:

(a) The occurrence of any "default" or "event of default" under any of the Loan Documents;

(b) The failure by the Assignor duly and fully to comply with any covenant, condition or agreement of this Assignment which failure is not cured within fifteen (15) days after written notice from Assignee; or

(c) The breach of any representation or warranty by Assignor contained in this Assignment.

8. Upon the occurrence of any Event of Default, Assignee may at its option, with or without notice or demand of any kind (except as may be provided herein or in any of the Loan Documents), and without waiving such Event of Default, exercise any or all of the following remedies:

(a) Declare any part or all of the Indebtedness to be due and payable, whereupon the same shall become immediately due and payable;

(b) Perform any and all obligations of Assignor under any or all of the Leases or this Assignment and exercise any and all rights of Assignor herein or therein as fully as Assignor itself could do, including, without limiting the generality of the foregoing: enforcing, modifying, extending or terminating any or all of the Leases, collecting, modifying, compromising, waiving or increasing any or all of the rents payable thereunder; and obtaining new tenants and entering into new Leases on the Property on any terms and conditions deemed desirable by Assignee, and, to the extent Assignee shall incur any costs in connection with the performance of any such obligations of Assignor, including costs of litigation, then all such costs shall become a part of the Indebtedness, shall bear interest from the incurring thereof at the default interest rate specified in the Note, and shall be due and payable on demand;

(c) In Assignor's or Assignee's name, institute any legal or equitable action which Assignee in its sole discretion deems desirable to collect and receive any or all of the rents, issues and profits assigned herein;

(d) Collect the rents, issues and profits and any other sums due under the Leases and with respect to the Property, and apply the same in such manner as Assignee in its sole discretion may elect.

Assignee shall have full right to exercise any or all of the foregoing remedies without regard to the adequacy of security for any or all of the Indebtedness, and with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee, and shall have full right to enter upon, take possession of, and use and operate all or any portion of the Property which Assignee in its sole discretion deems desirable to effectuate any or all of the foregoing remedies, with full power to make alteration, renovations, repairs or replacements thereto.

9. Assignee shall not in any way be liable to Assignor for any act done or anything omitted to be done to the Property, the Leases or the Rents by or on behalf of Assignee in good faith in connection with this Assignment except for the consequences of its own gross negligence or willful misconduct. Assignee shall not be liable for any act or omission of its agents, servants, employees or attorneys, provided that reasonable care is used by Assignee in the selection of such agents, servants, employees and attorneys. Assignee shall be accountable to Assignor only for monies actually received by Assignee pursuant to this Assignment.

10. Assignor shall indemnify and hold Assignee harmless from and against any and all liability, loss, damage, cost or expense, including attorneys' fees, which it may incur under any of the Leases, or with respect to this Assignment or any action or failure to act of Assignee hereunder, and from and against any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants and conditions of any of the Leases or with respect to any Rents. In the event that Assignee incurs any such liability, loss, damage, cost or expense, the amount thereof, together with interest thereon from the date such amount was suffered or incurred by Assignee until the same is paid by Assignor to Assignee, at a rate equal to the lesser of (i) five (5%) percent per annum in excess of the regular rate of interest that would then have been applicable to the indebtedness under the evidence of indebtedness secured by the Mortgage, or (ii) the maximum rate permitted by applicable law, shall be payable by Assignor to Assignee immediately upon demand, or at the option of Assignee, Assignee may reimburse itself therefor out of any Rents collected by Assignee.

11. Upon request of Assignee, Assignor shall execute and deliver to Assignee, such further instruments as Assignee may deem necessary to effect this Assignment and the covenants of Assignor contained herein. Assignor shall cause such further instruments to be recorded in such manner and in such places as may be required of Assignee.

12. All of the representations, warranties, covenants, agreements and provisions in this Assignment by or for the benefit of Assignee shall bind and inure to the benefit of its successors and assigns.

13. This Assignment may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

14. This Assignment shall be governed by, construed and enforced in accordance with the laws of the State of New York.

15. **Assignor's Obligations to Comply with the Company Lease and the Agency Lease.** Assignor shall: (i) pay the all other sums of money due and payable at any time and from time to time under the Company Lease and the Agency Lease, as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Company Lease and/or the Agency Lease for the payment of any such sum; and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Company Lease and/or the Agency Lease to be performed, observed or complied with by Assignor as lessor under the Company Lease and as lessee under the Agency Lease, as applicable. If the Company Lease and/or the Agency Lease do not provide for a grace period for the payment of a sum of money, Assignor shall make the payment on or before the date on which the payment becomes due and payable. Assignor shall deliver evidence of the payment to Assignee within ten (10) days after receipt of a written request from Assignee for evidence of the payment.

16. **Agency Executing at the Direction of Assignor.** The Assignor directs the Agency to execute and deliver this Assignment of Leases and Rents to the Assignee, and further agrees to indemnify the Agency (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Assignment of Leases and Rents, including but not limited to attorney's fees and costs.

17. **Recourse Against Agency.** The general credit of the Agency is not obligated or available for the payment of the loan or any amount due and owing under any loan document or this Assignment. The Assignor will not look to the Agency or any principal, member, director, officer, agent, or employee of the Agency with respect to the indebtedness secured by this Assignment or the Loan Documents or any covenant, stipulation, promise, agreement or obligation contained herein or therein. In enforcing its rights and remedies under this Assignment or the Loan Documents, the Assignor will look solely to the collateral covered by the security interest granted by this Assignment and/or the Assignor for the payment of the indebtedness secured by this Assignment or the Loan Documents and for the performance of the provisions hereof or thereof. The Assignee will not seek a deficiency or other money judgment against the Agency or any principal, member, director, officer, agent, or employee of the Agency (except the Assignor) and will not institute any separate action against the Agency by reason of any default that may occur in the performance of any of the terms and conditions of this Assignment or the loan documentation. This agreement on the part of the Assignee shall not be construed in any way so as to effect or impair the lien of this Assignment or the Assignee's right to foreclose or collect hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Assignee in any foreclosure or collection proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants, stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Assignor) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent (except the Assignor) of the Agency or any natural person executing this Assignment on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York or the City of Syracuse, New York and neither the State of New York nor the City of Syracuse, New York shall be liable on any

covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Agency.

No order or decree of specific performance with respect, to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than thirty days, shall have failed to institute and diligently pursue action to cause compliance with such request within such thirty day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Assignor) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents (other than the Assignor) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Assignor) and employees against all liability expected to be incurred as a result of compliance with such request.

18. **Hold Harmless Provisions.** The Assignor hereby acknowledges that the terms of the Agency Lease, as amended and restated from time to time, is in full force and effect, including but not limited to the "Hold Harmless Provisions" contained in Section 8.2 thereof and incorporates same in this instrument and makes same applicable hereto as if fully set forth herein.

19. **Recordation of Assignment.** The Agency covenants that it will record or cause this Assignment to be duly recorded in all offices where recordation thereof is necessary.

20. **Miscellaneous Provision.**

(a) The Assignor and the Assignee hereto, by accepting this Assignment, acknowledge that the Agency is executing this Assignment solely to subject its interest in the Premises, if any, to this Assignment. Notwithstanding anything herein to the contrary, the Assignee acknowledges and agrees that their sole recourse against the Agency for any default hereunder shall be solely with respect to the Agency's interest in the Premises.

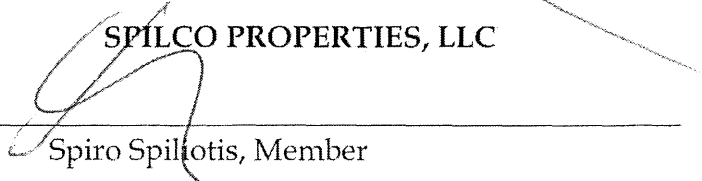
(b) The Assignor and Assignee acknowledge that the Agency's obligations hereunder shall be for only so long as the Agency Lease and Company Lease are in effect.

IN WITNESS WHEREOF, Assignor and Agency have caused this Assignment to be duly executed and delivered on the date first above written.

BEACON ARMORY LLC

By:   
Jeffrey Appel, Managing Member

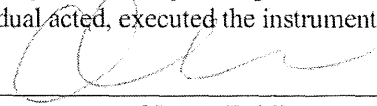
SPILCO PROPERTIES, LLC

By:   
Spiro Spiliotis, Member

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

On the 22<sup>nd</sup> day of December in the year 2021 before me, the undersigned, a notary public in and for said state, personally appeared **JEFFREY APPEL** 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.

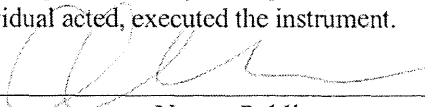
ALEXANDRA S. LOCKE  
Notary Public - State of New York  
No. 01105232933  
Qualified in Onondaga County  
Commission Expires September 16, 2023

  
Notary Public

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ALEXANDRA S. LOCKE  
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Notary Public





## SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga and State of New York being part of Lots Nos. 1, 2, 30, 31, 40 and 41 of Block No. 105-D Syracuse, New York, according to a map made by B.F. Green and filed in the Onondaga County Clerk's Office Oct. 11, 1850 and bounded and described as follows: Beginning at a point in the southerly line of West Fayette St., said point being North 89° 44' West, 208-855/1000 feet distant measured along said street line from the westerly line of South Clinton St., said point being where the centerline of the west wall of the so-called Tallman and Palmer Store, now known as Number 225 West Fayette St., intersects the south line of West Fayette St.; thence southwardly along the center of said wall and the same continued about 115 feet to a point in range with the north face of the north wall of the six-story brick building erected by E.F. Holden on Walton St.; thence westwardly along said range line about 27/100 of a foot to the northeasterly corner of said six-story building; thence southwardly along the east face of the brick wall of said building about 90 feet to a point in the north line of Walton St., said point being North 89° 45' West, 208-856/1000 feet distant, measured along the said northerly line of Walton St. from the westerly line of South Clinton St.; thence North 89° 45' West, 64-304/1000 feet along said northerly line of Walton St. to a point; thence north 0° 13' 20" West, 110-8/100 feet to a point; thence North 89° 44' West, 54/100 of a foot to a point; thence north 0° 16' East, 95 feet to a point in the southerly line of West Fayette St.; thence South 89° 44' East, 65-45/1000 feet along said street line to the place of beginning.

ALSO ALL THAT TRACT OR PARCEL OF LAND situate, lying and being under the waters of the old channel of Onondaga Creek (now filled in), situate in the City of Syracuse, County of Onondaga and State of New York, said tract or parcel being all of the old channel of Onondaga Creek lying within the premises described above.



Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2229

## Onondaga County Clerk Recording Cover Sheet

Received From :  
BRADT LUCIANI

Method Returned : FILE CABINET

**First DEBTOR**

BEACON ARMORY LLC

**First SECURED PARTY**

SOLVAY BANK

Index Type : Ucc

File Num : 2021-00001361

Type of Instrument : Ucc1

Type of Transaction : Ucc Liens

Recording Fee: \$40.00

Recording Pages : 4

**Recorded Information**

State of New York

County of Onondaga

I hereby certify that the within and foregoing was  
recorded in the Clerk's office for Onondaga  
County, New York

On (Recorded Date) : 12/27/2021

At (Recorded Time) : 2:09:40 PM



Doc ID - 046109920004

*Lisa Dell*  
Lisa Dell, County Clerk



This sheet constitutes the Clerks endorsement required by Section 319 of Real Property Law of the State of New York

Entered By: RSWEENIE Printed On : 12/27/2021 At : 2:13:43PM

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

---

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME      FIRST NAME      MIDDLE NAME      SUFFIX

1c. MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY

1d. **SEE INSTRUCTIONS**      ADD'L INFO RE ORGANIZATION DEBTOR      1e. TYPE OF ORGANIZATION      1f. JURISDICTION OF ORGANIZATION      1g. ORGANIZATIONAL ID #, if any

NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME      FIRST NAME      MIDDLE NAME      SUFFIX

2c. MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY

2d. **SEE INSTRUCTIONS**      ADD'L INFO RE ORGANIZATION DEBTOR      2e. TYPE OF ORGANIZATION      2f. JURISDICTION OF ORGANIZATION      2g. ORGANIZATIONAL ID #, if any

NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME      FIRST NAME      MIDDLE NAME      SUFFIX

3c. MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION [if applicable]:  LESSEE/LESSOR     CONSIGNEE/CONSIGNOR     BAILEE/BAILOR     SELLER/BUYER     AG. LIEN     NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum  if applicable]    7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE]  [optional]     All Debtors     Debtor 1     Debtor 2

8. OPTIONAL FILER REFERENCE DATA

# UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

## 9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

## 10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

## 11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

11c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

11d. **SEE INSTRUCTIONS**

ADD'L INFO RE  
ORGANIZATION  
DEBTOR

11e. TYPE OF ORGANIZATION

11f. JURISDICTION OF ORGANIZATION

11g. ORGANIZATIONAL ID #, if any

NONE

## 12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

12c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

13. This FINANCING STATEMENT covers  timber to be cut or  as-extracted collateral, or is filed as a  fixture filing.

14. Description of real estate:

16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.

Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box.

Debtor is a TRANSMITTING UTILITY

Filed in connection with a Manufactured-Home Transaction — effective 30 years

Filed in connection with a Public-Finance Transaction — effective 30 years

## SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga and State of New York being part of Lots Nos. 1, 2, 30, 31, 40 and 41 of Block No. 105-D Syracuse, New York, according to a map made by B.F. Green and filed in the Onondaga County Clerk's Office Oct. 11, 1850 and bounded and described as follows: Beginning at a point in the southerly line of West Fayette St., said point being North 89° 44' West, 208-855/1000 feet distant measured along said street line from the westerly line of South Clinton St., said point being where the centerline of the west wall of the so-called Tallman and Palmer Store, now known as Number 225 West Fayette St., intersects the south line of West Fayette St.; thence southwardly along the center of said wall and the same continued about 115 feet to a point in range with the north face of the north wall of the six-story brick building erected by E.F. Holden on Walton St.; thence westwardly along said range line about 27/100 of a foot to the northeasterly corner of said six-story building; thence southwardly along the east face of the brick wall of said building about 90 feet to a point in the north line of Walton St., said point being North 89° 45' West, 208-856/1000 feet distant, measured along the said northerly line of Walton St. from the westerly line of South Clinton St.; thence North 89° 45' West, 64-304/1000 feet along said northerly line of Walton St. to a point; thence north 0° 13' 20" West, 110-8/100 feet to a point; thence North 89° 44' West, 54/100 of a foot to a point; thence north 0° 16' East, 95 feet to a point in the southerly line of West Fayette St.; thence South 89° 44' East, 65-45/1000 feet along said street line to the place of beginning.

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020374

2021 DEC 27 AM 9:00

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]  
**Alexandra S. Locke, Esq.**

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**Barclay Damon LLP  
 Barclay Damon Tower  
 125 East Jefferson Street  
 Syracuse, NY 13202**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a ORGANIZATION'S NAME  
**Beacon Armory LLC**

OR 1b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**325 South Salina Street, Floor 3 Syracuse NY 13202 USA**

1d SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 1e TYPE OF ORGANIZATION limited liability co. 1f JURISDICTION OF ORGANIZATION New York 1g ORGANIZATIONAL ID #, if any  NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a ORGANIZATION'S NAME  
**Spilco Properties, LLC**

OR 2b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**96 Locus Avenue, Apt. A New Rochelle NY 10801 USA**

2d SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 2e TYPE OF ORGANIZATION limited liability co. 2f JURISDICTION OF ORGANIZATION New York 2g ORGANIZATIONAL ID #, if any  NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a ORGANIZATION'S NAME  
**Solvay Bank**

OR 3b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**P.O. Box 19050 Syracuse NY 13209-4050 USA**

4. This FINANCING STATEMENT covers the following collateral:

All Debtor's now owned and hereafter acquired machinery, equipment and fixtures attached to and part of the real property collateral described in Schedule "A" attached hereto. All Debtor's now owned and hereafter acquired accounts (including but not limited to accounts receivable and contract rights), chattel paper, documents and instruments, including the right to receive payment under any of the foregoing related to the premises described in Schedule "A" attached. All Debtor's now owned and hereafter acquired inventory, whether held for sale or lease, including raw materials, work in process, materials used or consumed in Debtor's business and finished goods related to the premises described in Schedule "A" attached.

All Debtor's now owned and hereafter acquired general intangibles and other rights used or arising in the operation of Debtor's business as previously, now or hereafter constituted, including but not limited to trademarks, copyrights, copyrighted material, licenses, franchises, rights under licensing and franchising agreements, computer software programs, plans and specifications, patterns, molds, manuals and technical material and know-how of every kind and character related to the premises described in Schedule "A" attached hereto. All Debtor's rents, issues and profits accruing to Debtor from the Premises described in Schedule "A" attached.

5. ALTERNATIVE DESIGNATION (if applicable) LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA



STATE OF NEW YORK  
DEPARTMENT OF STATE  
ONE COMMERCE PLAZA, 99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001

KATHY HOCHUL  
GOVERNOR

ROBERT J. RODRIGUEZ  
ACTING SECRETARY OF STATE

**FILING ACKNOWLEDGMENT**

December 28, 2021

BARCLAY DAMON LLP  
ONE PARK PL 300 SOUTH STATE ST  
SYRACUSE NY 132022078

Attached is the acknowledgment copy of your recently submitted filing. This filing consists of a total of 2 pages; however, only the first page of the filed document is returned as part of this acknowledgment. This document has been filed with the New York State Department of State, Uniform Commercial Code Division.

The Financing Statement has been assigned Filing Number: 202112270498202, Filing Date: 12/27/2021 and is currently reflected in our automated database as follows:

**Debtor's Name & Address**

BEACON ARMORY LLC  
325 SOUTH SALINA STREET, FLOOR 3  
SYRACUSE NY 13202  
(See attached for additional Debtors)

**Secured Party's Name & Address**

SOLVAY BANK  
P.O. BOX 19050  
SYRACUSE NY 13209-4050

This filing will lapse on 12/27/2026, unless continued. We encourage filers to take full advantage of the six-month window of opportunity in which to file a Financing Statement Amendment (Continuation). Submission of your documents at the onset of the six-month window will allow ample time to rectify potential filing errors and help to assure timely recording of your filing.

If you have any concerns regarding the way this document is recorded, please contact one of our Customer Service Representatives at (518) 473-2492, or respond in writing to the UCC Data Processing Unit at the address indicated above.

Sincerely,

Uniform Commercial Code Division  
Data Processing Unit

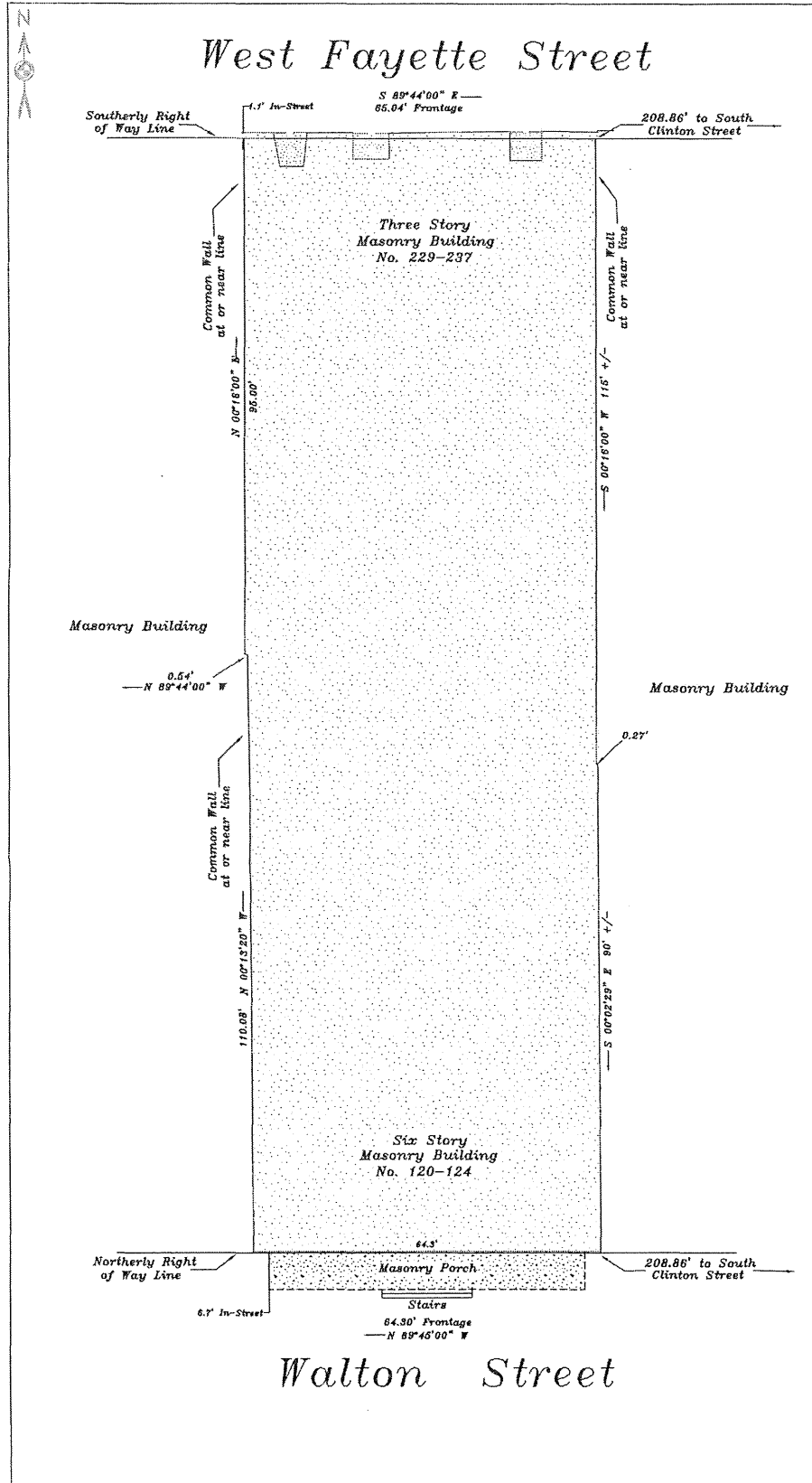
REF #: 020374



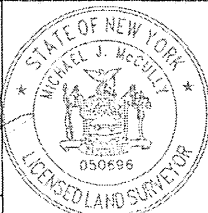
Debtor's Name & Address (continued)

SPILCO PROPERTIES, LLC  
96 LOCUS AVENUE, APT. A  
NEW ROCHELLE NY 10801





Michael J. McCully  
 Land Surveying PLLC  
 5875 Fieldstone Drive  
 Cazenovia New York 13035  
 Phone : (315) 815-5034



Location Survey on Part of Lots  
 One, Two, 30, 40 and 41, Block  
 105D of the Mill Pond Tract.

I hereby certify that this map was made from  
 an actual survey and same is correct.

*[Signature]*

Known as No. 120-124 Walton Street,  
 No. 229-237 West Fayette Street,  
 City of Syracuse, County of  
 Onondaga, State of New York.

M.J. McCully NYSLS 60696

Drawn by: MJM Scale: 1" = 20'  
 Date(s): 07-06-21

Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of Section 7209, Subdivision 2 of the New York State Education Law. Only copies from the original of this survey marked with an original of the land surveyor's inked seal or his embossed seal shall be considered to be valid true copies. Certifications shall run only to the person or entities for whom the survey is prepared and are not transferable to subsequent persons or entities. Copyright 2021, Michael J. McCully Land Surveying, all rights reserved.



**GENERAL CERTIFICATE OF THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

This certificate is made in connection with the execution by the City of Syracuse Industrial Development Agency (the “*Agency*”) of the Project Agreement, the Company Lease, the Agency Lease, the Mortgage and any other document now or hereafter executed by the Agency (collectively, the “*Agency Documents*”) with respect to a project (the “*Project*”) undertaken at the request of Beacon Armory LLC and Spilco Properties, LLC (collectively, the “*Company*”) consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the “*Building*”) located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the “*Land*”); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Land and the Facility are connected to an adjacent building located at 229-37 West Fayette Street, Syracuse, New York (the land and building collectively referred to as the “*Adjacent Building*”) which is owned by the Company.

To satisfy certain lender requirements, the Adjacent Building is being pledged as collateral to support a note to cover, among other things, the construction costs of the Project and the Company requested, and the Agency agreed, to spread its interest in the Project Facility to include the Adjacent Building solely for the purposes of the approved mortgage recording tax exemption with the understanding that all of the State and local sales and use tax exemption benefits authorized by the Agency will be realized from the work done solely on the Project Facility.

Capitalized terms used herein which are not otherwise defined herein and which are defined in the Agency Lease Agreement dated as of December 1, 2021 (the “*Agency Lease*”), between the Agency and the Company, and shall have the meanings ascribed to such terms in the Agency Lease except that, for purposes of this certificate: (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this

certificate and not as of any future date; and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

I, the undersigned Executive Director of the Agency, Do Hereby Certify:

1. I am an officer of the Agency and am duly authorized to execute and deliver this certificate in the name of the Agency.

2. The Agency is an industrial development agency duly established under Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended (the "**Enabling Act**") and Chapter 641 of the Laws of 1979 of the State (said Chapter with the Enabling Act, the "**Act**") (a certified copy of Chapter 641 of the Laws of 1979 of the State is attached hereto as **Exhibit "A"**), and it is a corporate governmental agency constituting a public benefit corporation of the State.

3. The Act empowers the Agency, among other things, to acquire, construct reconstruct, lease, improve, maintain, equip, sell and dispose of land and any building or other improvement, and all real and personal property, 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, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the City of Syracuse and the State and to improve their standard of living. The Act further authorizes the Agency to lease any and all of its facilities on such terms and conditions as it deems advisable, to acquire, construct, lease, improve, and equip one or more projects as defined in the Act, to mortgage any or all of its facilities and to pledge the revenues and receipts from the sale or transfer of its facilities.

4. The Agency has full legal power and authority to own its property, conduct its business and execute, deliver, and perform its obligations under the Agency Documents and has taken all actions and obtained all approvals required in connection therewith by the Act and any other applicable laws and regulations, and no legislation has been enacted affecting the powers or authority of the Agency to execute and deliver the Agency Documents, affecting the financing of the Project, or affecting the validity thereof or of the Agency Documents, or contesting the existence and powers of the Agency or the appointment of the members and officers of the Agency to their respective offices.

5. Pursuant to the Act, the governing body of the City of Syracuse, New York, for whose benefit the Agency was established, duly filed or caused to be filed within six (6) months after the effective date of Chapter 641 of the Laws of 1979 of the State in the office of the Secretary of State of the State the Certificate of Establishment of the Agency pursuant to Section 926 of the New York General Municipal Law. The Certificate of Establishment of the Agency described in the preceding sentence also named the members and officers of the Agency as appointed by the Mayor of the City of Syracuse. Attached hereto as **Exhibit "B"** are certified

copies of said Certificates of Establishment and copies of the Certificates of Appointment relating to all of the current members of the Agency, who are:

Kathleen Murphy, Chair  
Steven Thompson, Vice Chair  
Rickey T. Brown, Secretary  
Kenneth Kinsey, Treasurer  
Dirk Sonneborn, Member

6. Attached hereto as **Exhibit “C”** is a true, correct and complete copy of the by-laws of the Agency, together with all amendments thereto or modifications thereof; and said by-laws as so amended and modified are in full force and effect in accordance with their terms as of the date of this certificate.

7. That a resolution determining that the acquisition, construction and equipping of the Project constitutes a Project and describing the financial assistance in connection therewith and authorizing a public hearing (the “**Public Hearing Resolution**”) was adopted by the Agency on June 15, 2021 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Public Hearing Resolution is attached hereto at **Exhibit “D.”**

8. Attached hereto as **Exhibit “E”** is proof of publication of a notice of the public hearing with respect to the Project (the “**Public Hearing Notice**”), required pursuant to Section 859-a of the Act and held on July 20, 2021, and providing proof of notice thereof pursuant to Section 859-a of the Act to the chief executive officers of the affected tax jurisdictions (as defined in Section 854(16) of the Act) on June 30, 2021.

9. That a resolution classifying the Project as an Unlisted Action pursuant to SEQRA, declaring the Agency Lead Agency for the purposes of an uncoordinated review thereunder and determining that the Project will not have a significant effect on the environment (the “**SEQRA Resolution**”) was adopted by the Agency on September 30, 2021 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the SEQRA Resolution is attached hereto at **Exhibit “F.”**

10. That a resolution approving the undertaking of the acquisition, construction and equipping of the Project, appointing the Company as agent of the Agency for the purpose of the acquisition, construction and equipping of the Project, and authorizing the execution and delivery of an agreement between the Agency and the Company (the “**Inducement Resolution**”) was adopted by the Agency on September 30, 2021 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Inducement Resolution is attached hereto at **Exhibit “G.”**

11. That a resolution authorizing the execution and delivery of certain documents by the Agency in connection with the Project was adopted by the Agency on September 30, 2021 (the “**Final Approving Resolution**”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Final Approving Resolution is attached hereto at **Exhibit “H”**.

12. The execution, delivery and performance of all Agency Documents, certificates and documents required to be executed, delivered and performed by the Agency in order to carry out, give effect to and consummate the transactions contemplated by the Agency Documents have been duly authorized by all necessary action of the Agency, and the Agency Documents have been duly authorized, executed and delivered. The Agency Documents are in full force and effect on and as of the date hereof, and no authority or proceeding for the execution, delivery or performance of the Agency Documents has been materially amended, repealed, revoked or rescinded; and no event or circumstance has occurred or exists which constitutes, or with the giving of notice or the passage of time would constitute, a default on the part of the Agency under the Agency Documents.

13. The execution, delivery, and performance of the Agency Documents, the consummation of the transactions therein contemplated and compliance with the provisions of each do not and will not: (a) violate the Act or the by-laws of the Agency; (b) require consent (which has not heretofore been received) under or result in a breach or default of any credit agreement, purchase agreement, indenture, deed of trust, commitment, guaranty, lease, or other agreement or instrument to which the Agency is a party or by which the Agency may be bound or affected; or (c) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any government, governmental instrumentality, or court, domestic or foreign, having jurisdiction over the Agency or any of its Property.

14. The Agency has not received written notice that any event of default has occurred and is continuing, or that any event has occurred which with the lapse of time or the giving of notice or both would constitute an event of default by any party to the Agency Documents.

15. There is no action, suit, proceeding or investigation at law or in equity, before or by any court, public board or body of the United States of America or the State of New York, pending or, to the best of my knowledge, threatened against or affecting the Agency (or to my knowledge any basis therefor): (a) wherein an unfavorable decision or finding would adversely affect (i) the Inducement Resolution, the Final Approving Resolution, the Company Lease, the Agency Lease or the other Agency Documents; or (ii) the existence or organization of the Agency; or (iii) restrain or enjoin the financing, acquisition or construction of the Project or the performance by the Agency of the Agency Documents; or (b) in any manner questioning the proceedings or authority of the financing of the Project, or affecting the validity thereof or of the Agency Documents, or contesting the existence and powers of the Agency or the appointment of the directors and officers of the Agency to their respective offices.

16. December 22, 2021 has been duly designated as the date for the Closing.

17. The Agency has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Date.

18. In accordance with the Act, the Agency has determined:

(a) to assist the Company's acquisition, reconstruction, renovation, equipping and completion of the Project Facility;



(b) to grant the Financial Assistance to the Company;

(c) to designate the Company as the Agency's agent for the acquisition, reconstruction, renovation, equipping and completion of the Project Facility and to authorize the Company to appoint additional agents;

(d) that the Project will promote employment opportunities and prevent economic deterioration in the City by the preservation and/or the creation of both full and part-time jobs; and

(e) to pledge its interest in the Company Lease and the Agency Lease (except the Agency's Unassigned Rights) to the Mortgagee and grant the Mortgagee a security interest in the Agency's leasehold interest in the Project Facility.

19. That I did officially cause all certificates necessary for the granting of the Financial Assistance and included in the official transcript of closing, to be executed, as required, in the name of the Agency by the signing of each of such certificates with the signature of the Executive Director of the Agency.

20. That I did officially cause the following Agency Documents to be executed in the name of the Agency by the signing of each of such Agency Documents with the signature of the Judith DeLaney, Executive Director of the Agency:

(a) a Project Agreement between the Agency and the Company;

(b) a Company Lease from the Company to the Agency pursuant to which the Company agrees to lease the Land and the Facility to the Agency;

(b) an Agency Lease from the Agency to the Company pursuant to which the Agency agrees to sublease the Project Facility to the Company; and

(c) the Mortgage pursuant to which the Mortgagee has been granted a security interest in the Project Facility.

21. No member, officer or employee of the Agency having power to: (i) negotiate, prepare, authorize or approve any of the Agency Documents; (ii) audit bills or claims under any of the Agency Documents; or (iii) appoint an officer or employee who has any of the powers or duties set forth in (i) or (ii):

(a) directly or indirectly owns any stock of the Company;

(b) is a partner, director or employee of the Company;

(c) is related to the Company within the meaning of Section 800.3(a) of the New York General Municipal Law.

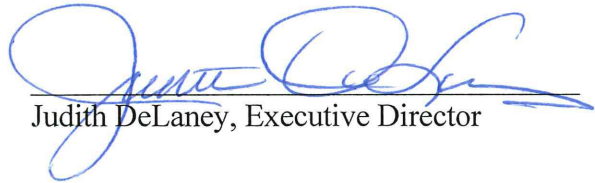
No member, officer, or employee of the Agency has publicly disclosed, in a writing included as part of the official minutes of the Agency, any Interest (as defined in Section 800.3 of the New York General Municipal Law), direct or indirect, in the Company.

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WITNESS, as of the 1<sup>st</sup> day of December, 2021.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:



Judith DeLaney, Executive Director

**EXHIBIT "A"**

**CHAPTER 641 OF THE LAWS OF 1979  
OF THE STATE OF NEW YORK**

LAWS OF NEW YORK, 1979

CHAPTER 641

AN ACT to amend the general municipal law, in relation to creating and establishing for the city of Syracuse industrial development agency and, providing for its functions and duties

Became a law July 11, 1979, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2 (b) (2) of the Constitution, by a majority vote, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. The general municipal law is amended by adding a new section nine hundred twenty-six to read as follows:

§ 926. *City of Syracuse industrial development agency. (a) For the benefit of the city of Syracuse and the inhabitants thereof, an industrial development agency, to be known as the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter. It shall constitute a body corporate and politic, and be perpetual in duration. It shall consist of five members who shall be appointed by the mayor of the city of Syracuse and its chairman shall be designated by such mayor. It shall have the powers and duties now or hereafter conferred by title one of article eighteen-A of this chapter upon industrial development agencies. It shall organize in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter. The agency, its members, officers and employees, and its operations and activities shall in all respects be governed by the provisions of title one of article eighteen-A of this chapter.*

*(b) The city shall have the power to make, or contract to make grants or loans, including but not limited to grants or loans of money, to the agency in such amounts, upon such terms and conditions and for such period or periods of time as in the judgment of the city and the agency are necessary or appropriate for the accomplishment of any of the purposes of the agency.*

§ 2. This act shall take effect immediately.

**EXHIBIT "B"**

**AGENCY'S CERTIFICATE OF ESTABLISHMENT  
AND  
CERTIFICATES OF APPOINTMENT OF CURRENT MEMBERS**

CERTIFICATE OF THE CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law, Lee Alexander, Mayor of the City of Syracuse, certifies as follows:

1) The name of the industrial development agency herein is the City of Syracuse Industrial Development Agency.

2) Chapter 641 of the Laws of 1979, the special act of the New York State Legislature establishing the City of Syracuse Industrial Development Agency, was adopted by the New York State Legislature on June 16, 1979 and signed by the Governor on July 18, 1979. 11<sup>th</sup>

3) The names of the Chairman and the Members, respectively, of the City of Syracuse Industrial Development Agency and their terms of office are as follows:

(a)	Frank L. Canino	Chairman
	David M. Garber	Member
	David S. Michel	Member
	Erwin G. Schultz	Member
	Irwin L. Davis	Member

(b) The term of office of the Chairman and of the Members of the City of Syracuse Industrial Development Agency is at the pleasure of the Mayor and continues until a successor is appointed and has qualified.

4) The facts establishing the need for the creation of a City of Syracuse Industrial Development Agency are as follows:

Expansion of its industrial-commercial base is essential to the City of Syracuse, especially in a time of mounting economic pressures. To achieve this goal of expansion, the City has designed a comprehensive economic development program, requiring an Industrial Development Agency.

The existing potential for economic development will be augmented by the financial incentives of an Industrial Development Agency. Various City agencies and departments, such as the Department of Community Development and the Office of Federal and State Aid Coordination will interface with the Syracuse Industrial Development Agency to strengthen the business and industrial climate of the community.

Access to the Department of Community Development will make available to the Syracuse Industrial Development Agency an array of staff assistance, technical expertise, and various other development services. The City's Office of Federal and State Aid Coordination will provide assistance to it in locating, analyzing, and obtaining various forms of federal and state assistance and participation.

STATE OF NEW YORK  
DEPARTMENT OF STATE

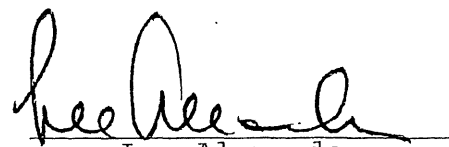
FILED JUL 20 1979

*Carl P. Peterson*

Secretary of State

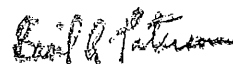
The Syracuse Industrial Development Agency, in combination with, and utilizing these and other resources, will greatly enhance the City's ability to compete for, and successfully attract, the commercial and industrial enterprises necessary for continued economic health and growth.

July 20, 1979

  
Lee Alexander  
Mayor

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 20 1979

  
Secretary of State



***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on February 25, 2020.

*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State



# OFFICE OF THE MAYOR

MAYOR BEN WALSH

FILED  
STATE RECORDS

FEB 04 2019

DEPARTMENT OF STATE

## CERTIFICATE OF APPOINTMENT TO THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as an Officer of the City of Syracuse Industrial Development Agency:

Ms. Kathleen Murphy - Member/Chair

The following Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Officer of said Agency:

Ms. Kathleen Murphy - Member/Treasurer

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 17, 2020.

Office of the Mayor  
233 E. Washington St.  
201 City Hall  
Syracuse, N.Y. 13202

Office 315 448 8005  
Fax 315 448 8067

[www.syrgov.net](http://www.syrgov.net)

Ben Walsh

Mayor

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
April 10, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald  
Executive Deputy Secretary of State



OFFICE OF THE MAYOR

Ben Walsh, Mayor

FILED  
STATE RECORDS

JAN 29 2018

DEPARTMENT OF STATE

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as an Officer of the City of Syracuse Industrial Development Agency:

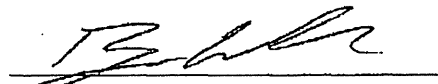
Mr. Steven P. Thompson - Member/Vice Chair

The following Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Officer of said Agency :

Mr. Steven P. Thompson - Member/Secretary

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 16, 2018.

  
Ben Walsh  
Mayor, City of Syracuse

***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on April 10, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald  
Executive Deputy Secretary of State



FILED  
STATE RECORDS

OFFICE OF THE MAYOR

JAN 29 2018

Ben Walsh, Mayor

DEPARTMENT OF STATE

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a member of the City of Syracuse Industrial Development Agency:

Mr. Rickey Brown - Member/Secretary

The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency :

Ms. M. Catherine Richardson - Member/Vice-Chair

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 16, 2018.

Ben Walsh  
Mayor, City of Syracuse

***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
February 25, 2020.



*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State



# OFFICE OF THE MAYOR

MAYOR BEN WALSH

FILED  
STATE RECORDS

FEB 04 2019

DEPARTMENT OF STATE

## CERTIFICATE OF APPOINTMENT TO THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as an Officer of the City of Syracuse Industrial Development Agency:

Mr. Kenneth J. Kinsey - Member/Treasurer

The following Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Officer of said Agency:

Mr. Kenneth J. Kinsey - Member

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 17, 2020.

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201 City Hall  
Syracuse, N.Y. 13202

Office 315 448 8005  
Fax 315 448 8067

[www.syrgov.net](http://www.syrgov.net)

Ben Walsh  
Mayor



***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
February 25, 2020.

*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State



# OFFICE OF THE MAYOR

MAYOR BEN WALSH

FILED  
STATE RECORDS

FEB 04 2019

DEPARTMENT OF STATE

## CERTIFICATE OF APPOINTMENT TO THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as an Officer of the City of Syracuse Industrial Development Agency:

Mr. Dirk Sonneborn - Member

The following Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Officer of said Agency:

Mr. Michael Frame - Member/Chair

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 17, 2020.

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Ben Walsh

Mayor

**EXHIBIT "C"**

**AGENCY'S BY-LAWS**

**BY-LAWS OF  
THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
(as amended August 18, 2009)**

**Article I**

**THE AGENCY**

Section 1. Name

The name of the agency shall be "City of Syracuse Industrial Development Agency", and it shall be referred to in these by-laws as the Agency.

Section 2. Seal

The seal of the Agency shall be in such form as may be determined by the members of the Agency.

Section 3. Office

The principal office of the Agency shall be located in the City of Syracuse, New York, County of Onondaga, and State of New York. The Agency may have such other offices at such other places as the members of the Agency may, from time to time, designate by resolution.

**Article II**

**MEMBERS**

Section 1. Members

(a) There shall be five members of the Agency. All references in these by-laws to members shall be references to Members of the Agency. The persons designated in the certificates of appointment filed in the office of the Secretary of State as members of the Agency and their successors in office and such other persons as may, from time to time, be appointed as

Members of the Agency by the Mayor of the City of Syracuse, or by special act of the Legislature, shall constitute all the members.

(b) Members shall hold office at the pleasure of the Mayor and shall continue to hold office until his or her successor is appointed and has qualified. The Mayor may remove any Member at his discretion, with or without cause.

(c) Upon the resignation or removal of a Member, a successor shall be selected by the Mayor.

(d) Members may resign at any time by giving written notice to the Mayor and to the Chairman of the Agency. Unless otherwise specified in the notice the resignation shall take effect upon receipt of the notice by the Chairman or the Mayor. Acceptance of the resignation shall not be necessary to make it effective.

## Section 2. Meeting of the Members

(a) The Annual Meeting of the members shall be held on such date or dates as shall be fixed, from time to time, by the Members of the Agency. The first Annual Meeting of Members shall be held on a date within twelve (12) months after the filing of the Certificate of the Agency with the Secretary of State as required by General Municipal Law §856 (l) (a). Each successive Annual Meeting of Members shall be held on a date not more than twelve (12) months following the preceding Annual Meeting of Members.

(b) Regular meetings of the Agency may be held at such time and place as, from time to time, may be determined by the Members.

(c) Upon the written request of the Mayor, the Chairman or two (2) Members of the Agency, the Chairman of the Agency shall call a special meeting of the Members. Special meetings may be held on such date or dates as may be fixed in the call for such special meetings.

The call for a special meeting may be personally delivered to each Member of the Agency or may be mailed to the business or home address of such Member. A waiver of notice may be signed by any Member failing to receive a proper notice.

Section 3. Procedure at Meetings of Members

(a) The Chairman shall preside over the meetings of the Agency. In the absence of the Chairman, the Vice-Chairman shall preside. In the absence of both the Chairman and Vice-Chairman, any Member directed by the Chairman may preside.

(b) At all meetings of Members, a majority of the Members of the Agency shall constitute a quorum for the purpose of transacting business. If less than a quorum is present for any meeting, the Members then present may adjourn the meeting to such other time or until a quorum is present. Except to the extent provided for by law, all actions shall be by a majority of the votes cast, provided that the majority of the votes cast shall be at least equal to a quorum.

(c) When determined by the Agency that a matter pending before it is confidential in nature, it may, upon motion, establish an executive session and exclude any non-member from such session.

(d) Order of business

At all meetings of the Agency, the following shall be the order of business:

- (1) Roll Call;
- (2) Proof of Notice of Meeting;
- (3) Reading and approval of the minutes of the previous meeting;
- (4) bills and communications;
- (5) Report of the Treasurer;
- (6) Reports of Committees;

- (7) Unfinished business;
- (8) New business;
- (9) Adjournment.

The order of business may be altered or suspended at any meeting by the Members of the Agency.

(e) All resolutions shall be in writing and shall be recorded in the journal of the proceedings of the Agency.

### Article III

#### OFFICERS AND PERSONNEL

##### Section 1. Officers

The officers of the Agency shall be Chairman or Co-Chairman, Vice-Chairman, Secretary and Treasurer and such other offices as may be prescribed, from time to time, by the Agency. The Chairman or Co-Chairman and other officers shall be appointed by the Mayor of the City of Syracuse and may be removed with or without cause at his discretion. Each officer shall be a Member of the Agency during his or her term of office.

##### Section 2. Chairman or Co-Chairmen

The Chairman shall be chief executive officer of the Agency, and shall serve as an ex officio member of all duly constituted committees, shall supervise the general management and the affairs of the Agency, and shall carry out the orders and resolutions of the Agency. Except as otherwise authorized by resolution of the Agency, the Chairman shall execute (manually and by facsimile signature) all agreements, contracts, deeds, bonds, notes or other evidence of indebtedness and any other instruments of the Agency on behalf of the Agency. The Mayor may from time to time appoint two Co-Chairmen in place of the Chairman. During their term of office the Co-

Chairmen shall share equally the duties, rights, powers and responsibilities of the Chairman. The action of either Co-Chairman or execution (manually or by facsimile signature) by either Co-Chairman of any agreement, contract, deed, bond, note or other evidence of indebtedness or any other instrument of the Agency on behalf of the Agency shall have the same force and effect as such action or execution by the Chairman.

Section 3. Vice-Chairman

The Vice-Chairman shall have all the powers and functions of the Chairman or Co-Chairmen in the absence or disability of the Chairman or Co-Chairmen, as the case may be. The Vice-Chairman shall perform such other duties as the Members of the Agency shall prescribe or as delegated by the Chairman or Co-Chairmen.

Section 4. Secretary

The Secretary shall keep the minutes of the Agency, shall have the custody of the seal of the Agency and shall affix and attest the same to documents when duly authorized by the Agency, shall attest to the giving or serving of all notices of the Agency, shall have charge of such books and papers as the Members of the Agency may order, shall attest to such correspondence as may be assigned, and shall perform all the duties incidental to his office.

Section 5. Treasurer

The Treasurer shall have the care and custody of all the funds and securities of the Agency, shall deposit such funds in the name of the Agency, in such bank or trust company as the members of the Agency may elect, shall sign such instrument as may require the Treasurer's signature, but only with the approval of the Chairman or Co-Chairman, as the case may be, shall at all reasonable times exhibit the books and accounts of the Agency to the Mayor or any Member of



the Agency, and at the end of each fiscal year shall present an annual report setting forth in full the financial condition of the Agency.

Section 6. Additional Personnel

The Agency, with the consent of the Mayor, may appoint an Administrative or Executive Director to supervise the administration of the business and affairs of the Agency, subject to the direction of the Agency. The Agency may, from time to time, employ such other personnel as it deems necessary to execute its powers, duties and functions as prescribed by the New York State Industrial Development Agency Act (General Municipal Law, Article 18-A), as amended, and all other laws of the State of New York applicable thereto.

Section 7. Compensation of Chairman, Co-Chairmen, Members, Officers, and Other Personnel

The Chairman, Co-Chairmen, Members and Officers shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties. The compensation of other personnel, including the Administrative Director, shall be determined by the Members of the Agency.

**Article IV**

**AMENDMENTS**

Section 1. Amendments to By-Laws

These by-laws may be amended or revised, from time to time, by a two-third (2/3) vote of the Agency, but no such amendment or revision shall be adopted unless written notice of the proposed action shall have been given by mail to each Member and the Mayor at least ten (10) days prior to the date of the meeting at which it is proposed that such action be taken; provided, however,

that this provision and other provisions relating to the appointment, renewal and terms of office of Members and officers may be amended only with the prior written approval of the Mayor.

## Article V

### MISCELLANEOUS

#### Section 1. Sureties and Bonds

In case the Agency shall so require, any officer, employee or agent of the Agency shall execute to the Agency a bond in such sum and with such surety or sureties as the Agency may direct, conditioned upon the faithful performance of his or her duties to the Agency and including responsibility for negligence and for the accounting for all property, funds or securities of the Agency which may come into the hands of the officer, employee or agent.

#### Section 2. Indemnification

(a) Upon compliance by a Member or Officer of the Agency (including a former Member or Officer, the estate of a Member or Officer or a judicially appointed personal representative thereof) (referred to in this Section 2 collectively as "Member") with the provisions of subdivision (i) of this Section 2, the Agency shall provide for the defense of the Member in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the Member was acting within the scope of the public employment or duties of such Member. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or at the behest of the Agency.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the Member shall be entitled to be represented by private counsel of the Member's choice in any civil action or proceeding whenever the chief legal officer of the Agency or other counsel designated by the

Agency determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the Member is entitled to be represented by counsel of the Member's choice, provided, however, that the chief legal officer or other counsel designated by the Agency may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such Members be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the Agency to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of a majority of the Members of the Agency eligible to vote thereon.

(c) Any dispute with respect to representation of multiple Members by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(d) Where the Member delivers process and a written request for a defense to the Agency under subdivision (i) of this Section 2, the Agency shall take the necessary steps on behalf of the Member to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

(e) The Agency shall indemnify and save harmless its Members in the amount of any judgment obtained against such Members in a State or Federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the Member was acting within the scope of the Member's public employment or duties; provided further that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by a majority of the Members of the Agency eligible to vote thereon.

(f) Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this Section 2 shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the Member seeking indemnification.

(g) Nothing in this subdivision shall authorize the Agency to indemnify or save harmless any Member with respect to punitive or exemplary damages, fines or penalties; provided, however, that the Agency shall indemnify and save harmless its Members in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that the Member, acting within the scope of the Member's public employment or duties, has, without willfulness or intent on the Member's part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of the State or of the United States.

(h) Upon entry of a final judgment against the Member, or upon the settlement of the claim, the Member shall serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty (30) days of the date of entry or settlement, upon the Chairman and the chief administrative officer of the Agency; and if not inconsistent with the provisions of this Section 2, the amount of such judgment or settlement shall be paid by the Agency.

(i) The duty to defend or indemnify and save harmless prescribed by this Section 2 shall be conditioned upon: (i) delivery by the Member to the Chairman of the Agency and the chief legal officer of the Agency or to its chief administrative officer of a written request to provide for such Member's defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten (10) days after the Member is served with such document, and (ii) the full cooperation of the Member in the defense of such action or

proceeding and in defense of any action or proceeding against the Agency based upon the same act or omission, and in the prosecution of any appeal.

(j) The benefits of this Section shall inure only to Members as defined in subdivision (a) of this Section 2 and shall not enlarge or diminish the rights of any other party.

(k) This Section 2 shall not in any way affect the obligation of any claimant to give notice to the Agency under Section 10 of the Court of Claims Act, Section 880 of the General Municipal Law, or any other provision of law.

(l) The Agency is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of the State, or authorized by law to transact business in the State, against any liability imposed by the provisions of this Section 2, or to act as a self-insurer with respect thereto. The provisions of this Section 2 shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

(m) All payments made under the terms of this Section 2, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

(n) Except as otherwise specifically provided in this Section 2, the provisions of this Section 2 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any Member of the Agency by, in accordance with, or by reason of, any other provision of State or Federal statutory or common law. The benefits under this Section 2 shall supplement, and be available in addition to, defense or indemnification protection conferred by any law or enactment. This Section 2 is intended to confer upon Members of the Agency all of the benefits of Section 18 of the Public Officers Law

and to impose upon the Agency liability for costs incurred under the provisions hereof and thereof.

Section 3. Fiscal Year

The fiscal year of the Agency shall be fixed by the Members, subject to the applicable law.

Section 4. Powers of the Agency

The Agency shall have all the powers of an Industrial Development Agency authorized by Article 18-A of the General Municipal Law and shall have the power to do all things necessary or convenient to carry out its purposes and exercise the powers authorized herein.

<sup>1</sup>  
**EXHIBIT "D"**

**PUBLIC HEARING RESOLUTION**

## RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as amended from time to time, the City of Syracuse Industrial Development Agency (the "**Agency**") held a meeting on the 15<sup>th</sup> day of June, 2021, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=m2efdee5dd594ed46848d90bc9de1e1b4>; (or by accessing the link on the Agency's website) and using meeting number 173 245 5085 and password DNehTqMm478; or via telephone at (408) 418-9388 with access code: 173 245 5085, in conjunction with the matter set forth below.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

**PRESENT:** Kathleen Murphy, Steven Thompson, Kenneth Kinsey and Dirk Sonneborn (in person) and Rickey T. Brown (via tele/videoconference, in accordance with the Governor's Executive Order 202.1)

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** **Staff Present:** Judith DeLaney, Susan Katzoff, Esq., Lori McRobbie (in person) and John Vavonese (via tele/videoconference, in accordance with the Governor's Executive Order 202.1); **Others Present:** Matthew Oja (in person) and Christopher Bianchi, Scott Dumas, Charles Wallace, Christine Stevens, Jeff Appel and Rick Moriarty (via tele/videoconference, in accordance with the Governor's Executive Order 202.1)

The following resolution was offered by Kenneth Kinsey and seconded by Rickey T. Brown:

**RESOLUTION DETERMINING THAT THE ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF A MIXED-USE FACILITY AT THE REQUEST OF THE COMPANY CONSTITUTES A PROJECT; DESCRIBING THE FINANCIAL ASSISTANCE IN CONNECTION THEREWITH; AND AUTHORIZING A PUBLIC HEARING**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, 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, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and



**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant “financial assistance” (as defined in the Act) in connection with the acquisition, reconstruction and equipping of one or more “projects” (as defined in the Act); and

**WHEREAS**, by application dated on or about June 7, 2021 (the “*Application*”), Beacon Armory LLC, or an entity to be formed (the “*Company*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the “*Building*”) located at 120-24 Walton Street (Tax Map No. 101.-04-09.0) (the “*Land*”); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “*SEQRA*”), the Agency is required to make a determination with respect to the environmental impact of any “action” (as said quoted term is defined in SEQRA) to be taken by the Agency and the approval of the Project constitutes such an action; and

**WHEREAS**, the Agency has not yet made a determination under SEQRA; and

**WHEREAS**, the Agency has not approved undertaking the Project or granting the Financial Assistance; and

**WHEREAS**, the grant of Financial Assistance to the Project is subject to, among other things, the Agency finding after a public hearing pursuant to Section 859-a of the Act that the Project will serve the public purposes of the Act by promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State or increasing the overall number of permanent, private sector jobs in the State.

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) Based upon the representations made by the Company to the Agency, the Agency makes the following findings and determinations:

- (A) The Project constitutes a “project” within the meaning of the Act;
- (B) The Project is located in a “Highly Distressed Area” as defined in Section 854(18) of the Act.
- (C) The Financial Assistance contemplated with respect to the Project consists of assistance in the form of exemptions from State and local sales and use taxation and mortgage recording tax; and

(2) The Agency hereby directs that pursuant to Section 859-a of the Act, a public hearing with respect to the Project and Financial Assistance shall be scheduled with notice thereof published, and such notice, as applicable, shall further be sent to affected tax jurisdictions within which the Project is located.

(3) The Secretary or the Executive Director of the Agency is hereby authorized to and may distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(4) A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

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

	<u>AYE</u>	<u>NAY</u>
Kathleen Murphy	X	
Steven Thompson	X	
Kenneth Kinsey	X	
Rickey T. Brown	X	
Dirk Sonneborn	X	

The foregoing Resolution was thereupon declared duly adopted.

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

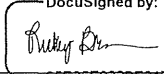
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "**Agency**") held on June 15, 2021, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that: (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), as temporarily amended by Executive Order 202.1 issued on March 12, 2020, as amended from time to time ("**EO 202.1**"), such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (iii) the meeting was in all respects duly held; and (iv) there was a quorum present throughout.

**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 set my hand and affixed the seal of the Agency on 7/6/2021.

City of Syracuse Industrial Development Agency

DocuSigned by:  
  
65E35E032BE24D9...  
Rickey T. Brown, Secretary

(S E A L)

**EXHIBIT "E"**

**NOTICE OF PUBLIC HEARING WITH EVIDENCE OF PUBLICATION AND COPIES  
OF LETTERS TO AFFECTED TAX JURISDICTIONS PURSUANT TO SECTIONS  
859-a OF THE ACT**

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 20<sup>th</sup> day of July, 2021, at 8:00 a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

Beacon Armory LLC, or an entity to be formed (the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the "Building") located at 120-24 Walton Street (Tax Map No. 101.-04-09.0) (the "Land"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "Facility"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

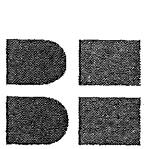
The Company shall be the initial owner or operator of the Project Facility.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, are available for public inspection during the business hours at the office of the Agency located at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York.

Dated: July 6, 2021

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY



# BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET • ONE LINCOLN CENTER • SUITE 1000 • SYRACUSE, NEW YORK 13202 • PH: 315.422.1500 • FX: 315.422.3549

June 30, 2021

**VIA CERTIFIED MAIL**  
7010 0780 0002 1722 1316

Honorable Benjamin Walsh  
Mayor, City of Syracuse  
City Hall  
233 East Washington Street  
Syracuse, New York 13202

**VIA CERTIFIED MAIL**  
7010 0780 0002 1722 1293

Honorable J. Ryan McMahon, II  
County Executive, Onondaga County  
John Mulroy Civic Center, 14<sup>th</sup> Floor  
421 Montgomery Street  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency (the "**Agency**")  
Beacon Armory LLC (the "**Company**")  
Bentley Lofts Project

Dear Mayor and County Executive:

Enclosed herewith please find a Notice of Public Hearing in relation to the above-referenced project. The proposed project (the "**Project**") consists of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the "**Building**") located at 120-24 Walton Street (Tax Map No. 101.-04-09.0) (the "**Land**"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the


Honorable Benjamin Walsh  
Honorable J. Ryan McMahon, II  
June 30, 2021  
Page 2

acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

General Municipal Law Section 859-a requires that notice of the Public Hearing be given to the chief executive officer of each affected tax jurisdiction in which the Project is located.

As stated in the notice, the public hearing is scheduled for **July 20, 2021 at 8:00 a.m.** in the Common Council Chambers at City Hall.

Very truly yours,

Handwritten signature of Susan R. Katzoff in cursive, with a circled number '24' at the end.

Susan R. Katzoff

SRK/llm  
Enclosure

cc: Judy DeLaney, Executive Director, City of Syracuse Industrial Development Agency,  
via email (w/Enclosure)

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 20<sup>th</sup> day of July, 2021, at 8:00 a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

Beacon Armory LLC, or an entity to be formed (the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the "Building") located at 120-24 Walton Street (Tax Map No. 101.-04-09.0) (the "Land"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "Facility"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company shall be the initial owner or operator of the Project Facility.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, are available for public inspection during the business hours at the office of the Agency located at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York.

Dated: July 6, 2021

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

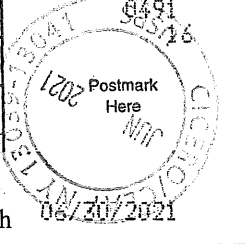


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Sent To: Honorable Benjamin Walsh  
 Mayor, City of Syracuse  
 City Hall  
 Street, or PO E: 233 East Washington Street  
 City, State: Syracuse, New York 13202

PS Form 3800, August 2006 See Reverse for Instructions

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1. Article Addressed to:  
 Honorable Benjamin Walsh  
 Mayor, City of Syracuse  
 City Hall  
 233 East Washington Street  
 Syracuse, New York 13202



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2. Article Number (Transfer from service label)

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 Addressee

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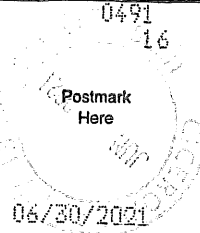
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Honorable J. Ryan McMahon, II  
 County Executive, Onondaga County  
 John Mulroy Civic Center, 14th Floor  
 421 Montgomery Street  
 Syracuse, New York 13202

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Honorable J. Ryan McMahon, II  
 County Executive, Onondaga County  
 John Mulroy Civic Center, 14th Floor  
 421 Montgomery Street  
 Syracuse, New York 13202



9590 9402 6543 1028 3274 07

**2. Article Number (Transfer from service label)**

7010 0780 0002 1722 1293

**COMPLETE THIS SECTION ON DELIVERY**

**A. Signature**

X

- Agent  
 Addressee

**B. Received by (Printed Name)**

**C. Date of Delivery**

7/1/21

- D. Is delivery address different from item 1?**  Yes  
 If YES, enter delivery address below:  No

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KAREN KELLER  
110 W FAYETTE ST STE 1000  
SYRACUSE, NY 13202

Name: BOUSQUET HOLSTEIN PLLC

Sales Rep: Pamela Gallagher

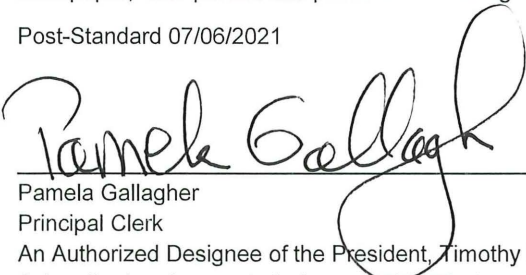
Account Number: 12145

INV#: 0010024211

Date	Position	Description	P.O. Number	Ad Size
07/06/2021	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that	C2147L.00050	1 x 133.00 CL

State of New York, County of Onondaga ss. Pamela Gallagher, of the City of Syracuse, in said County, being duly sworn, doth depose and says: this person is the Principal Clerk in the office of THE POST-STANDARD, a public newspaper, published in the City of Syracuse, Onondaga County, New York and that the notice, is an accurate and true copy of the ad as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following days, viz.:

Post-Standard 07/06/2021

  
\_\_\_\_\_  
Pamela Gallagher  
Principal Clerk  
An Authorized Designee of the President, Timothy R. Kennedy  
Subscribed and sworn to before me, this 7th day of July 2021

LOIS ROTCHFORD  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01RO6395132  
Qualified in Onondaga County  
My Commission Expires 7/22/2023

  
\_\_\_\_\_  
NOTARY PUBLIC

FOR QUESTIONS CONCERNING THIS AFFIDAVIT,  
PLEASE CONTACT PAMELA GALLAGHER AT  
(315) 470-2051 OR Legals@Syracuse.com

Date	Position	Description	P.O. Number	Ad Size
07/06/2021	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that a	C2147L.00050	1 x 133.00 CL

**NOTICE OF PUBLIC HEARING** NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 20th day of July, 2021, at 8:00 a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter: Beacon Armory LLC, or an entity to be formed (the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the "Building") located at 120-24 Walton Street (Tax Map No. 101.-04-09.0) (the "Land"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the subterranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "Facility"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the

granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement. The Company shall be the initial owner or operator of the Project Facility. The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project. A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, are available for public inspection during the business hours at the office of the Agency located at 201 East Washington Street, 6th Floor, Syracuse, New York. Dated: July 6, 2021 CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

**EXHIBIT "F"**

**SEQRA RESOLUTION**

## SEQRA RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to the Governor Executive Order 202.1 issued on March 12, 2020 suspending the Open Meetings Law, as extended from time to time including September 2, 2021, the City of Syracuse Industrial Development Agency (the "**Agency**") held a special meeting on the 30<sup>th</sup> day of September, 2021, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=mc0bb61adbeed18e60a21b1f9a98234e0>; (or by accessing the link on the Agency's website) and using meeting number 2336 173 6505 and password zXsv2rKSq36; or via telephone at (408) 418-9388 with access code: 2336 173 6505, in conjunction with the matter set forth below.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

**PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): Kathleen Murphy, Steven Thompson Rickey T. Brown and Kenneth Kinsey

**EXCUSED:** Dirk Sonneborn

**THE FOLLOWING PERSONS WERE ALSO PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): Staff Present: Judith DeLaney, Susan Katzoff, Esq., Lori McRobbie and John Vavonese; Others Present: John Sidd, Esq., Lindsey Haubenreich, Esq., Milan Tyler, Esq., Jeffrey Appel, Khash Bayani, Spiro Spilotis, Christine Stevens, M. Braun

The following resolution was offered by Steven Thompson and seconded by Rickey T. Brown:

**RESOLUTION CLASSIFYING A CERTAIN PROJECT AS AN UNLISTED ACTION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT, DECLARING THE AGENCY LEAD AGENCY FOR PURPOSES OF AN UNCOORDINATED REVIEW THEREUNDER AND DETERMINING THAT THE ACTION WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, 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, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, by application dated on or about June 2, 2021, as amended or supplemented from time to time (the "**Application**"), Beacon Armory LLC and Spilco Properties, LLC, as tenants in common, or an entity to be formed (collectively, the "**Company**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the "**Building**") located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the "**Land**"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Land and the Facility are connected to an adjacent building located at 229-37 West Fayette Street, Syracuse, New York (the land and building collectively referred to as the "**Adjacent Building**") which is owned by Armory Boys LLC, the controlling members of which also hold a 50% membership interest in the Beacon Armory, LLC and

**WHEREAS**, the Company is or will be the fee owner of the Land and Facility at the time of the conference of any approved benefits authorized by the Agency; and

**WHEREAS**, the Company has advised the Agency that its lender (the "**Lender**") will require a pledge of the Adjacent Building as additional collateral for the note and mortgage to be given in connection with the Project; and

**WHEREAS**, the Agency proposes to assist the Company's acquisition, reconstruction and equipping of the Project Facility and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company and/or its designee as its agent with respect to completing the Project; (2) leasing of the Land, Facility and the Adjacent Building by the Agency pursuant to a company lease agreement; (3) accepting an interest in the Equipment pursuant to a bill of sale from the Company; (4) subleasing the Land, the Facility and the

Adjacent Building to the Company and Armory Boys LLC, as applicable, pursuant to an agency lease agreement; and (5) entering into one or more mortgages in favor of the Company's Lender; and

**WHEREAS**, in order to accommodate the Lender's collateral requirements, the owner of the Adjacent Building has agreed to lease its interests in the Adjacent Building to the Agency and the Company has requested the Agency agree to extend its interest to the Adjacent Building solely for the purposes of any approved mortgage recording tax exemption, if any, with the understanding that all of the State and local sales and use tax exemption benefits authorized by the Agency, if any, will be realized from the work done solely on the Project Facility (the "**Lender Requirements**"); and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), the Agency is required to make a determination with respect to the environmental impact of any "action" (as defined by SEQRA) to be taken by the Agency and the Project constitutes such an action; and

**WHEREAS**, the Agency previously undertook a SEQRA review relative to the Adjacent Building, and pursuant to a resolution adopted on August 15, 2017, the Agency determined that the action related to the Adjacent Building was an Unlisted Action, would not have a significant adverse impact on the environment, and issued a negative declaration; and

**WHEREAS**, the Company's present request for Financial Assistance does not require reconsideration or further review by the Agency under SEQRA with regard to the Adjacent Building; and

**WHEREAS**, to aid the Agency in determining whether the current action described above with respect to the Project may have a significant adverse impact upon the environment, a Short Environmental Assessment Form and a Full Environmental Assessment Form (collectively, the "**EAF**") were prepared by the Company, copies of which are attached hereto as **Exhibit "A"**, and on file at the office of the Agency; and

**WHEREAS**, in order to classify the Project and make a determination as to the potential significance of the Project pursuant to SEQRA, the Agency has examined and reviewed the EAF; and

**WHEREAS**, the Agency has also examined and reviewed the affirmations and analysis made by the Company classifying the action; and

**WHEREAS**, having determined that the Building was listed on the New York State Register of Historic Places and contributes to the Armory Square Historic District, the Agency noticed the New York State Historic Preservation Office (SHPO) on July 26, 2021 as an interested agency, requesting a letter from SHPO that the Project will have no adverse effect on the historic resources; and



**WHEREAS**, SHPO issued a letter to the Agency on September 17, 2021, stating that the Project will have no adverse effect on historic resources, provided the Company submit a Federal Rehabilitation Tax Credit Part 2 Application; and

**WHEREAS**, as a result of its careful review and examination of the Project, the Agency finds that, on balance, and after careful consideration of all relevant Project documentation, it has more than adequate information to evaluate as required by SEQRA all of the relevant benefits and potential impacts of the Project; and

**WHEREAS**, the Agency has prepared Parts 2 and 3 of the Short Environmental Assessment Form with respect to the Project, copies of which are attached hereto as **Exhibit “B”** and made a part hereof, that summarize its consideration of potential impacts in accordance with SEQRA; and

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) The foregoing recitals are incorporated herein as if fully set forth below. Based upon an examination of the materials provided by the Company to the Agency in furtherance of the Project, including, but not limited to, that certain written correspondence provided by the Company's counsel to the Agency, dated June 10, 2021, setting forth the Company's analysis, description, and scope of the Project, which analysis unequivocally affirms that the Project should be classified as an "Unlisted Action" (as said quoted term is defined in SEQRA, 6 NYCRR 617.2), the criteria contained in 6 NYCRR §617.7(c), and based further upon the Agency's knowledge of the action, and its environmental effects as the Agency has deemed appropriate, the Agency makes the following findings and determinations pursuant to SEQRA:

(a) The action constitutes an “Unlisted Action” (as said quoted term is defined in SEQRA);

(b) The Agency declares itself “Lead Agency” (as said quoted term is defined in SEQRA) with respect to an uncoordinated review pursuant to SEQRA; and

(c) The action will not have a significant adverse effect on the environment, and the Agency hereby issues a negative declaration pursuant to SEQRA, attached hereto as **Exhibit B**, which shall be filed in the office of the Agency in a file that is readily accessible to the public.

(2) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

(3) This Resolution shall take effect immediately. The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution and to do such further

things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(4) The Agency hereby authorizes Agency staff to take all further actions deemed necessary and appropriate to fulfill the Agency's responsibilities under SEQRA.

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

	<u>AYE</u>	<u>NAY</u>
Kathleen Murphy	X	
Steven Thompson	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	

The foregoing resolution was thereupon declared duly adopted.

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

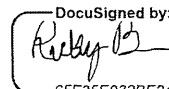
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "**Agency**") held on September 30, 2021, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that: (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), as temporarily amended by Executive Order 202.1 issued on March 12, 2020 ("**EO 202.1**"), as amended and extended from time to time, such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (iii) the meeting was in all respects duly held; and (iv) there was a quorum present throughout.

**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 set my hand and affixed the seal of the Agency on 10/13/2021.

City of Syracuse Industrial Development Agency

DocuSigned by:  


65E36E032BE24D9...  
Rickey T. Brown, Secretary

(S E A L)

**EXHIBIT "A"**

**ENVIRONMENTAL ASSESSMENT FORMS**

## *Short Environmental Assessment Form*

### *Part 1 - Project Information*

#### Instructions for Completing

**Part 1 – Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part 1 – Project and Sponsor Information</b>			
Beacon Armory LLC			
Name of Action or Project: Rentley 1 ofts			
Project Location (describe, and attach a location map): 120 Walton Street, Syracuse NY 13202 -			
Brief Description of Proposed Action: SEE APPLICANT ATTACHMENT #1			
Name of Applicant or Sponsor: Beacon Armory LLC, Jeffrey Appel Managing Member		Telephone: 917-848-0152	
		E-Mail: jeff@armoryboys.com	
Address: 325 S Salina Street, 3rd Floor			
City/PO: Syracuse		State: New York	Zip Code: 13202
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>
			YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: SIDA			NO <input type="checkbox"/>
			YES <input type="checkbox"/>
3. a. Total acreage of the site of the proposed action? _____ .15 acres			
b. Total acreage to be physically disturbed? _____ 0 acres			
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ .15 acres			
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input checked="" type="checkbox"/> Other(Specify): Mixed Use Residential/Commercial			
<input type="checkbox"/> Parkland			

## Applicant Attachment #1

### Beacon Armory LLC - Project Description

Beacon Armory LLC will re-purpose to mixed use of the Bentley Settle Building (Basement commercial tenant space formerly Empire Brewing Company, first floor commercial spaces and 5 floors residential on 2-6) a contributing building in the Armory Square Historic District recognized on the National Register of Historic Places. The project scope consists of 35,900 square feet above grade and an additional 7000 sq feet at the lower level. Approximately 25,000 sq feet will be divided into 30 residences. 5 2-bedroom residences of approximately 850 sq ft each and 25 1-bedroom residences ranging from 575 - 650 will occupy the upper 5 floors. These loft style apartments will be smartly finished and will incorporate the latest advances in urban style living but will leave intact the entirety of the historic fabric of the tallest building in the Armory. This development comes at a critical time for the property. The unfortunate demise of the buildings former anchor tenant, combine with a glut of office space inventory in the marketplace created a need to re evaluate the highest and best use for the building. With the onset of the Covid 19 Pandemic ownership arrived at an unenviable fulcrum. With only one commercial tenant occupying the entirety of the building a rededication to the redevelopment of this historic site was necessary. Work has begun on upgrading all building systems, preventative measures are being taken to insure the commercial spaces and facade do not suffer from deferred maintenance. Through a significant new round of cash investment by the principals along with traditional bank financing, Beacon Armory will deploy a nearly 4.5 million dollar program with local contractors and vendors to repair and needed facade work, Reconfiguration of the commercial spaces will present fresh and exciting floorplans that will attract the most sought after tenants in the marketplace. At least 50 new jobs should be generated through the new businesses that will find what they desire at the base of the Armory's most recognizable building. We ask SIDA to assist us in this endeavor. The funds we may receive will allow us to create a product we know both commercial and residential tenants will find valuable. Between the rising cost of materials (some of which have doubled and or tripled in recent months) labor shortages in the area and essential no active cash-flow from existing tenants, ownership humbly seeks SIDA's established benefits to insure that the beacon of the Armory can accommodate new business owners and urban dwellers .

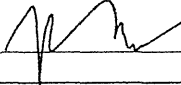
The following is additional historic background on the Bentley Settle building. During World War II Bentley Settle and Co would be among those responsible for the oversight and distribution of rationed goods for the City of Syracuse. In more recent history, the Bentley Settle Building served as home to a group of artists and early pioneers of Armory Square A group of free spirits, they created studios and lofts incubating a true artist colony. The artists of the Armory existed on the upper floors of the building until they accidentally set fire to their space. The artists went on to open Eureka Studios just a block away.

For the Bentley Settle Building it could have been the end of the road. The building remained empty and unprotected from the elements for years until a local Architect, Ed Riley, set his sights on his most aggressive project to date. In 1987 Riley secured funding from the State of New York and the National Historic Trust to completely renovate both buildings. Riley would go to save many other historic buildings in Syracuse and beyond including the seventy-five million dollar restoration of the Hotel Syracuse completed in 2018. The 1987 renovation of the Bentley Settle and Piper Phillips remains a significant advantage for ownership in its plans for the Bentley Lofts. The condition of the building, its sidewalk vaults and other major systems will spare significant "unseen" costs and allocate more of the budget to amenities. At the core of Syracuse nightlife and entertainment, The Bentley Settle building rises 6 floors at the center of the square. The landmark building demands glances upward along its fine brick work and verticality stressed by grouping windows under arches. A beautifully renovated lobby

and common corridor connects Walton Street to W Fayette Street. Here, another landmark, The Piper Phillips building, holds the fully leased result of the projects first phase, the Piper Phillips Residences and its eight unique urban homes. The Bentley Lofts, phase two of the project, will offer a mix of one and two bedroom homes with a distinctly urban edge. Massive hand hewn timbers support soaring ceilings and great windows that offer a variety of views that will never be taken for granted. But it is its enviable location that makes the Bentley Settle building and its thirty new loft residences a natural first choice for sophisticated yet affordable downtown living.

5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	NO	YES	N/A
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	



14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: _____ Existing roof system remains in place _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b></p> <p>Applicant/sponsor/name: <u>Beach Armory LLC</u> Date: <u>5/30/2021</u></p> <p>Signature: <u></u> Title: <u>MANAGING MEMBER</u></p>		

**Full Environmental Assessment Form**  
**Part 1 - Project and Setting**

### Instructions for Completing Part 1

**Part 1 is to be completed by the applicant or project sponsor.** Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1 is accurate and complete.

#### A. Project and Applicant/Sponsor Information.

Name of Action or Project: Beacon Lofts - Armory Square		
Project Location (describe, and attach a general location map): 120-124 Walton Street, Syracuse NY 13202		
Brief Description of Proposed Action (include purpose or need):		
Name of Applicant/Sponsor: Beacon Armory LLC		Telephone: 917-848-0152
		E-Mail: jeff@armoryboys.com
Address: 325 S Salina Street #3		
City/PO: Syracuse	State: NY	Zip Code: 13202
Project Contact (if not same as sponsor; give name and title/role): Jeffrey Appel		Telephone: 917-848-0152
		E-Mail: jeff@armoryboys.com
Address: 325 S Salina Street #3		
City/PO: Syracuse	State: NY	Zip Code: 13202
Property Owner (if not same as sponsor): Same		Telephone:
		E-Mail:
Address:		
City/PO:	State:	Zip Code:

**B. Government Approvals**

**B. Government Approvals, Funding, or Sponsorship.** ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Council, Town Board, <input type="checkbox"/> Yes <input type="checkbox"/> No or Village Board of Trustees		
b. City, Town or Village <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Planning Board or Commission		
c. City, Town or <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Village Zoning Board of Appeals		
d. Other local agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	SIDA	
e. County agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
f. Regional agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
g. State agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	SHPO	
h. Federal agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	National Park Service	
i. Coastal Resources.		
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
iii. Is the project site within a Coastal Erosion Hazard Area?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**C. Planning and Zoning**

**C.1. Planning and zoning actions.**

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed?  Yes  No

- If Yes, complete sections C, F and G.
- If No, proceed to question C.2 and complete all remaining sections and questions in Part 1

**C.2. Adopted land use plans.**

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located?  Yes  No

If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located?  Yes  No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?)  Yes  No

If Yes, identify the plan(s):  
 Historic District - Armory Square New York - National Register of Historic Places - Contributing Building  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan?  Yes  No

If Yes, identify the plan(s):  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**C.3. Zoning**

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance.  Yes  No

If Yes, what is the zoning classification(s) including any applicable overlay district?

CBD

b. Is the use permitted or allowed by a special or conditional use permit?  Yes  No

c. Is a zoning change requested as part of the proposed action?  Yes  No

If Yes,

i. What is the proposed new zoning for the site? \_\_\_\_\_

**C.4. Existing community services**

a. In what school district is the project site located? City of Syracuse Schools

b. What police or other public protection forces serve the project site?

City of Syracuse Police

c. Which fire protection and emergency medical services serve the project site?

City of Syracuse Fire Department, Upstate Medical Center

d. What parks serve the project site?

N/A

**D. Project Details****D.1. Proposed and Potential Development**

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Mixed Use

b. a. Total acreage of the site of the proposed action? \_\_\_\_\_ .15 acres

b. Total acreage to be physically disturbed? \_\_\_\_\_ N/A acres

c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? \_\_\_\_\_ .30 acres

c. Is the proposed action an expansion of an existing project or use?  Yes  No

i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % \_\_\_\_\_ Units: \_\_\_\_\_

d. Is the proposed action a subdivision, or does it include a subdivision?  Yes  No

If Yes,

i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)

ii. Is a cluster/conservation layout proposed?  Yes  No

iii. Number of lots proposed? \_\_\_\_\_

iv. Minimum and maximum proposed lot sizes? Minimum \_\_\_\_\_ Maximum \_\_\_\_\_

e. Will the proposed action be constructed in multiple phases?  Yes  No

i. If No, anticipated period of construction: \_\_\_\_\_ months

ii. If Yes:

- Total number of phases anticipated \_\_\_\_\_
- Anticipated commencement date of phase 1 (including demolition) \_\_\_\_\_ month \_\_\_\_\_ year
- Anticipated completion date of final phase \_\_\_\_\_ month \_\_\_\_\_ year

• Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: \_\_\_\_\_

f. Does the project include new residential uses?  Yes  No

If Yes, show numbers of units proposed.

	<u>One Family</u>	<u>Two Family</u>	<u>Three Family</u>	<u>Multiple Family (four or more)</u>
Initial Phase	_____	_____	_____	_____
At completion	_____	_____	_____	_____
of all phases	_____	_____	_____	30

g. Does the proposed action include new non-residential construction (including expansions)?  Yes  No

If Yes,

- i. Total number of structures \_\_\_\_\_
- ii. Dimensions (in feet) of largest proposed structure: \_\_\_\_\_ height; \_\_\_\_\_ width; and \_\_\_\_\_ length
- iii. Approximate extent of building space to be heated or cooled: \_\_\_\_\_ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage?  Yes  No

If Yes,

- i. Purpose of the impoundment: \_\_\_\_\_
- ii. If a water impoundment, the principal source of the water:  Ground water  Surface water streams  Other specify: \_\_\_\_\_
- iii. If other than water, identify the type of impounded/contained liquids and their source. \_\_\_\_\_
- iv. Approximate size of the proposed impoundment. Volume: \_\_\_\_\_ million gallons; surface area: \_\_\_\_\_ acres
- v. Dimensions of the proposed dam or impounding structure: \_\_\_\_\_ height; \_\_\_\_\_ length
- vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): \_\_\_\_\_

**D.2. Project Operations**

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)  Yes  No

If Yes:

- i. What is the purpose of the excavation or dredging? \_\_\_\_\_
- ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?
  - Volume (specify tons or cubic yards): \_\_\_\_\_
  - Over what duration of time? \_\_\_\_\_
- iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. \_\_\_\_\_
- iv. Will there be onsite dewatering or processing of excavated materials?  Yes  No  
If yes, describe. \_\_\_\_\_
- v. What is the total area to be dredged or excavated? \_\_\_\_\_ acres
- vi. What is the maximum area to be worked at any one time? \_\_\_\_\_ acres
- vii. What would be the maximum depth of excavation or dredging? \_\_\_\_\_ feet
- viii. Will the excavation require blasting?  Yes  No
- ix. Summarize site reclamation goals and plan: \_\_\_\_\_

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area?  Yes  No

If Yes:

- i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): \_\_\_\_\_

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

iii. Will the proposed action cause or result in disturbance to bottom sediments?  Yes  No

If Yes, describe: \_\_\_\_\_

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation?  Yes  No

If Yes:

- acres of aquatic vegetation proposed to be removed: \_\_\_\_\_
- expected acreage of aquatic vegetation remaining after project completion: \_\_\_\_\_
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): \_\_\_\_\_
- proposed method of plant removal: \_\_\_\_\_
- if chemical/herbicide treatment will be used, specify product(s): \_\_\_\_\_

v. Describe any proposed reclamation/mitigation following disturbance: \_\_\_\_\_

c. Will the proposed action use, or create a new demand for water?  Yes  No

If Yes:

i. Total anticipated water usage/demand per day: \_\_\_\_\_ 7900 gallons/day

ii. Will the proposed action obtain water from an existing public water supply?  Yes  No

If Yes:

- Name of district or service area: City of Syracuse Water Department
- Does the existing public water supply have capacity to serve the proposal?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No
- Do existing lines serve the project site?  Yes  No

iii. Will line extension within an existing district be necessary to supply the project?  Yes  No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_
- Source(s) of supply for the district: \_\_\_\_\_

iv. Is a new water supply district or service area proposed to be formed to serve the project site?  Yes  No

If, Yes:

- Applicant/sponsor for new district: \_\_\_\_\_
- Date application submitted or anticipated: \_\_\_\_\_
- Proposed source(s) of supply for new district: \_\_\_\_\_

v. If a public water supply will not be used, describe plans to provide water supply for the project: \_\_\_\_\_

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: \_\_\_\_\_ gallons/minute.

d. Will the proposed action generate liquid wastes?  Yes  No

If Yes:

i. Total anticipated liquid waste generation per day: \_\_\_\_\_ 7900 gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): \_\_\_\_\_

Sanitary wastewater

iii. Will the proposed action use any existing public wastewater treatment facilities?  Yes  No

If Yes:

- Name of wastewater treatment plant to be used: Metropolitan Syracuse Wastewater Treatment Plant
- Name of district: City of Syracuse Department of Public Works - Sewer Department
- Does the existing wastewater treatment plant have capacity to serve the project?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No

- Do existing sewer lines serve the project site?  Yes  No
  - Will a line extension within an existing district be necessary to serve the project?  Yes  No
- If Yes:
- Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site?  Yes  No

If Yes:

- Applicant/sponsor for new district: \_\_\_\_\_
- Date application submitted or anticipated: \_\_\_\_\_
- What is the receiving water for the wastewater discharge? \_\_\_\_\_

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):

\_\_\_\_\_

\_\_\_\_\_

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction?  Yes  No

If Yes:

- i. How much impervious surface will the project create in relation to total size of project parcel?
- \_\_\_\_\_ Square feet or \_\_\_\_\_ acres (impervious surface)
- \_\_\_\_\_ Square feet or \_\_\_\_\_ acres (parcel size)

ii. Describe types of new point sources. \_\_\_\_\_

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

\_\_\_\_\_

\_\_\_\_\_

- If to surface waters, identify receiving water bodies or wetlands: \_\_\_\_\_  
 \_\_\_\_\_
- Will stormwater runoff flow to adjacent properties?  Yes  No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater?  Yes  No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations?  Yes  No

If Yes, identify:

- i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)
- \_\_\_\_\_
- ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)
- \_\_\_\_\_
- iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)
- \_\_\_\_\_

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit?  Yes  No

If Yes:

- i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year)  Yes  No
- ii. In addition to emissions as calculated in the application, the project will generate:
- \_\_\_\_\_ Tons/year (short tons) of Carbon Dioxide (CO<sub>2</sub>)
  - \_\_\_\_\_ Tons/year (short tons) of Nitrous Oxide (N<sub>2</sub>O)
  - \_\_\_\_\_ Tons/year (short tons) of Perfluorocarbons (PFCs)
  - \_\_\_\_\_ Tons/year (short tons) of Sulfur Hexafluoride (SF<sub>6</sub>)
  - \_\_\_\_\_ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs)
  - \_\_\_\_\_ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)?  Yes  No

If Yes:  
 i. Estimate methane generation in tons/year (metric): \_\_\_\_\_  
 ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): \_\_\_\_\_

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations?  Yes  No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): \_\_\_\_\_

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services?  Yes  No

If Yes:  
 i. When is the peak traffic expected (Check all that apply):  Morning  Evening  Weekend  
 Randomly between hours of \_\_\_\_\_ to \_\_\_\_\_.  
 ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): \_\_\_\_\_

iii. Parking spaces: Existing \_\_\_\_\_ Proposed \_\_\_\_\_ Net increase/decrease \_\_\_\_\_

iv. Does the proposed action include any shared use parking?  Yes  No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: \_\_\_\_\_

vi. Are public/private transportation service(s) or facilities available within 1/2 mile of the proposed site?  Yes  No

vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles?  Yes  No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes?  Yes  No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy?  Yes  No

If Yes:  
 i. Estimate annual electricity demand during operation of the proposed action: \_\_\_\_\_

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): \_\_\_\_\_

iii. Will the proposed action require a new, or an upgrade, to an existing substation?  Yes  No

l. Hours of operation. Answer all items which apply.

- i. During Construction:
- Monday - Friday: \_\_\_\_\_
  - Saturday: \_\_\_\_\_
  - Sunday: \_\_\_\_\_
  - Holidays: \_\_\_\_\_

- ii. During Operations:
- Monday - Friday: \_\_\_\_\_
  - Saturday: \_\_\_\_\_
  - Sunday: \_\_\_\_\_
  - Holidays: \_\_\_\_\_



m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both?  Yes  No

If yes:  
i. Provide details including sources, time of day and duration:  
\_\_\_\_\_

ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen?  Yes  No  
Describe: \_\_\_\_\_

n. Will the proposed action have outdoor lighting?  Yes  No

If yes:  
i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:  
\_\_\_\_\_

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen?  Yes  No  
Describe: \_\_\_\_\_

o. Does the proposed action have the potential to produce odors for more than one hour per day?  Yes  No

If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:  
\_\_\_\_\_  
\_\_\_\_\_

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage?  Yes  No

If Yes:  
i. Product(s) to be stored \_\_\_\_\_  
ii. Volume(s) \_\_\_\_\_ per unit time \_\_\_\_\_ (e.g., month, year)  
iii. Generally, describe the proposed storage facilities: \_\_\_\_\_

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation?  Yes  No

If Yes:  
i. Describe proposed treatment(s):  
\_\_\_\_\_  
\_\_\_\_\_

ii. Will the proposed action use Integrated Pest Management Practices?  Yes  No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)?  Yes  No

If Yes:  
i. Describe any solid waste(s) to be generated during construction or operation of the facility:  
• Construction: \_\_\_\_\_ tons per \_\_\_\_\_ (unit of time)  
• Operation : \_\_\_\_\_ tons per \_\_\_\_\_ (unit of time)  
ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:  
• Construction: \_\_\_\_\_  
• Operation: \_\_\_\_\_  
iii. Proposed disposal methods/facilities for solid waste generated on-site:  
• Construction: \_\_\_\_\_  
• Operation: \_\_\_\_\_

s. Does the proposed action include construction or modification of a solid waste management facility?  Yes  No

If Yes:

- i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): \_\_\_\_\_
- ii. Anticipated rate of disposal/processing:
  - \_\_\_\_\_ Tons/month, if transfer or other non-combustion/thermal treatment, or
  - \_\_\_\_\_ Tons/hour, if combustion or thermal treatment
- iii. If landfill, anticipated site life: \_\_\_\_\_ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste?  Yes  No

If Yes:

- i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: \_\_\_\_\_
- ii. Generally describe processes or activities involving hazardous wastes or constituents: \_\_\_\_\_
- iii. Specify amount to be handled or generated \_\_\_\_\_ tons/month
- iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: \_\_\_\_\_

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility?  Yes  No

If Yes: provide name and location of facility: \_\_\_\_\_

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: \_\_\_\_\_

**E. Site and Setting of Proposed Action**

**E.1. Land uses on and surrounding the project site**

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

- Urban  Industrial  Commercial  Residential (suburban)  Rural (non-farm)
- Forest  Agriculture  Aquatic  Other (specify): \_\_\_\_\_

ii. If mix of uses, generally describe: \_\_\_\_\_

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	.15	.15	0
• Forested			
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)			
• Agricultural (includes active orchards, field, greenhouse etc.)			
• Surface water features (lakes, ponds, streams, rivers, etc.)			
• Wetlands (freshwater or tidal)			
• Non-vegetated (bare rock, earth or fill)			
• Other Describe: _____			

c. Is the project site presently used by members of the community for public recreation?  Yes  No

i. If Yes: explain: \_\_\_\_\_

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site?  Yes  No

If Yes,

i. Identify Facilities: \_\_\_\_\_

e. Does the project site contain an existing dam?  Yes  No

If Yes:

i. Dimensions of the dam and impoundment:

- Dam height: \_\_\_\_\_ feet
- Dam length: \_\_\_\_\_ feet
- Surface area: \_\_\_\_\_ acres
- Volume impounded: \_\_\_\_\_ gallons OR acre-feet

ii. Dam's existing hazard classification: \_\_\_\_\_

iii. Provide date and summarize results of last inspection: \_\_\_\_\_

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility?  Yes  No

If Yes:

i. Has the facility been formally closed?  Yes  No

- If yes, cite sources/documentation: \_\_\_\_\_

ii. Describe the location of the project site relative to the boundaries of the solid waste management facility: \_\_\_\_\_

iii. Describe any development constraints due to the prior solid waste activities: \_\_\_\_\_

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste?  Yes  No

If Yes:

i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred: \_\_\_\_\_

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site?  Yes  No

If Yes:

i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply:  Yes  No

Yes – Spills Incidents database

Provide DEC ID number(s): \_\_\_\_\_

Yes – Environmental Site Remediation database

Provide DEC ID number(s): \_\_\_\_\_

Neither database

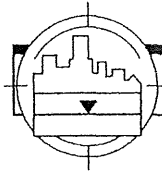
ii. If site has been subject of RCRA corrective activities, describe control measures: \_\_\_\_\_

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database?  Yes  No

If yes, provide DEC ID number(s): See Applicant Attachment # 2

iv. If yes to (i), (ii) or (iii) above, describe current status of site(s): \_\_\_\_\_

## Applicant Attachment #2



**ENVIRONMENTAL INSITE, INC.**

5259 West Taft Road ■ North Syracuse, NY 13212 ■ Phone: (315) 458-3005 ■ Email: envinsite@gmail.com

June 10, 2021

Mr. Jeffrey Appel  
Armory Boys LLC  
120 Walton Street  
Syracuse, New York 13202

Dear Mr. Appel

Re: **EAF Long Form**  
Page 10 Section h (iii)  
120 Walton Street  
Syracuse, NY 13202

Per your request, Environmental InSite, Inc. has reviewed the environmental database report (see attached) for the subject property address for the purpose of responding to the following question of the EAF Long Form:

h. (iii). Is the property within 2000 feet of any site in the NYSDEC Environmental Site Remediation database?

*Yes.*

If yes, provide the DEC ID number(s).

A review of the attached environmental database report for the radius of 2000 feet (0.38 miles) shows the presence of numerous spill, leaking underground storage tanks, brownfield sites, and voluntary cleanup sites. All of the sites lists have been closed with No Further Action required by the NYSDEC, except for one site located 0.19-miles north, the Niagara Mohawk MPG site (ID 808), located at 300 Erie Boulevard West, Syracuse, NY. This site is listed with an 'Active' classification. However, owing to its relative location, the regional topography, and suspected ground water flow direction, this site does not appear to present an environmental risk to the subject property.

Sincerely,

ENVIRONMENTAL INSITE, INC.

A handwritten signature in black ink, appearing to read "Stuart R. Holtzclaw". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Stuart R. Holtzclaw  
Principal

v. Is the project site subject to an institutional control limiting property uses?  Yes  No

- If yes, DEC site ID number: \_\_\_\_\_
- Describe the type of institutional control (e.g., deed restriction or easement): \_\_\_\_\_
- Describe any use limitations: \_\_\_\_\_
- Describe any engineering controls: \_\_\_\_\_
- Will the project affect the institutional or engineering controls in place?  Yes  No
- Explain: \_\_\_\_\_

**E.2. Natural Resources On or Near Project Site**

a. What is the average depth to bedrock on the project site? \_\_\_\_\_ feet

b. Are there bedrock outcroppings on the project site?  Yes  No  
 If Yes, what proportion of the site is comprised of bedrock outcroppings? \_\_\_\_\_ %

c. Predominant soil type(s) present on project site: \_\_\_\_\_ %  
 \_\_\_\_\_ %  
 \_\_\_\_\_ %

d. What is the average depth to the water table on the project site? Average: \_\_\_\_\_ feet

e. Drainage status of project site soils:  Well Drained: \_\_\_\_\_ 100 % of site  
 Moderately Well Drained: \_\_\_\_\_ % of site  
 Poorly Drained \_\_\_\_\_ % of site

f. Approximate proportion of proposed action site with slopes:  0-10%: \_\_\_\_\_ 0 % of site  
 10-15%: \_\_\_\_\_ % of site  
 15% or greater: \_\_\_\_\_ % of site

g. Are there any unique geologic features on the project site?  Yes  No  
 If Yes, describe: \_\_\_\_\_

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)?  Yes  No

ii. Do any wetlands or other waterbodies adjoin the project site?  Yes  No

If Yes to either *i* or *ii*, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency?  Yes  No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Lakes or Ponds: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Wetlands: Name \_\_\_\_\_ Approximate Size \_\_\_\_\_
- Wetland No. (if regulated by DEC) \_\_\_\_\_

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies?  Yes  No  
 If yes, name of impaired water body/bodies and basis for listing as impaired: \_\_\_\_\_

i. Is the project site in a designated Floodway?  Yes  No

j. Is the project site in the 100-year Floodplain?  Yes  No

k. Is the project site in the 500-year Floodplain?  Yes  No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer?  Yes  No  
 If Yes:  
 i. Name of aquifer: \_\_\_\_\_

m. Identify the predominant wildlife species that occupy or use the project site: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

n. Does the project site contain a designated significant natural community?  Yes  No

If Yes:

i. Describe the habitat/community (composition, function, and basis for designation): \_\_\_\_\_

ii. Source(s) of description or evaluation: \_\_\_\_\_

iii. Extent of community/habitat:

- Currently: \_\_\_\_\_ acres
- Following completion of project as proposed: \_\_\_\_\_ acres
- Gain or loss (indicate + or -): \_\_\_\_\_ acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species?  Yes  No

If Yes:

i. Species and listing (endangered or threatened): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern?  Yes  No

If Yes:

i. Species and listing: \_\_\_\_\_  
\_\_\_\_\_

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing?  Yes  No

If yes, give a brief description of how the proposed action may affect that use: \_\_\_\_\_  
\_\_\_\_\_

**E.3. Designated Public Resources On or Near Project Site**

a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304?  Yes  No

If Yes, provide county plus district name/number: \_\_\_\_\_

b. Are agricultural lands consisting of highly productive soils present?  Yes  No

i. If Yes: acreage(s) on project site? \_\_\_\_\_

ii. Source(s) of soil rating(s): \_\_\_\_\_

c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark?  Yes  No

If Yes:

i. Nature of the natural landmark:  Biological Community  Geological Feature

ii. Provide brief description of landmark, including values behind designation and approximate size/extent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

d. Is the project site located in or does it adjoin a state listed Critical Environmental Area?  Yes  No

If Yes:

i. CEA name: \_\_\_\_\_

ii. Basis for designation: \_\_\_\_\_

iii. Designating agency and date: \_\_\_\_\_

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?  Yes  No

If Yes:

i. Nature of historic/archaeological resource:  Archaeological Site  Historic Building or District

ii. Name: Armory Square Historic District

iii. Brief description of attributes on which listing is based: \_\_\_\_\_

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f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?  Yes  No

---

g. Have additional archaeological or historic site(s) or resources been identified on the project site?  Yes  No

If Yes:

i. Describe possible resource(s): \_\_\_\_\_

ii. Basis for identification: \_\_\_\_\_

---

h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource?  Yes  No

If Yes:

i. Identify resource: \_\_\_\_\_

ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): \_\_\_\_\_

iii. Distance between project and resource: \_\_\_\_\_ miles.

---

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666?  Yes  No

If Yes:

i. Identify the name of the river and its designation: \_\_\_\_\_

ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666?  Yes  No

**F. Additional Information**


Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

**G. Verification**

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Beacon Armory LLC Date 6/10/2021

Signature  Title MANAGING MEMBER

**Full Environmental Assessment Form**  
**Part 2 - Identification of Potential Project Impacts**

Project : \_\_\_\_\_

Date : \_\_\_\_\_

**Part 2 is to be completed by the lead agency.** Part 2 is designed to help the lead agency inventory all potential resources that could be affected by a proposed project or action. We recognize that the lead agency's reviewer(s) will not necessarily be environmental professionals. So, the questions are designed to walk a reviewer through the assessment process by providing a series of questions that can be answered using the information found in Part 1. To further assist the lead agency in completing Part 2, the form identifies the most relevant questions in Part 1 that will provide the information needed to answer the Part 2 question. When Part 2 is completed, the lead agency will have identified the relevant environmental areas that may be impacted by the proposed activity.

If the lead agency is a state agency **and** the action is in any Coastal Area, **complete the Coastal Assessment Form** before proceeding with this assessment.

**Tips for completing Part 2:**

- Review all of the information provided in Part 1.
- Review any application, maps, supporting materials and the Full EAF Workbook.
- Answer each of the 18 questions in Part 2.
- If you answer "**Yes**" to a numbered question, please complete all the questions that follow in that section.
- If you answer "**No**" to a numbered question, move on to the next numbered question.
- Check appropriate column to indicate the anticipated size of the impact.
- Proposed projects that would exceed a numeric threshold contained in a question should result in the reviewing agency checking the box "Moderate to large impact may occur."
- The reviewer is not expected to be an expert in environmental analysis.
- If you are not sure or undecided about the size of an impact, it may help to review the sub-questions for the general question and consult the workbook.
- When answering a question consider all components of the proposed activity, that is, the "whole action".
- Consider the possibility for long-term and cumulative impacts as well as direct impacts.
- Answer the question in a reasonable manner considering the scale and context of the project.

1. <b>Impact on Land</b>			
Proposed action may involve construction on, or physical alteration of, the land surface of the proposed site. (See Part 1. D.1)		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
<i>If "Yes", answer questions a - j. If "No", move on to Section 2.</i>			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may involve construction on land where depth to water table is less than 3 feet.	E2d	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may involve construction on slopes of 15% or greater.	E2f	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may involve construction on land where bedrock is exposed, or generally within 5 feet of existing ground surface.	E2a	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve the excavation and removal of more than 1,000 tons of natural material.	D2a	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may involve construction that continues for more than one year or in multiple phases.	D1e	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result in increased erosion, whether from physical disturbance or vegetation removal (including from treatment by herbicides).	D2e, D2q	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action is, or may be, located within a Coastal Erosion hazard area.	B1i	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>



**2. Impact on Geological Features**

The proposed action may result in the modification or destruction of, or inhibit access to, any unique or unusual land forms on the site (e.g., cliffs, dunes, minerals, fossils, caves). (See Part 1. E.2.g)

 NO YES

If "Yes", answer questions a - c. If "No", move on to Section 3.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Identify the specific land form(s) attached: _____ _____	E2g	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may affect or is adjacent to a geological feature listed as a registered National Natural Landmark. Specific feature: _____	E3c	<input type="checkbox"/>	<input type="checkbox"/>
c. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**3. Impacts on Surface Water**

The proposed action may affect one or more wetlands or other surface water bodies (e.g., streams, rivers, ponds or lakes). (See Part 1. D.2, E.2.h)

 NO YES

If "Yes", answer questions a - l. If "No", move on to Section 4.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may create a new water body.	D2b, D1h	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in an increase or decrease of over 10% or more than a 10 acre increase or decrease in the surface area of any body of water.	D2b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may involve dredging more than 100 cubic yards of material from a wetland or water body.	D2a	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve construction within or adjoining a freshwater or tidal wetland, or in the bed or banks of any other water body.	E2h	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may create turbidity in a waterbody, either from upland erosion, runoff or by disturbing bottom sediments.	D2a, D2h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may include construction of one or more intake(s) for withdrawal of water from surface water.	D2c	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may include construction of one or more outfall(s) for discharge of wastewater to surface water(s).	D2d	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action may cause soil erosion, or otherwise create a source of stormwater discharge that may lead to siltation or other degradation of receiving water bodies.	D2e	<input type="checkbox"/>	<input type="checkbox"/>
i. The proposed action may affect the water quality of any water bodies within or downstream of the site of the proposed action.	E2h	<input type="checkbox"/>	<input type="checkbox"/>
j. The proposed action may involve the application of pesticides or herbicides in or around any water body.	D2q, E2h	<input type="checkbox"/>	<input type="checkbox"/>
k. The proposed action may require the construction of new, or expansion of existing, wastewater treatment facilities.	D1a, D2d	<input type="checkbox"/>	<input type="checkbox"/>

1. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>
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<b>4. Impact on groundwater</b> The proposed action may result in new or additional use of ground water, or may have the potential to introduce contaminants to ground water or an aquifer. (See Part 1. D.2.a, D.2.c, D.2.d, D.2.p, D.2.q, D.2.t) <i>If "Yes", answer questions a - h. If "No", move on to Section 5.</i>			
		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>
a. The proposed action may require new water supply wells, or create additional demand on supplies from existing water supply wells.	D2c	<input type="checkbox"/>	<input type="checkbox"/>
b. Water supply demand from the proposed action may exceed safe and sustainable withdrawal capacity rate of the local supply or aquifer. Cite Source: _____	D2c	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may allow or result in residential uses in areas without water and sewer services.	D1a, D2c	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may include or require wastewater discharged to groundwater.	D2d, E2l	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in the construction of water supply wells in locations where groundwater is, or is suspected to be, contaminated.	D2c, E1f, E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may require the bulk storage of petroleum or chemical products over ground water or an aquifer.	D2p, E2l	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may involve the commercial application of pesticides within 100 feet of potable drinking water or irrigation sources.	E2h, D2q, E2l, D2c	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

<b>5. Impact on Flooding</b> The proposed action may result in development on lands subject to flooding. (See Part 1. E.2) <i>If "Yes", answer questions a - g. If "No", move on to Section 6.</i>			
		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>
a. The proposed action may result in development in a designated floodway.	E2i	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in development within a 100 year floodplain.	E2j	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in development within a 500 year floodplain.	E2k	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in, or require, modification of existing drainage patterns.	D2b, D2e	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may change flood water flows that contribute to flooding.	D2b, E2i, E2j, E2k	<input type="checkbox"/>	<input type="checkbox"/>
f. If there is a dam located on the site of the proposed action, is the dam in need of repair, or upgrade?	E1e	<input type="checkbox"/>	<input type="checkbox"/>

g. Other impacts: \_\_\_\_\_

**6. Impacts on Air**

The proposed action may include a state regulated air emission source.  
(See Part 1. D.2.f., D.2.h, D.2.g)

 NO YES

*If "Yes", answer questions a - f. If "No", move on to Section 7.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. If the proposed action requires federal or state air emission permits, the action may also emit one or more greenhouse gases at or above the following levels: i. More than 1000 tons/year of carbon dioxide (CO <sub>2</sub> ) ii. More than 3.5 tons/year of nitrous oxide (N <sub>2</sub> O) iii. More than 1000 tons/year of carbon equivalent of perfluorocarbons (PFCs) iv. More than .045 tons/year of sulfur hexafluoride (SF <sub>6</sub> ) v. More than 1000 tons/year of carbon dioxide equivalent of hydrochloroflourocarbons (HFCs) emissions vi. 43 tons/year or more of methane	D2g D2g D2g D2g D2g D2h	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
b. The proposed action may generate 10 tons/year or more of any one designated hazardous air pollutant, or 25 tons/year or more of any combination of such hazardous air pollutants.	D2g	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may require a state air registration, or may produce an emissions rate of total contaminants that may exceed 5 lbs. per hour, or may include a heat source capable of producing more than 10 million BTU's per hour.	D2f, D2g	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may reach 50% of any of the thresholds in "a" through "c", above.	D2g	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in the combustion or thermal treatment of more than 1 ton of refuse per hour.	D2s	<input type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

**7. Impact on Plants and Animals**

The proposed action may result in a loss of flora or fauna. (See Part 1. E.2. m.-q.)

 NO YES

*If "Yes", answer questions a - j. If "No", move on to Section 8.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may cause reduction in population or loss of individuals of any threatened or endangered species, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2o	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in a reduction or degradation of any habitat used by any rare, threatened or endangered species, as listed by New York State or the federal government.	E2o	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may cause reduction in population, or loss of individuals, of any species of special concern or conservation need, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2p	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in a reduction or degradation of any habitat used by any species of special concern and conservation need, as listed by New York State or the Federal government.	E2p	<input type="checkbox"/>	<input type="checkbox"/>

e. The proposed action may diminish the capacity of a registered National Natural Landmark to support the biological community it was established to protect.	E3c	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result in the removal of, or ground disturbance in, any portion of a designated significant natural community. Source: _____	E2n	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may substantially interfere with nesting/breeding, foraging, or over-wintering habitat for the predominant species that occupy or use the project site.	E2m	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action requires the conversion of more than 10 acres of forest, grassland or any other regionally or locally important habitat. Habitat type & information source: _____	E1b	<input type="checkbox"/>	<input type="checkbox"/>
i. Proposed action (commercial, industrial or recreational projects, only) involves use of herbicides or pesticides.	D2q	<input type="checkbox"/>	<input type="checkbox"/>
j. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

8. <b>Impact on Agricultural Resources</b>			
The proposed action may impact agricultural resources. (See Part 1. E.3.a. and b.)		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
<i>If "Yes", answer questions a - h. If "No", move on to Section 9.</i>			
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>
a. The proposed action may impact soil classified within soil group 1 through 4 of the NYS Land Classification System.	E2c, E3b	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may sever, cross or otherwise limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc).	E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in the excavation or compaction of the soil profile of active agricultural land.	F3b	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may irreversibly convert agricultural land to non-agricultural uses, either more than 2.5 acres if located in an Agricultural District, or more than 10 acres if not within an Agricultural District.	E1b, E3a	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may disrupt or prevent installation of an agricultural land management system.	E1 a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result, directly or indirectly, in increased development potential or pressure on farmland.	C2c, C3, D2c, D2d	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed project is not consistent with the adopted municipal Farmland Protection Plan.	C2c	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

**9. Impact on Aesthetic Resources**  NO  YES

The land use of the proposed action are obviously different from, or are in sharp contrast to, current land use patterns between the proposed project and a scenic or aesthetic resource. (Part 1. E.1.a, E.1.b, E.3.h.)  
*If "Yes", answer questions a - g. If "No", go to Section 10.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Proposed action may be visible from any officially designated federal, state, or local scenic or aesthetic resource.	E3h	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the obstruction, elimination or significant screening of one or more officially designated scenic views.	E3h, C2b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may be visible from publicly accessible vantage points: i. Seasonally (e.g., screened by summer foliage, but visible during other seasons) ii. Year round	E3h	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
d. The situation or activity in which viewers are engaged while viewing the proposed action is: i. Routine travel by residents, including travel to and from work ii. Recreational or tourism based activities	E3h E2q, E1c	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
e. The proposed action may cause a diminishment of the public enjoyment and appreciation of the designated aesthetic resource.	E3h	<input type="checkbox"/>	<input type="checkbox"/>
f. There are similar projects visible within the following distance of the proposed project: 0-1/2 mile 1/2 -3 mile 3-5 mile 5+ mile	D1a, E1a, D1f, D1g	<input type="checkbox"/>	<input type="checkbox"/>
g. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**10. Impact on Historic and Archeological Resources**  NO  YES

The proposed action may occur in or adjacent to a historic or archaeological resource. (Part 1. E.3.e, f. and g.)  
*If "Yes", answer questions a - e. If "No", go to Section 11.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may occur wholly or partially within, or substantially contiguous to, any buildings, archaeological site or district which is listed on the National or State Register of Historical Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places.	E3e	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may occur wholly or partially within, or substantially contiguous to, an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory.	E3f	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may occur wholly or partially within, or substantially contiguous to, an archaeological site not included on the NY SHPO inventory. Source: _____	E3g	<input type="checkbox"/>	<input type="checkbox"/>

d. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>
e. If any of the above (a-d) are answered "Moderate to large impact may occur", continue with the following questions to help support conclusions in Part 3:			
i. The proposed action may result in the destruction or alteration of all or part of the site or property.	E3e, E3g, E3f	<input type="checkbox"/>	<input type="checkbox"/>
ii. The proposed action may result in the alteration of the property's setting or integrity.	E3e, E3f, E3g, E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
iii. The proposed action may result in the introduction of visual elements which are out of character with the site or property, or may alter its setting.	E3e, E3f, E3g, E3h, C2, C3	<input type="checkbox"/>	<input type="checkbox"/>

<b>11. Impact on Open Space and Recreation</b> The proposed action may result in a loss of recreational opportunities or a reduction of an open space resource as designated in any adopted municipal open space plan. (See Part 1. C.2.c, E.1.c., E.2.q.) If "Yes", answer questions a - e. If "No", go to Section 12.			
		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>
a. The proposed action may result in an impairment of natural functions, or "ecosystem services", provided by an undeveloped area, including but not limited to stormwater storage, nutrient cycling, wildlife habitat.	D2e, E1b E2h, E2m, E2o, E2n, E2p	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the loss of a current or future recreational resource.	C2a, E1c, C2c, E2q	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may eliminate open space or recreational resource in an area with few such resources.	C2a, C2c E1c, E2q	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in loss of an area now used informally by the community as an open space resource.	C2c, E1c	<input type="checkbox"/>	<input type="checkbox"/>
e. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

<b>12. Impact on Critical Environmental Areas</b> The proposed action may be located within or adjacent to a critical environmental area (CEA). (See Part 1. E.3.d) If "Yes", answer questions a - c. If "No", go to Section 13.			
		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>
a. The proposed action may result in a reduction in the quantity of the resource or characteristic which was the basis for designation of the CEA.	E3d	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in a reduction in the quality of the resource or characteristic which was the basis for designation of the CEA.	E3d	<input type="checkbox"/>	<input type="checkbox"/>
c. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**13. Impact on Transportation**

The proposed action may result in a change to existing transportation systems.  
(See Part 1. D.2.j)

 NO YES

*If "Yes", answer questions a - f. If "No", go to Section 14.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Projected traffic increase may exceed capacity of existing road network.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the construction of paved parking area for 500 or more vehicles.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action will degrade existing transit access.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action will degrade existing pedestrian or bicycle accommodations.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may alter the present pattern of movement of people or goods.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**14. Impact on Energy**

The proposed action may cause an increase in the use of any form of energy.  
(See Part 1. D.2.k)

 NO YES

*If "Yes", answer questions a - e. If "No", go to Section 15.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action will require a new, or an upgrade to an existing, substation.	D2k	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two-family residences or to serve a commercial or industrial use.	D1f, D1q, D2k	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may utilize more than 2,500 MWhrs per year of electricity.	D2k	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve heating and/or cooling of more than 100,000 square feet of building area when completed.	D1g	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Other Impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**15. Impact on Noise, Odor, and Light**

The proposed action may result in an increase in noise, odors, or outdoor lighting.  
(See Part 1. D.2.m., n., and o.)

 NO YES

*If "Yes", answer questions a - f. If "No", go to Section 16.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may produce sound above noise levels established by local regulation.	D2m	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in blasting within 1,500 feet of any residence, hospital, school, licensed day care center, or nursing home.	D2m, E1d	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in routine odors for more than one hour per day.	D2o	<input type="checkbox"/>	<input type="checkbox"/>

d. The proposed action may result in light shining onto adjoining properties.	D2n	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in lighting creating sky-glow brighter than existing area conditions.	D2n, E1a	<input type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**16. Impact on Human Health**

The proposed action may have an impact on human health from exposure to new or existing sources of contaminants. (See Part 1.D.2.q., E.1. d. f. g. and h.)  
If "Yes", answer questions a - m. If "No", go to Section 17.

 NO YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action is located within 1500 feet of a school, hospital, licensed day care center, group home, nursing home or retirement community.	E1d	<input type="checkbox"/>	<input type="checkbox"/>
b. The site of the proposed action is currently undergoing remediation.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
c. There is a completed emergency spill remediation, or a completed environmental site remediation on, or adjacent to, the site of the proposed action.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
d. The site of the action is subject to an institutional control limiting the use of the property (e.g., easement or deed restriction).	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may affect institutional control measures that were put in place to ensure that the site remains protective of the environment and human health.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action has adequate control measures in place to ensure that future generation, treatment and/or disposal of hazardous wastes will be protective of the environment and human health.	D2t	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action involves construction or modification of a solid waste management facility.	D2q, E1f	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action may result in the unearthing of solid or hazardous waste.	D2q, E1f	<input type="checkbox"/>	<input type="checkbox"/>
i. The proposed action may result in an increase in the rate of disposal, or processing, of solid waste.	D2r, D2s	<input type="checkbox"/>	<input type="checkbox"/>
j. The proposed action may result in excavation or other disturbance within 2000 feet of a site used for the disposal of solid or hazardous waste.	E1f, E1g E1h	<input type="checkbox"/>	<input type="checkbox"/>
k. The proposed action may result in the migration of explosive gases from a landfill site to adjacent off site structures.	E1f, E1g	<input type="checkbox"/>	<input type="checkbox"/>
l. The proposed action may result in the release of contaminated leachate from the project site.	D2s, E1f, D2r	<input type="checkbox"/>	<input type="checkbox"/>
m. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>



17. <b>Consistency with Community Plans</b>			
The proposed action is not consistent with adopted land use plans. (See Part 1. C.1, C.2. and C.3.) <i>If "Yes", answer questions a - h. If "No", go to Section 18.</i>		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action's land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s).	C2, C3, D1a E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action will cause the permanent population of the city, town or village in which the project is located to grow by more than 5%.	C2	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action is inconsistent with local land use plans or zoning regulations.	C2, C2, C3	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action is inconsistent with any County plans, or other regional land use plans.	C2, C2	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may cause a change in the density of development that is not supported by existing infrastructure or is distant from existing infrastructure.	C3, D1c, D1d, D1f, D1d, E1b	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action is located in an area characterized by low density development that will require new or expanded public infrastructure.	C4, D2c, D2d D2j	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may induce secondary development impacts (e.g., residential or commercial development not included in the proposed action)	C2a	<input type="checkbox"/>	<input type="checkbox"/>
h. Other: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

18. <b>Consistency with Community Character</b>			
The proposed project is inconsistent with the existing community character. (See Part 1. C.2, C.3, D.2, E.3) <i>If "Yes", answer questions a - g. If "No", proceed to Part 3.</i>		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may replace or eliminate existing facilities, structures, or areas of historic importance to the community.	E3e, E3f, E3g	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may create a demand for additional community services (e.g. schools, police and fire)	C4	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may displace affordable or low-income housing in an area where there is a shortage of such housing.	C2, C3, D1f D1g, E1a	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may interfere with the use or enjoyment of officially recognized or designated public resources.	C2, E3	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action is inconsistent with the predominant architectural scale and character.	C2, C3	<input type="checkbox"/>	<input type="checkbox"/>
f. Proposed action is inconsistent with the character of the existing natural landscape.	C2, C3 E1a, E1b E2g, E2h	<input type="checkbox"/>	<input type="checkbox"/>
g. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

## Applicant Attachment #1

### Beacon Armory LLC - Project Description

Beacon Armory LLC will re-purpose to mixed use of the Bentley Settle Building (Basement commercial tenant space formerly Empire Brewing Company, first floor commercial spaces and 5 floors residential on 2-6) a contributing building in the Armory Square Historic District recognized on the National Register of Historic Places. The project scope consists of 35,900 square feet above grade and an additional 7000 sq feet at the lower level. Approximately 25,000 sq feet will be divided into 30 residences. 5 2-bedroom residences of approximately 850 sq ft each and 25 1-bedroom residences ranging from 575 - 650 will occupy the upper 5 floors. These loft style apartments will be smartly finished and will incorporate the latest advances in urban style living but will leave intact the entirety of the historic fabric of the tallest building in the Armory. This development comes at a critical time for the property. The unfortunate demise of the buildings former anchor tenant, combine with a glut of office space inventory in the marketplace created a need to re evaluate the highest and best use for the building. With the onset of the Covid 19 Pandemic ownership arrived at an unenviable fulcrum. With only one commercial tenant occupying the entirety of the building a rededication to the redevelopment of this historic site was necessary. Work has begun on upgrading all building systems, preventative measures are being taken to insure the commercial spaces and facade do not suffer from deferred maintenance. Through a significant new round of cash investment by the principals along with traditional bank financing, Beacon Armory will deploy a nearly 4.5 million dollar program with local contractors and vendors to repair and needed facade work, Reconfiguration of the commercial spaces will present fresh and exciting floorplans that will attract the most sought after tenants in the marketplace. At least 50 new jobs should be generated through the new businesses that will find what they desire at the base of the Armory's most recognizable building. We ask SIDA to assist us in this endeavor. The funds we may receive will allow us to create a product we know both commercial and residential tenants will find valuable. Between the rising cost of materials (some of which have doubled and or tripled in recent months) labor shortages in the area and essential no active cash-flow from existing tenants, ownership humbly seeks SIDA's established benefits to insure that the beacon of the Armory can accommodate new business owners and urban dwellers .

The following is additional historic background on the Bentley Settle building. During World War II Bentley Settle and Co would be among those responsible for the oversight and distribution of rationed goods for the City of Syracuse. In more recent history, the Bentley Settle Building served as home to a group of artists and early pioneers of Armory Square A group of free spirits, they created studios and lofts incubating a true artist colony. The artists of the Armory existed on the upper floors of the building until they accidentally set fire to their space. The artists went on to open Eureka Studios just a block away.

For the Bentley Settle Building it could have been the end of the road. The building remained empty and unprotected from the elements for years until a local Architect, Ed Riley, set his sights on his most aggressive project to date. In 1987 Riley secured funding from the State of New York and the National Historic Trust to completely renovate both buildings. Riley would go to save many other historic buildings in Syracuse and beyond including the seventy-five million dollar restoration of the Hotel Syracuse completed in 2018. The 1987 renovation of the Bentley Settle and Piper Phillips remains a significant advantage for ownership in its plans for the Bentley Lofts. The condition of the building, its sidewalk vaults and other major systems will spare significant "unseen" costs and allocate more of the budget to amenities. At the core of Syracuse nightlife and entertainment, The Bentley Settle building rises 6 floors at the center of the square. The landmark building demands glances upward along its fine brick work and verticality stressed by grouping windows under arches. A beautifully renovated lobby

and common corridor connects Walton Street to W Fayette Street. Here, another landmark, The Piper Phillips building, holds the fully leased result of the projects first phase, the Piper Phillips Residences and its eight unique urban homes. The Bentley Lofts, phase two of the project, will offer a mix of one and two bedroom homes with a distinctly urban edge. Massive hand hewn timbers support soaring ceilings and great windows that offer a variety of views that will never be taken for granted. But it is its enviable location that makes the Bentley Settle building and its thirty new loft residences a natural first choice for sophisticated yet affordable downtown living.

**EXHIBIT "B"**

**PARTS 2 AND 3 OF  
SHORT ENVIRONMENTAL ASSESSMENT FORM**

## Agency Use Only [If applicable]

Project: Bentley Lofts Project

Date: September 30, 2021

***Short Environmental Assessment Form***  
***Part 2 - Impact Assessment***

**Part 2 is to be completed by the Lead Agency.**

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:		
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Project: Bentley Lofts Project

Date: September 30, 2021

### Short Environmental Assessment Form Part 3 Determination of Significance

For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

(8) Impacts on historical and archaeological resources – The State Historic Preservation Office (SHPO) has conducted a review consistent with Section 106 of the National Historic Preservation Act of 1966. In a letter dated September 17, 2021, SHPO indicates that the project will result in no significant impacts to historic properties including archaeological and/or historic resources, so long as the project sponsor complies with SHPO's requirements, including, but not limited to, submitting a Federal Rehabilitation Tax Credit Part 2 Application.

<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
<input checked="" type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.
City of Syracuse Industrial Development Agency	September 30, 2021
Name of Lead Agency	Date
Judith DeLaney	Executive Director
<small>DocuSigned by:</small> Print or Type Name of Responsible Officer in Lead Agency <i>Judith DeLaney</i>	Title of Responsible Officer
<small>C938C8B871BA42A</small> Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

**PRINT FORM**

**EXHIBIT "G"**

**INDUCEMENT RESOLUTION**

## INDUCEMENT RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to the Governor Executive Order 202.1 issued on March 12, 2020 suspending the Open Meetings Law, as extended from time to time including September 2, 2021, the City of Syracuse Industrial Development Agency (the "*Agency*") held a special meeting on the 30<sup>th</sup> day of September, 2021, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=mc0bb61adbeed18e60a21b1f9a98234e0>; (or by accessing the link on the Agency's website) and using meeting number 2336 173 6505 and password zXsv2rKSq36; or via telephone at (408) 418-9388 with access code: 2336 173 6505, in conjunction with the matter set forth below.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

**PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): Kathleen Murphy, Steven Thompson Rickey T. Brown and Kenneth Kinsey

**EXCUSED:** Dirk Sonneborn

**THE FOLLOWING PERSONS WERE ALSO PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): Staff Present: Judith DeLaney, Susan Katzoff, Esq., Lori McRobbie and John Vavonese; Others Present: John Sidd, Esq., Lindsey Haubenreich, Esq., Milan Tyler, Esq., Jeffrey Appel, Khash Bayani, Spiro Pilotis, Christine Stevens, M. Braun

The following resolution was offered by Steven Thompson and seconded by Rickey T. Brown:

**RESOLUTION AUTHORIZING THE UNDERTAKING, ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF A PROJECT; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "*Agency*") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "*State*"), as amended, together with Chapter 641 of the Laws of 1979 of the



State of New York, as amended from time to time (collectively, the “*Act*”) to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, and to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease and sell real property and grant financial assistance in connection with one or more “projects” (as defined in the Act); and

**WHEREAS**, by application dated on or about June 2, 2021, as amended or supplemented from time to time (the “*Application*”), Beacon Armory LLC and Spilco Properties, LLC, as tenants in common, or an entity to be formed (collectively, the “*Company*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the “*Building*”) located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the “*Land*”); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Land and the Facility are connected to an adjacent building located at 229-37 West Fayette Street, Syracuse, New York (the land and building collectively referred to as the “*Adjacent Building*”) which is owned by Armory Boys LLC, the controlling members of which also hold a 50% membership interest in the Beacon Armory, LLC and

**WHEREAS**, the Company is or will be the fee owner of the Land and Facility at the time of the conference of any approved benefits authorized by the Agency; and

**WHEREAS**, the Company has advised the Agency that its lender (the “*Lender*”) will require a pledge of the Adjacent Building as additional collateral for the note and mortgage to be

given in connection with the Project; and

**WHEREAS**, the Agency proposes to assist the Company's acquisition, reconstruction and equipping of the Project Facility and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company and/or its designee as its agent with respect to completing the Project; (2) leasing of the Land, Facility and the Adjacent Building by the Agency pursuant to a company lease agreement; (3) accepting an interest in the Equipment pursuant to a bill of sale from the Company; (4) subleasing the Land, the Facility and the Adjacent Building to the Company and Armory Boys LLC, as applicable, pursuant to an agency lease agreement; and (5) entering into one or more mortgages in favor of the Company's Lender; and

**WHEREAS**, in order to accommodate the Lender's collateral requirements, the owner of the Adjacent Building has agreed to lease its interests in the Adjacent Building to the Agency and the Company has requested Agency the agree to extend its interest to the Adjacent Building solely for the purposes of any approved mortgage recording tax exemption, if any, with the understanding that all of the State and local sales and use tax exemption benefits authorized by the Agency, if any, will be realized from the work done solely on the Project Facility (the "**Lender Requirements**"); and

**WHEREAS**, the Project is located in a "Highly Distressed Area" as defined in Section 854(18) of the Act; and

**WHEREAS**, the Agency adopted a resolution on June 15, 2021 describing the Project and the proposed financial assistance and authorizing a public hearing with respect thereto ("**Public Hearing Resolution**"); and

**WHEREAS**, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on July 20, 2021 pursuant to Section 859-a of the Act, notice of which was published on July 6, 2021, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated June 30, 2021; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), the Agency is required to make a determination whether the "action" (as said quoted term is defined in SEQRA) to be taken by the Agency may have a "significant impact on the environment" (as said quoted term is utilized in SEQRA), and the preliminary agreement of the Agency to undertake the Project constitutes such an action; and

**WHEREAS**, by resolution adopted September 21, 2021 (the "**SEQRA Resolution**"), the Agency determined that the Project constitutes an "Unlisted Action" as defined under SEQRA and will not have a significant adverse effect on the environment and issued a negative declaration; and

**WHEREAS**, the Agency has considered the policy, purposes and requirements of the Act in making its determinations with respect to taking official action regarding the Project; and

**WHEREAS**, the Agency has given due consideration to the Application and to representations by the Company that the provision of Financial Assistance: (i) will induce the Company to develop the Project Facility in the City of Syracuse (the “*City*”); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) the Project will serve the purposes of the Act by advancing job opportunities and the economic welfare of the people of the State and the City and improve their standard of living.

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

**Section 1.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 2.** Based upon the representations and projections made by the Company to the Agency, the Agency hereby and makes the following determinations:

- (A) Ratifies the findings in its SEQRA Resolution;
- (B) The Project constitutes a “*project*” within the meaning of the Act;
- (C) The Project is located in a “Highly Distressed Area” as defined in Section 854(18) of the Act.
- (D) The acquisition of a controlling interest in the Project Facility by the Agency and the designation of the Company as the Agency’s agent for completion of the Project will be an inducement to the Company to acquire, reconstruct, renovate, equip and complete the Project Facility in the City, and will serve the purposes of the Act by, among other things, advancing job opportunities, the standard of living and economic welfare of the inhabitants of the City;
- (E) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project

Facility located in the State, except as may be permitted by the Act;

(F) The Financial Assistance approved hereby includes an exemption from State and local sales and use taxes and mortgage recording taxes, and the appointment of the Company as agent of the Agency as further set forth herein; and

(G) The Lender Requirements are hereby approved and the Agency is authorized to take all action and execute and deliver all documents necessary to effectuate same.

**Section 3.** The Company shall execute and deliver a copy of the agreement attached hereto at **Exhibit "A"** to the Agency within thirty (30) business days from the date of this Resolution (the "**Agreement**"). Any and all approvals provided herein or in any contemporaneous resolution adopted by the Agency with respect to the Project, shall be subject to rescission should the Company fail to execute and deliver the Agreement in accordance with the terms hereof.

**Section 4.** As a condition to the appointment of the Company as agent of the Agency, and the conference of any approved Financial Assistance, the Company and the Agency shall first execute and deliver: (i) a project agreement in substantially the same form used by the Agency in similar transactions (the "**Project Agreement**"); (ii) the Agreement; and (iii) the Lease Documents (as defined herein) unless otherwise authorized by the Agency. The Chair, Vice Chair or Executive Director of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Project Agreement, the Agreement, the Lease Documents (as defined herein), in form and substance similar to other such agreements and documents used by the Agency for similar transactions and any documents necessary to effectuate the Lender Requirements, with changes in terms and form as shall be consistent with this Resolution and as the Chair or Vice Chair shall approve. The execution thereof by the Chair, Vice Chair and/or Executive Director shall constitute conclusive evidence of such approval. Subject to the due execution and delivery by the Company of the Project Agreement, the Agreement and the Lease Documents, the satisfaction of the conditions of this Resolution, the Agreement, the Project Agreement, the Lease Documents and the payment by the Company of any attendant fees and costs of the Agency, the Company and its designees, are appointed the true and lawful agent of the Agency to proceed with the reconstruction, renovation, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed **\$200,000**.

**Section 5.** Subject to the terms of this Resolution and the execution and delivery of, and the conditions set forth in, the Agreement and the Project Agreement the Agency will: (i) acquire an interest in the Land, the Adjacent Building and the Facility pursuant to a lease agreement (the "**Lease**") to be entered into between the Company and Armory Boys LLC and the Agency; accept an interest in the Equipment pursuant to a bill of sale from the Company (the "**Bill of Sale**"); (ii) sublease the Project Facility and the Adjacent Building to the Company and Armory Boys LLC pursuant to a sublease agreement (the "**Sublease**" and with the Lease and the Bill of Sale, and all other documents required by the Agency for similar transactions, including but not limited to, an environmental compliance and indemnification agreement, collectively, the

“*Lease Documents*”) to be entered into between the Agency and the Company; (iii) grant the approved Financial Assistance; and (iv) provided that no default shall have occurred and be continuing under the Agreement, and provided the Company has executed and delivered all documents and certificates required by the Agency in conjunction with the Agency’s undertaking of the Project, execute and deliver all other certificates and documents necessary or appropriate for the grant of the approved Financial Assistance, in form and substance acceptable to the Agency.

**Section 6.** The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from State and local sales and use tax exemptions benefits.

**Section 7.** The Company may utilize, and subject to the terms of this Resolution, the Agreement and the Project Agreement, is hereby authorized to appoint, a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, “*Additional Agents*”) to proceed with the reconstruction, renovation, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf, provided the Company execute, deliver and comply with the Agreement. The Company shall provide, or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the State Commissioner of Taxation and Finance (the “*Commissioner*”) upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project’s receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request. for purposes of exemption from New York State (the “*State*”) sales and use taxation as part of the Financial Assistance requested, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

**Section 8.** The Chair, Vice Chair and/or the Executive Director of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred herein as the (Vice) Chair deems appropriate, and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution, the Agreement and/or the Project Agreement.

**Section 9.** The obligation of the Agency to consummate any transaction contemplated herein or hereby is subject to and conditioned upon the Company’s execution and delivery of the Lease Documents and the documents set forth in Sections 3, 4 and 5 hereof.

**Section 10.** No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

**Section 11.** Should the Agency’s participation in the Project, or the appointments made in accordance herewith, be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency’s counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

**Section 12.** Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and consummate the Lease Documents.

**Section 13.** The Secretary and/or the Executive Director of the Agency are hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 14.** This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

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

	<u>AYE</u>	<u>NAY</u>
Kathleen Murphy	X	
Steven Thompson	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “Agency”) held on September 30, 2021, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that: (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), as temporarily amended by Executive Order 202.1 issued on March 12, 2020 (“EO 202.1”), as amended and extended from time to time, such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (iii) the meeting was in all respects duly held; and (iv) there was a quorum present throughout.

**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 set my hand and affixed the seal of the Agency on 10/13/2021.

City of Syracuse Industrial Development Agency

DocuSigned by:  
  
65E35E032BE24D9...

Rickey T. Brown, Secretary

## EXHIBIT "A"

### AGENCY/COMPANY AGREEMENT

**THIS AGREEMENT** is between **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**"), with an office at 201 E. Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202, **BEACON ARMORY LLC**, with an office at 325 S. Salina Street, Syracuse, New York 13202 and **SPILCO PROPERTIES, LLC**, as tenants in common (collectively, the "**Company**").

**Article 1. Preliminary Statement.** Among the matters of mutual inducement which have resulted in the execution of this agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the "**Act**") to designate an agent for constructing, renovating and equipping "projects" (as defined in the Act).

1.02. The purposes of the Act are to promote, attract, encourage and develop recreation and economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes, including the power to acquire and dispose of interests in real property and to appoint agents for the purpose of completion of projects undertaken by the Agency.

1.03. The Company, by application dated June 2, 2021 (the "**Application**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the "**Building**") located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the "**Land**"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**") and together with the Land and the Facility, the "**Project Facility**"; (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the



Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Land and the Facility are connected to an adjacent building located at 229-37 West Fayette Street, Syracuse, New York (the land and building collectively referred to as the "**Adjacent Building**") which is owned by Armory Boys LLC, the controlling members of which also hold a 50% membership interest in the Beacon Armory, LLC. The Company has advised the Agency that its lender (the "**Lender**") will require a pledge of the Adjacent Building as additional collateral for the note and mortgage to be given in connection with the Project. As such, the Agency has agreed to extend its interest to the Adjacent Building solely for the purposes of any approved mortgage recording tax exemption, if any, with the understanding that all of the State and local sales and use tax exemption benefits authorized by the Agency, if any, will be realized from the work done solely on the Project Facility and no portion of such assistance shall be used on or for the Adjacent Building.

1.03(a). All documents necessary to effectuate the Agency's undertaking of the Project and the granting of the approved Financial Assistance between the Agency and the Company, including but not limited to, a project agreement, a company lease agreement, an agency lease agreement, a bill of sale and an environmental compliance and indemnification agreement, shall be collectively referred to herein as the "**Lease Documents**".

1.04. The Company hereby represents to the Agency that undertaking the Project, the designation of the Company as the Agency's agent for the reconstruction, renovation, equipping and completion of the Project Facility, and the use and appointment, as necessary, by the Company of a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "**Additional Agents**"): (i) will be an inducement to it to reconstruct, renovate and equip the Project Facility in the City of Syracuse (the "**City**"); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another or in the abandonment of one or more plants or facilities of the Company or of any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) undertaking the Project Facility will promote, create and/or preserve private sector jobs in the State. The Company hereby further represents to the Agency that the Project Facility is not primarily used in making retail sales to customers who personally visit the Facility.

1.05. The Agency has determined that the acquisition of a controlling interest in, and the reconstruction, renovation and equipping of the Project Facility and the subleasing of the same to the Company will promote and further the purposes of the Act.

1.06. On September 30, 2021, the Agency adopted a resolution (the "**Inducement Resolution**") agreeing, subject to the satisfaction of all conditions precedent set forth in such Resolution, to designate the Company as the Agency's agent for the acquisition, reconstruction, renovation and equipping of the Project Facility and determining that the leasing of the same to the Company will promote further purposes of the Act. For purposes of that designation, the Agency authorized as part of the approved Financial Assistance, State and local sales and use tax

exemption benefits in an amount not to exceed **\$200,000**.

1.07. In the Resolution, subject to the execution of, and compliance with, this Agreement by the Company, the execution and delivery of a project agreement by the Company, and other conditions set forth in the Resolution and herein, the Agency appointed the Company as its agent for the purposes of reconstruction, renovation and equipping the Project Facility, entering into contracts and doing all things requisite and proper for reconstruction, renovation and equipping the Project Facility.

**Article 2. Undertakings on the Part of the Agency.** Based upon the statement, representations and undertakings of the Company and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. The Agency confirms that it has authorized and designated, pursuant to the terms hereof, the Company as the Agency's agent for reconstructing, renovating and equipping the Project Facility.

2.02. The Agency will adopt such proceedings and authorize the execution of such Agency documents as may be necessary or advisable for: (i) acquisition of a controlling interest in the Project Facility; (ii) designation by the Company of Additional Agents for reconstruction, renovation and equipping of the Project Facility subject to the terms hereof; and (iii) the leasing or subleasing of the Project Facility to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

2.03. Nothing contained in this Agreement shall require the Agency to apply its funds to Project costs.

2.04. After satisfying the conditions precedent set forth in the Sections 2.05, 3.06 and 4.02 hereof and in the Inducement Resolution, the Company may proceed with the reconstruction, renovation and equipping of the Project Facility and the utilization of and, as necessary the appointment of, Additional Agents.

2.05. Subject to the execution of the Lease Documents and Section 4.02 hereof, the Company is appointed the true and lawful agent of the Agency: (i) for the reconstruction, renovation and equipping of the Project Facility; and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the reconstruction, renovation and equipping of the Project Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof. The Agency may in accordance with Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEORA**"), undertake supplemental review of

the Project. Such review to be limited to specific significant adverse environmental impacts not addressed or inadequately addressed in the Agency's review under SEQRA that arise from changes in the proposed Project, newly discovered information or a change in the circumstances related to the Project.

**Article 3. Undertakings on the Part of the Company.** Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein the Company agrees as follows:

3.01. (a) The Company shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of a controlling interest in, and reconstruction, renovation and equipping of the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the Company or Additional Agents acting as agent for the Agency pursuant to this Agreement or otherwise.

(b) The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove, any mechanics' or other liens against the Project Facility for labor or material furnished in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility.

(c) The Company shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

(d) The Company shall defend, indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on the non-disclosure of information, if any, requested by the Company in accordance with Section 4.05 hereof.

(e) The defense and indemnities provided for in this Article 3 shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

(f) The Company shall provide and carry: (i) worker's compensation and disability insurance as required by law; and (ii) comprehensive liability and property insurance with such coverages (including without limitation, owner's protective coverage for the benefit of

the Agency, naming the Agency as an additional insured on all policies of coverage regarding the Project; providing the coverage with respect to the Agency be primary and non-contributory; and contractual coverage covering the indemnities herein provided for), with such limits and which such companies as may be approved by the Agency. Upon the request of the Agency, the Company shall provide certificates, endorsements, binders and/or policies of insurance in form satisfactory to the Agency evidencing such insurance.

(g) The Company shall apply and diligently pursue all approvals, permits and consents from the State of New York, the City, the City Planning Commission and any other governmental authority which approvals, permits and consents are required under applicable law for the development, reconstruction, renovation and equipping of the Project and any related site improvements. The Company acknowledges and agrees that the Agency's findings and determinations under SEQRA do not and shall not in and of themselves (except as specifically set forth in SEQRA) satisfy or be deemed to satisfy applicable laws, regulations, rules and procedural requirements applicable to such approvals, permits and consents.

(h) The Company shall complete a Local Access Agreement to be obtained from the City of Syracuse Industrial Development Agency and agrees to utilize, and cause its Additional Agents to utilize, local contractors and suppliers for the reconstruction, renovation, equipping and completion of the Project unless a waiver is received from the Agency in writing. For purposes of this Agency Agreement, the term "*Local*" shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland Counties. The Company agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project Facility.

3.02. The Company agrees that, as agent for the Agency or otherwise, it will comply at the Company's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or Company with respect to the Project Facility, the acquisition of a controlling interest therein, reconstruction, renovation and equipping thereof, the operation and maintenance of the Project Facility, supplemental review of adverse environmental impacts in accordance with SEQRA and the financing of the Project. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full, including, but not limited to, Section 875 of the Act; and upon the request of either party, this Agreement shall be amended to specifically set forth any such provision or provisions.

3.03. The Company agrees that, as agent for the Agency or otherwise, to the extent that such provisions of law are in fact applicable (without creating an obligation by contract beyond that which is created by statute) it will comply with the requirements of Section 220 of the Labor Law of the State of New York, as amended.

3.04. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.05. If it should be determined that any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental of machinery or equipment,

materials or supplies in connection with the Project Facility, or are in any manner otherwise payable directly or indirectly in connection with the Project Facility, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

3.06 The Company shall proceed with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility and advance such funds as may be necessary to accomplish such purposes. The Company may appoint Additional Agents as agents of the Agency in furtherance thereof. Any appointment of an Additional Agent is conditioned upon the Company first obtaining and providing the Agency the following:

(1) A written, executed agreement, in form and substance acceptable to the Agency, from each Additional Agent which provides for the assumption by the Additional Agent, for itself, certain of the obligations under this Agreement relative to the appointment, work and purchases done and made by each Additional Agent; (ii) a commitment to utilize local contractors and suppliers for the reconstruction, renovation and equipping of the Project (“local” being defined in Section 3.01(h) hereof); (iii) an acknowledgement that the Additional Agent is obligated, to timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the Agency and the New York State Department of Taxation and Finance on “Annual Report of Sales and Use Tax Exemptions” (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project; (iv) an acknowledgment by the Additional Agent that the failure to comply with the foregoing will result in the loss of the exemption; and (v) such other terms and conditions as the Agency deems necessary; and

(2) A completed “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (Form ST-60) for each Additional Agent appointed within fifteen (15) days of the appointment of each Additional Agent such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment of each such Additional Agent.

Failure of the Company to comply with the foregoing shall nullify the appointment of any Additional Agent and may result in the loss of the Company’s exemption with respect to the Project at the sole discretion of the Agency.

The Company acknowledges that the assumption by the Additional Agent in accordance with Section 3.06(1) above, does not relieve the Company of its obligations under those provisions or any other provisions of this Agreement with respect to the Project.

3.07 The Company ratifies and confirms its obligations to pay an annual administrative reporting fee in accordance with the Agency’s fee schedule to cover administrative and reporting requirements to comply with New York State reporting regulations on Agency assisted projects. In addition, the Company ratifies and confirms its absolute obligation to pay on demand all of the Agency’s legal fees associated with the undertaking of the Project, including but not limited to, review of the application, preparation of resolutions and attendance at meetings and to

correspondence and calls, regardless of whether benefits are ultimately conferred on the Project.

#### **Article 4. General Provisions.**

4.01. This Agreement shall take effect on the date of the execution hereof by the Agency and the Company and, subject to Section 4.04 hereof, shall remain in effect until the Lease Documents become effective. It is the intent of the Agency and the Company that, except as to those provisions that survive, this Agreement be superseded in its entirety by the Lease Documents.

4.02. (a) It is understood and agreed by the Agency and the Company that the grant of Financial Assistance and the execution of the Lease Documents and related documents are subject to: (i) payment by the Company of the Agency's fee and Agency's counsel fees; (ii) obtaining all necessary governmental approvals, permits and consents of any kind required in connection with the Project Facility; (iii) approval by the members of the Agency; (iv) approval by the Company; and (v) the condition that there are no changes in New York State Law, including regulations, which prohibit or limit the Agency from fulfilling its obligations hereunder; and

(b) the Company, by executing this agreement, acknowledges and agrees to make, or cause its Additional Agents, to make, all records and information regarding State and local sales and use tax exemption benefits given to the Project as part of the Financial Assistance available to the Agency upon request, including but not limited to the Form ST-340 for itself and each Additional Agent; and

(c) the Company, by executing this Agreement, acknowledges and agrees to the terms and conditions of Section 875(3) of the Act as if such section were fully set forth herein and further agrees to cause all of its Additional Agents to acknowledge, agree and consent to same. Without limiting the scope of the foregoing the Company acknowledges that pursuant to Section 875(3) of the Act, and in accordance with the Agency's Recapture of Benefits Policy, the Agency shall, and in some instances may, recover, recapture, receive or otherwise obtain from the Company some or all of the Financial Assistance (the "**Recapture Amount**") including, but not limited to: (1) (a) that portion of the State and local sales and use tax exemption to which the Company was not entitled, which is in excess of the amount of the State and local sales and use tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State and local sales and use tax exemption, if the Company fails to comply with a material term or condition regarding the use of the property or services as represented to the Agency in its Application or otherwise; or (c) the full amount of such State and local sales and use tax exemption in the event the Company fails to execute and deliver the Lease Documents in accordance herewith or fails to complete the Project; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise; and (d) the failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the Commissioner to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties. In addition to the foregoing, the Company acknowledges and agrees that for purposes of exemption from New York State (the "**State**") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article

twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight. In addition to the foregoing, the Agency may recapture other benefits comprising the Financial Assistance in accordance with the Agency's Recapture Policy (a copy of which is on the Agency's website).

4.03. The Company agrees that it will, within thirty (30) days of a written request for same, regardless of whether or not this matter closes or the Project Facility is completed: (i) reimburse the Agency for all reasonable and necessary expenses, including without limitation the fees and expenses of counsel to the Agency arising from, out of or in connection with the Project, and/or any documents executed in connection therewith, including, but not limited to any claims or actions taken by the Agency against the Company, Additional Agents or third parties; and (ii) indemnify the Agency from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder, including but not limited to, any obligations related to Additional Agents.

4.04. If for any reason the Lease Documents are not executed and delivered by the Company and the Agency on or before **August 17, 2022**, the provisions of this Agreement (other than the provisions of Articles 1.04, 2.02, 2.04, 3.01, 3.02, 3.03, 3.05, 3.06, 4.02, 4.03, 4.04, 4.05 and 4.06, which shall survive) shall unless extended by agreement of the Agency and the Company, terminate and be of no further force or effect, and following such termination neither party shall have any rights against the other party except:

(a) The Company shall pay the Agency for all expenses incurred by the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility;

(b) The Company shall assume and be responsible for any contracts for the construction or purchase of equipment entered into by the Agency at the request of or as agent for the Company in connection with the Project Facility; and

(c) The Company will pay the out-of-pocket expenses of members of the Agency and counsel for the Agency incurred in connection with the Project Facility and will pay the fees of counsel for the Agency for legal services relating to the Project Facility, Additional Agents or the proposed financing thereof.

4.05. **The Company acknowledges that Section 875(7) of the New York General Municipal Law ("GML") requires the Agency to post on its website all resolutions and agreements relating to the Company's appointment as an agent of the Agency or otherwise related to the Project, including this Agreement; and Article 6 of the New York 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 Company feels that there are elements of the Project or information about the Company in the Agency's possession 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 Company's competitive position, the Company must identify such elements in writing,**

**supply same to the Agency: (i) with respect to this Agreement, prior to or contemporaneously with the execution hereof; and (ii) with respect to all other agreements executed in connection with the Project, on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.**

4.06 That every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State of New York, without regard to its conflict-of-laws provisions that if applied might require the application of the laws of another jurisdiction; and that the Company irrevocably and expressly submits to the exclusive personal jurisdiction of the Supreme Court of the State of New York and the United States District Court for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.



**IN WITNESS WHEREOF**, the parties hereto have entered into this Agreement as of the 21<sup>st</sup> day of September, 2021.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Judith DeLaney, Executive Director

**BEACON ARMORY LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT "H"**  
**FINAL APPROVING RESOLUTION**

## FINAL APPROVING RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to the Governor Executive Order 202.1 issued on March 12, 2020 suspending the Open Meetings Law, as extended from time to time including September 2, 2021, the City of Syracuse Industrial Development Agency (the "**Agency**") held a special meeting on the 30<sup>th</sup> day of September, 2021, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=mc0bb61adbeed18e60a21b1f9a98234e0>; (or by accessing the link on the Agency's website) and using meeting number 2336 173 6505 and password zXsv2rKSq36; or via telephone at (408) 418-9388 with access code: 2336 173 6505, in conjunction with the matter set forth below.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

**PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): Kathleen Murphy, Steven Thompson Rickey T. Brown and Kenneth Kinsey

**EXCUSED:** Dirk Sonneborn

**THE FOLLOWING PERSONS WERE ALSO PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): Staff Present: Judith DeLaney, Susan Katzoff, Esq., Lori McRobbie and John Vavonese; Others Present: John Sidd, Esq., Lindsey Haubenreich, Esq., Milan Tyler, Esq., Jeffrey Appel, Khash Bayani, Spiro Spilotis, Christine Stevens, M. Braun

The following resolution was offered by Steven Thompson and seconded by Rickey T. Brown:

### **RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A COMMERCIAL PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, 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, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, by application dated on or about June 2, 2021, as amended or supplemented from time to time (the "**Application**"), Beacon Armory LLC and Spilco Properties, LLC, as tenants in common, or an entity to be formed (collectively, the "**Company**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the "**Building**") located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the "**Land**"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on July 20, 2021 pursuant to Section 859-a of the Act, notice of which was published on July 6, 2021, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated June 30, 2021; and

**WHEREAS**, the Agency adopted a resolution on September 21, 2021 (the "**SEORA Resolution**") entitled:

**RESOLUTION CLASSIFYING A CERTAIN PROJECT AS AN UNLISTED ACTION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT, DECLARING THE AGENCY LEAD AGENCY FOR PURPOSES OF AN UNCOORDINATED REVIEW THEREUNDER AND DETERMINING THAT THE ACTION WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT**

which resolution is in full force and effect and has not been amended or modified; and

WHEREAS, the Agency adopted a resolution on September 21, 2021 (the “*Inducement Resolution*”) entitled:

**RESOLUTION AUTHORIZING THE UNDERTAKING, ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF A PROJECT; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY**

which resolution is in full force and effect and has not been amended or modified; and

NOW, THEREFORE, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

**Section 1.** Based upon the representations made by the Company to the Agency and after consideration of the comments received at the public hearing, if any, the Agency hereby ratifies all of its prior resolutions adopted in conjunction with the Project, including but not limited to the SEQRA Resolution, Inducement Resolution and all other action with respect to the Project and Financial Assistance taken by the Agency, and makes the following findings and determinations:

(a) The acquisition of a controlling interest in the Project Facility by the Agency, the granting of the approved Financial Assistance in accordance with the Inducement Resolution and the designation of the Company as the Agency’s agent for completion of the Project will be an inducement to, and permit, the Company to develop and operate the Project Facility in the City of Syracuse, thus serving the public purposes of Article 18-A of the General Municipal Law of New York State by promoting and preserving the job opportunities, general prosperity, health and economic welfare of the inhabitants of the City of Syracuse (the “*City*”) in furtherance of the purposes of the Act;

(b) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act;

(c) The commitment of the Agency to provide the approved Financial Assistance in accordance with the Inducement Resolution to the Company will enable and induce the Company to acquire, reconstruct, renovate, equip and complete the Project Facility and help provide much needed affordable housing in the City of Syracuse;

(d) The acquisition, construction, equipping and completion of the Project Facility and the attendant promotion of the local economy will advance the job opportunities, health, prosperity and economic welfare of the people of the City and the granting of the Financial Assistance is a necessary component to the financing of the Project;

(e) The Project Facility constitutes a “project” within the meaning of the Act. The Project is located in a “Highly Distressed Area” as defined in Section 854(18) of the Act; and

(f) It is desirable and in the public interest for the Agency to grant Financial Assistance in connection with the Project.

**Section 2.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. The Project will serve the public purposes of Article 18-A of the General Municipal Law of the State of New York by advancing job opportunities and promoting economic development.

**Section 3.** It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, reconstructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 4.** Subject to the conditions set forth in this and prior resolutions adopted by the Agency, the Project Agreement, and the Agreement (each as defined in the Inducement Resolution), the Agency will: (A) acquire a controlling interest in the Project Facility; (B) lease the Land and Facility from the Company pursuant to a lease agreement between the Agency and the Company (the “*Company Lease*”); acquire an interest in the Equipment pursuant to a bill of sale from the Company (the “*Bill of Sale*”); and sublease the Project Facility to the Company pursuant to a sublease agreement (the “*Agency Lease*”); (C) subject to the terms of the Agency Lease and other documents, secure the Company’s borrowings with respect to the Project Facility by joining in one or more construction or permanent mortgages on the Project Facility in favor of the Company’s lenders; (D) execute and deliver any and all necessary documents to confer the approved Financial Assistance; and (E) execute and deliver any other documents necessary to effectuate the actions contemplated by and consistent with this Resolution upon the advice of counsel to the Agency.

**Section 5.** The (Vice) Chair and the Executive Director of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified in Section 4 of this Resolution as well as the Lease Documents (as defined in the Inducement Resolution) and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to in Section 4 of this Resolution and to do and cause to

be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution.

**Section 6.** No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

**Section 7.** Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare, for submission to the (Vice)Chair and/or the Executive Director, all documents necessary to effect the undertaking of the Project and the grant of Financial Assistance in connection with the Project.

**Section 8.** The approvals provided for herein are contingent upon the Company’s payment of all of the Agency’s fees and costs, including but not limited to attorney's fees.

**Section 9.** The Secretary and/or Executive Director of the Agency is hereby authorized to distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 10.** This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

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

	<b><u>AYE</u></b>	<b><u>NAY</u></b>
Kathleen Murphy	X	
Steven Thompson	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

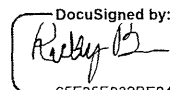
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "**Agency**") held on September 30, 2021, with the original thereof on file in my office, and that the same (including any and all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that: (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), as temporarily amended by Executive Order 202.1 issued on March 12, 2020 ("**EO 202.1**"), as amended and extended from time to time, such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (iii) the meeting was in all respects duly held; and (iv) there was a quorum present throughout.

**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 set my hand and affixed the seal of the Agency on 10/13/2021.

City of Syracuse Industrial Development Agency

DocuSigned by:  


65E36E032BE24D0...  
Rickey T. Brown, Secretary

(S E A L)







To satisfy certain lender requirements, the Adjacent Building is being pledged as collateral to support a note to cover, among other things, the construction costs of the Project and the Company requested, and the Agency agreed, to spread its interest in the Project Facility to include the Adjacent Building.

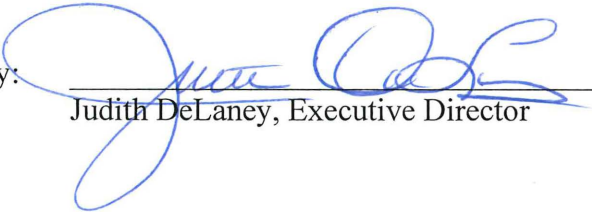
The Company and the Agency are mortgaging their respective interests in the improved real property described on **Exhibit “A”** to: Solvay Bank (the “*Mortgage*”), pursuant to a certain Mortgage dated December 22, 2021 in the amount of \$6,562,500 (the “*Mortgage*”) and an Assignment of Leases and Rents dated December 22, 2021 (“*Assignment of Rents and Leases*”). The Mortgage is pledged to secure a note given by the Company to the Mortgagee.

Pursuant to Article 18-A of the New York General Municipal Law, as amended from time to time (the “*Act*”), the Agency is regarded as performing a governmental function and is generally not required to pay taxes or assessments upon any property acquired by it or under its jurisdiction, control or supervision or upon its activities.


Deponent submits that no mortgage tax, other than as may be required in Section 874(1) of the Act and Section 252(2) of the Tax Law of the State of New York with respect to the portion of the tax allocable to the Central New York Regional Transportation District, should be imposed upon the Mortgage and the Assignment of Rents, insomuch as the Mortgage and [the Assignment of Rents are being executed and delivered under the State authority creating the Agency, insomuch as the use by the Agency of its powers to secure the payment of principal and interest on the loan is deemed by Article 18-A public purpose essential to the public interest, and insomuch as both the New York State Department of Taxation and Finance and Counsel to the New York State Department of Taxation and Finance have expressed their opinion that the recording of similar documents by similar agencies organized under Article 18-A of the New York General Municipal Law are operations of said agencies entitled to exemption from the mortgage recording tax.

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**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Judith DeLaney, Executive Director

Subscribed and sworn to before me  
this 15<sup>th</sup> day of December, 2021.

  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC505591  
Commission Expires on Feb. 12, 2022

## EXHIBIT "A"

### LEGAL DESCRIPTION

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Nos. 1, 2, 30, 31, 40 and 41 of Block No. 105-D, Syracuse, New York, according to a Map made by B.F. Green and filed in the Onondaga County Clerk's Office on October 11, 1850 and bounded and described as follows:

Beginning at a point in the southerly line of West Fayette Street, said point being N. 89° 44' 00" W., 208.855 feet distant, measured along said street line from the westerly line of South Clinton Street, said point being where the centerline of the west wall of the so-called Tallman and Palmer Store, now or formerly known as No. 225 West Fayette Street, intersects the south line of West Fayette Street; thence southwardly along the center of said wall and the same continued about 115.0 feet to a point in range with the north face of the north wall of the six story brick building erected by E.F. Holden on Walton Street; thence westwardly along said range line about 27/100 of a foot to the northeasterly corner of said six story building; thence southwardly along the east face of the brick wall of said building about 90.0 feet to a point in the north line of Walton Street, said point being N. 89° 45' 00" W., 208.856 feet distant, measured along the said northerly line of Walton Street, from the westerly line of South Clinton Street; thence N. 89° 45' 00" W., 64.304 feet along said northerly line of Walton Street to a point; thence N. 00° 13' 20" W., 110.08 feet to a point; thence N. 89° 44' 00" W., .54 of a foot to a point; thence N. 00° 16' 00" E., 95.0 feet to a point in the southerly line of West Fayette Street; thence S. 89° 44' 00" E., 65.045 feet along said street line to the place of beginning.

**ALSO, ALL THAT TRACT OR PARCEL OF LAND**, situate lying and being under the waters of the old channel of Onondaga Creek (now filled in), situate in the City of Syracuse, County of Onondaga and State of New York, said tract or parcel being all of the old channel of Onondaga Creek lying within the premises describe above.



**GENERAL CERTIFICATE OF  
BEACON ARMORY LLC**

This certificate is made in connection with the execution by Beacon Armory LLC, a New York limited liability company ("**Beacon**") of the Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the Environmental Compliance and Indemnification Agreement and any other document now or hereafter executed by Beacon in connection with the City of Syracuse Industrial Development Agency (the "**Agency**") agreeing, at the request of Beacon and Spilco Properties, LLC (collectively, the "**Company**"), to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq .ft., six-story building (the "**Building**") located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the "**Land**"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq. ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq. ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq. ft. 2-bedroom units and twenty-five approximately 575-650 sq. ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Land and the Facility are connected to an adjacent building located at 229-37 West Fayette Street, Syracuse, New York (the land and building collectively referred to as the "**Adjacent Building**") which is owned by Armory Boys, LLC ("**Armory**"), the controlling members of which also hold a 50% membership interest in the Beacon.

To satisfy certain lender requirements, the Adjacent Building is being pledged as collateral to support a note to cover, among other things, the construction costs of the Project and the Company and Armory requested, and the Agency agreed, to spread its interest in the Project Facility to include the Adjacent Building and Armory has agreed to join the Company Lease and the Agency Lease for the purposes of leasing its interests in the Adjacent Building to the Agency to satisfy the lender's requirements.

The Project Facility is owned by the Company. The Company and Armory will lease their respective interests in the Land, the Facility and the Adjacent Building to the Agency pursuant to a Company Lease Agreement dated as of October 1, 2021 (the "**Company Lease**") and the Company will transfer its interest in the Equipment to the Agency pursuant to a bill of sale dated as of October 1, 2021 (the "**Bill of Sale**") and the Agency will sublease the Project Facility and the Adjacent Building back to the Company and Armory pursuant to an Agency Lease Agreement

dated as of October 1, 2021 (the “*Agency Lease*”).

Capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to such terms in the Agency Lease, except that, for purposes of this certificate: (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this Certificate and not as of any future date; and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

The undersigned does hereby certify as follows:

1. Attached hereto as **Exhibit “A”** is a true, correct and complete copy of the Articles of Organization of Beacon and any amendments thereto filed with the New York State Secretary of State with proof of publication thereof attached thereto, which Articles (including any amendments) are in full force and effect on the date hereof.

2. Attached hereto as **Exhibit “B”** is a true, correct and complete copy of Beacon’s Operating Agreement, and any amendments thereto, and such Operating Agreement, as may have been amended, is in full force and effect on the date hereof.

3. Beacon is, and at all times will be, a limited liability company, duly organized, validly existing and in good standing under the laws of New York State and authorized and licensed under the laws of New York State to transact business as a business corporation for the purpose of owning and operating the Project Facility in the State of New York. Attached hereto as **Exhibit “C”** is a true and correct copy of a Certificate of Good Standing of Beacon issued by the New York State Secretary of State.

4. Beacon has full legal right, power and authority to execute and deliver the Company Documents and to consummate the transactions on the part of Beacon contemplated by the Company Documents. The Company Documents have been duly authorized, executed, and delivered by the Managing Member on behalf of Beacon and are in full force and effect as of the date hereof. Attached hereto as **Exhibit “D”** is a true, correct and complete copy of the authorizing resolution of the Managing Member of Beacon (the “*Resolution*”) in respect of the execution, delivery and performance of the Company Documents.

5. Beacon understands and agrees that, unless a written waiver is first obtained from the Agency, Beacon and its Additional Agents shall utilize local labor, contractors and suppliers for the construction, renovation, reconstruction and equipping of the Project Facility. The term “*local*” shall mean Onondaga, Oswego, Madison, Cayuga, Oneida and Cortland Counties. Beacon further understands and agrees that failure to comply with these local labor requirements may result in the revocation or recapture of benefits provided/approved to the Project by the Agency. In furtherance thereof, Appendix I to the Agency’s Application entitled “Local Access Agreement” has been completed and is attached hereto as **Exhibit “E”**.

6. Beacon understands and agrees that it is the preference of the Agency that Beacon provide opportunities for the purchase of goods and services from: (i) business enterprises located in the City; (ii) certified minority and or women-owned business enterprises; and (iii)



business enterprises that employ residents of the City. Beacon further understands and acknowledges that consideration will be given by the Agency to Beacon's efforts to comply, and compliance, with this objective at any time an extension of benefits is sought or involvement by the Agency with the Project is requested by Beacon.

7. All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of Beacon or for the execution and delivery by Beacon of the Company Documents or the consummation on the part of Beacon of the transactions contemplated thereby have been obtained.

8. After performing due diligence, there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or threatened against or affecting Beacon or, to the knowledge of Beacon, any basis therefor: (i) in any way affecting the organization, existence or good standing of Beacon; (ii) contesting or materially affecting the validity or enforceability of the Company Documents; (iii) contesting the powers of Beacon or its authority with respect to the Company Documents; (iv) contesting the authority of Beacon to act on behalf of Beacon or the authority of the representatives of Beacon to act on behalf of Beacon; (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on: (A) the financial condition or operations of Beacon; or (B) the consummation on the part of Beacon of the transactions contemplated by any Company Documents.

9. The execution and delivery by Beacon of the Company Documents and the consummation by Beacon of the transactions contemplated thereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under: (i) the organizational documents of Beacon; (ii) any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which Beacon is subject; or (iii) any contract, agreement, mortgage, lease, guaranty, commitment or other obligation or instrument to which Beacon is a party or by which Beacon or its properties is bound.

10. All information concerning the Project Facility and Beacon submitted to the Agency and any Mortgagee by Beacon is true and correct in all material respects and does not omit to state a material fact necessary to make the statements therein not misleading.

11. Assuming the valid authorization, execution and delivery of the Agency Lease and the other Company Documents by the other parties thereto, the Agency Lease and the other Company Documents are the legal, valid and binding obligations of Beacon, enforceable against Beacon in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally or by the exercise of judicial discretion in accordance with general principles of equity. No default by Beacon or, to the best of knowledge of the undersigned, no event of default on the part of any other party to the Company Documents has occurred or is continuing and no event has occurred which, with the giving of notice or passage of time or both, would be such an event of default. Beacon has duly authorized the taking of and has taken all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Company Documents.

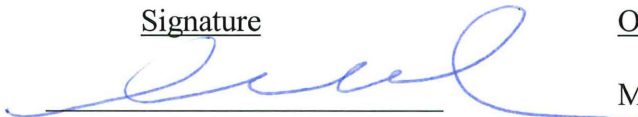
12. All permits (including building permits), licenses and authorizations necessary for the construction, ownership and operation of the Project in the manner contemplated by each of the Company Documents have been obtained or will be obtained, and said construction, ownership and operation will not, to the best knowledge of Beacon, conflict with any zoning or similar ordinance applicable to the Project. To the best of Beacon's knowledge, the Project conforms to all material environmental regulations.

13. There is no Event of Default or default on the part of Beacon under the Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the Environmental Compliance and Indemnification Agreement or any other Company Document, and no event has occurred and is continuing which, after notice or passage of time or both, would give rise to a default under any thereof.

14. The Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the Environmental Compliance and Indemnification Agreement and the other Company Documents are in full force and effect and Beacon has not assigned or pledged any of its rights under these documents.

15. Beacon restates and affirms all of the obligations, representations and covenants in the Agency Lease and the Project Agreement and incorporates same herein by reference as if fully set forth herein.

16. The authorized representatives of Beacon who, pursuant to the Resolution, are authorized to execute the Company Documents and the office held by each person are as set forth below. The signature set opposite the name of such officer, if any, is a genuine specimen of such officer's signature:

<u>Name</u>	<u>Signature</u>	<u>Office/Title</u>
Jeffrey Appel		Managing Member

IN WITNESS WHEREOF, I have set my hand and signature as officer of Beacon as of ~~October~~ <sup>December</sup> 1, 2021.

**BEACON ARMORY LLC**

By:   
Jeffrey Appel, Managing Member

**EXHIBIT "A"**  
**ARTICLES OF ORGANIZATION**

**STATE OF NEW YORK  
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for BEACON ARMORY LLC, File Number 210329020170 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on November 10, 2021.

*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State

**ARTICLES OF ORGANIZATION  
OF  
Beacon Armory LLC**

Under Section 203 of the Limited Liability Company Law

THE UNDERSIGNED, being a natural person of at least eighteen (18) years of age, and acting as the organizer of the limited liability company hereby being formed under Section 203 of the Limited Liability Company Law of the State of New York certifies that:

**FIRST:** The name of the limited liability company is:

**Beacon Armory LLC**

**SECOND:** To engage in any lawful act or activity within the purposes for which limited liability companies may be organized pursuant to Limited Liability Company Law provided that the limited liability company is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency, or other body without such consent or approval first being obtained.

**THIRD:** The county, within this state, in which the office of the limited liability company is to be located is ONONDAGA.

**FOURTH:** The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is:

Jeffrey Appel  
325 S Salina Street  
3rd. Floor  
Syracuse, NY 13202

**FIFTH:** The limited liability company is to be managed by: ONE OR MORE MEMBERS.

**SIXTH:** The existence of the limited liability company shall begin upon filing of these Articles of Organization with the Department of State.

**SEVENTH:** The limited liability company shall defend, indemnify and hold harmless all members, managers, and former members and managers of the limited liability company against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) incurred in connection with any claims, causes of action, demands, damages, liabilities of the limited liability company, and any pending or threatened action, suit, or proceeding. Such indemnification shall be made to the fullest extent permitted by the laws of the State of New York, provided that such acts or omissions which gives rise to the cause of action or proceedings occurred while the Member or Manager was in performance of his or her duties for the limited liability company and was not as a result of his or her fraud, gross negligence, willful misconduct or a wrongful taking. The indemnification provided herein shall inure to the benefit of successors, assigns, heirs, executors, and the administrators of any such person.

I certify that I have read the above statements, I am authorized to sign these Articles of Organization, that the above statements are true and correct to the best of my knowledge and belief and that my signature typed below constitutes my signature.

Jeffrey Appel (signature)

---

Jeffrey Appel , ORGANIZER  
325 S Salina Street  
3rd. Floor  
Syracuse, NY 13202

**Filed by:**  
Jeffrey Appel  
325 S Salina Street  
3rd. Floor  
Syracuse, NY 13202

**FILED WITH THE NYS DEPARTMENT OF STATE ON: 03/29/2021  
FILE NUMBER: 210329020170; DOS ID: 5974971**

**EXHIBIT "B"**  
**OPERATING AGREEMENT**

**OPERATING AGREEMENT**

**OF**

**BEACON ARMORY LLC**



## INDEX

<b>ARTICLE I</b>	<b>DEFINED TERMS</b> .....	1
	Adjusted Basis .....	1
	Adjusted Capital Account Deficit.....	1
	Adjusted Capital Balance.....	1
	Affiliate .....	2
	Agreement .....	2
	Capital Account .....	2
	Capital Contribution.....	2
	Capital Transaction.....	2
	Cash Flow .....	3
	Code .....	3
	Company .....	3
	Economic Interest .....	3
	Economic Interest Holder .....	3
	Involuntary Withdrawal .....	3
	Law .....	4
	Member .....	4
	Membership Interest .....	4
	Minimum Gain.....	4
	Negative Capital Account.....	4
	Non-Voting Member.....	4
	Percentage .....	5
	Person .....	5
	Positive Capital Account.....	5
	Profit and Loss .....	5
	Regulation .....	5
	Transfer .....	5
	Unpaid Capital Contribution.....	6
	Voluntary Withdrawal .....	6
	Voting Member.....	6
<b>ARTICLE II</b>	<b>FORMATION AND NAME; OFFICE; PURPOSE; TERM</b> .....	6
2.1	Organization.....	6
2.2	Name of Company .....	6
2.3	Purpose.....	6
2.4	Term.....	6
2.5	Location .....	6
2.6	Registered Agent .....	6
2.7	Members .....	6
<b>ARTICLE III</b>	<b>MEMBERS; CAPITAL; CAPITAL ACCOUNTS</b> .....	7
3.1	Initial Capital Contributions .....	7

3.2	Additional Capital Contributions.....	7
	(a) Limitation on Additional Contributions.....	7
	(b) No Personal Liability .....	7
3.3	No Interest on Capital Contributions .....	7
3.4	Return of Capital Contributions.....	7
3.5	Form of Return of Capital.....	7
3.6	Capital Accounts.....	7
3.7	Loans.....	7
3.8	Certificates .....	7
<b>ARTICLE IV</b>	<b>PROFIT, LOSS AND DISTRIBUTIONS.....</b>	<b>8</b>
4.1	Distributions.....	8
	(a) Distributions.....	8
	(b) Distributions to Economic Interest Holders for Payment of Taxes .....	8
4.2	Allocation of Profit or Loss .....	8
4.3	Regulatory Allocations .....	8
	(a) Qualified Income Offset .....	8
	(b) Minimum Gain Chargeback.....	8
	(c) Contributed Property and Book-Ups. ....	9
	(d) Curative Allocations .....	9
4.4	Liquidation and Dissolution.....	9
	(a) Assets Distributed Upon Liquidation.....	9
	(b) No Obligation to Make Up Negative Capital Account.....	9
4.5	Miscellaneous Rules Concerning Distributions and Allocations.....	9
	(a) Timing and Amount of Distributions.....	9
	(b) Distributions in Kind.....	10
	(c) To Whom Allocations and Distributions are Made .....	10
	(d) Members' Power to Amend Article IV .....	10
<b>ARTICLE V</b>	<b>MANAGEMENT: RIGHTS, POWERS AND DUTIES.....</b>	<b>10</b>
5.1	Management.....	10
	(a) Voting Member Managed.....	10
	(b) General Powers .....	10
5.2	Personal Service.....	11
5.3	Duties of Parties.....	11
	(a) No Exclusive Duty to Company .....	11
	(b) Freedom to Engage in Competitive Business .....	11
	(c) Arm's-Length Dealings.....	11
5.4	Liability and Indemnification .....	11
	(a) Liability for Certain Acts.....	11
	(b) Indemnification .....	12
5.5	Approval of All Members.....	12
5.6	Officers .....	12
<b>ARTICLE VI</b>	<b>MEETINGS OF MEMBERS.....</b>	<b>12</b>
6.1	Annual Meeting .....	12

6.2	Special Meetings .....	12
6.3	Place of Meetings.....	12
6.4	Notice of Meetings.....	12
6.5	Record Date .....	13
6.6	Quorum .....	13
6.7	Manner of Acting.....	13
6.8	Proxies.....	13
6.9	Action by Members Without a Meeting .....	14
6.10	Waiver of Notice.....	15
6.11	Voting Agreements .....	15
6.12	Telephonic Conferences.....	15
6.13	Member Deadlock.....	15
<b>ARTICLE VII</b>	<b>TRANSFER OF INTERESTS, WITHDRAWAL OF MEMBERS AND ADDITION OF MEMBERS .....</b>	<b>16</b>
7.1	Transfers .....	16
7.2	Voluntary Withdrawal .....	16
7.3	Involuntary Withdrawal.....	16
7.4	Additional Members .....	16
<b>ARTICLE VIII</b>	<b>DISSOLUTION, LIQUIDATION AND TERMINATION OF THE COMPANY.....</b>	<b>17</b>
8.1	Events of Dissolution.....	17
	(a) Written Agreement.....	17
	(b) Judicial Decree.....	17
8.2	Procedure for Winding Up and Distribution.....	17
8.3	Filing of Articles of Dissolution .....	17
<b>ARTICLE IX</b>	<b>BOOKS, RECORDS, ACCOUNTING AND TAX ELECTIONS .....</b>	<b>17</b>
9.1	Bank Accounts.....	17
9.2	Books and Records .....	17
9.3	Annual Accounting Period.....	18
9.4	Reports.....	18
9.5	Tax Matters Member.....	18
9.6	Tax Elections .....	18
	(a) Organizational Expenses.....	18
	(b) Transfer of Economic Interest .....	19
	(c) Taxation as Partnership.....	19
<b>ARTICLE X</b>	<b>GENERAL PROVISIONS.....</b>	<b>19</b>
10.1	Title to Company Property.....	19
10.2	Assurances .....	19
10.3	Notifications.....	19
10.4	Specific Performance .....	19
10.5	Complete Agreement .....	20
10.6	Applicable Law .....	20

10.7	Article and Section Titles.....	20
10.8	Binding Provisions.....	20
10.9	Exclusive Jurisdiction and Venue.....	20
10.10	Terms .....	20
10.11	Separability of Provisions.....	20
10.12	Counterparts.....	20

<b>EXHIBIT A</b>	Membership Listing
<b>EXHIBIT B</b>	Adherence Agreement

## OPERATING AGREEMENT

**THIS OPERATING AGREEMENT** (this "**Agreement**") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021 by and among **Beacon Armory LLC**, a New York limited liability company (the "**Company**"), **Jeffrey Appel and John J. Caraccioli**, ("**Members**") and such other individuals or entities who may become "Members", each of which may be hereinafter referred to individually as "**Member**" and collectively as the "**Members**").

### EXPLANATORY STATEMENT

The parties have agreed to organize and operate a limited liability company in accordance with the terms and subject to the conditions set forth in this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the parties, intending to be legally bound, agree as follows:

### ARTICLE I

#### DEFINED TERMS

The following capitalized terms shall have the meaning specified in this Article I. Other terms are defined in the text of this Agreement; and, throughout this Agreement, those terms shall have the meanings respectively ascribed to them.

"**Adjusted Basis**" means the adjusted basis for determining gain or loss from the sale or exchange or other disposition of property as determined according to Code Section 1011(a).

"**Adjusted Capital Account Deficiency**" means, with respect to any Economic Interest Holder, the deficit balance, if any, in the Economic Interest Holder's Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments:

(a) The deficit shall be decreased by the amounts which the Economic Interest Holder is deemed obligated to restore pursuant to Regulation Section 1.704-1(b)(2)(ii)(c); and

(b) The deficit shall be increased by the items described in Regulation Sections 1.704-1(b)(2)(ii)-(d)(4), (5) and (6).

"**Adjusted Capital Balance**" means, as of any day, an Economic Interest Holder's total Capital Contributions less all amounts of cash and property actually distributed to the Economic Interest Holder including those pursuant to Sections 4.1 and 4.4 hereof. If any Economic Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Adjusted Capital Balance of the transferor to the extent the Adjusted Capital Balance relates to the Economic Interest transferred.

"**Affiliate**" means, with respect to any Member, any Person: (i) which owns more than fifty percent (50%) of the voting interests in the Member; or (ii) in which the Member owns more than fifty percent (50%) of the voting interests; or (iii) in which more than fifty percent (50%) of the voting interests are owned by a Person who has a relationship with the Member described in clause (i) or (ii) above or who otherwise controls, is controlled by, or under common control with, another such Person.

"**Agreement**" means this Operating Agreement, as amended from time to time.

"**Capital Account**" means the account to be maintained by the Company for each Economic Interest Holder in accordance with the following provisions:

(a) An Economic Interest Holder's Capital Account shall be credited with the Economic Interest Holder's Capital Contributions, the amount of any Company liabilities assumed by the Economic Interest Holder within the meaning of Regulation Section 1.704-1(b)(2)(iv)(c) (or which are secured by Company property distributed to the Economic Interest Holder), the Economic Interest Holder's distributive share of Profit and any item in the nature of income or gain specially allocated to the Economic Interest Holder pursuant to the provisions of Article IV (other than Section 4.3(c)); and

(b) An Economic Interest Holder's Capital Account shall be debited with the amount of money and the fair market value of any Company property distributed to the Economic Interest Holder, the amount of any liabilities of the Economic Interest Holder assumed by the Company within the meaning of Regulation Section 1.704-1(b)(2)(iv)(c) (or which are secured by property contributed by the Economic Interest Holder to the Company), the Economic Interest Holder's distributive share of Loss and any item in the nature of expenses or losses specially allocated to the Economic Interest Holder pursuant to the provisions of Article IV (other than Section 4.3(c)).

If any Economic Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Economic Interest. If the book value of Company property is adjusted pursuant to Section 4.3(c), the Capital Account of each Economic Interest Holder shall be adjusted to reflect the aggregate adjustment in the same manner as if the Company had recognized gain or loss equal to the amount of such aggregate adjustment. It is intended that the Capital Accounts of all Economic Interest Holders shall be maintained in compliance with the provisions of Regulation Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Regulation.

"**Capital Contribution**" means the total amount of cash and the fair market value of any other assets contributed (or deemed contributed under Regulation Section 1.704-1(b)(2)(iv)(d)) to the Company by a Member, net of liabilities assumed or to which the assets are subject.

"**Capital Transaction**" means any transaction not in the ordinary course of business which results in the Company's receipt of cash or other consideration other than Capital Contributions,

including, without limitation, proceeds of sales or exchanges or other dispositions of property not in the ordinary course of business, financings, re-financings, condemnations, recoveries of damages, awards and insurance proceeds.

**"Cash Flow"** means all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any noncash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for incurred but unpaid expenses, future expenses, debt payments, capital improvements, and replacements as determined by the Members. Cash Flow shall not include Capital Proceeds but shall be increased by the reduction of any reserve previously established.

**"Code"** means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

**"Company"** means the limited liability company formed in accordance with this Agreement.

**"Economic Interest"** means a Person's share of the Profits and Losses of, and the right to receive distributions from, the Company.

**"Economic Interest Holder"** means any Person who holds an Economic Interest, whether as a Member or an unadmitted assignee of a Member.

**"Involuntary Withdrawal"** means, with respect to any Member, the occurrence of any of the following events:

- (a) The Member makes an assignment for the benefit of creditors;
- (b) The Member files a voluntary petition of bankruptcy;
- (c) The Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;
- (d) The Member files a petition seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
- (e) The Member seeks, consents to, or acquiesces in the appointment of a trustee for, receiver for, or liquidation of the Member or of all or any substantial part of the Member's properties;
- (f) The Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in subsections (a) through (e);

(g) Any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, that continues for one hundred twenty (120) days after the commencement thereof, or the appointment of a trustee, receiver, or liquidator for the Member of all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed for one hundred twenty (120) days or, if the appointment is stayed, for one hundred twenty (120) days after the expiration of the stay during which period the appointment is not vacated;

(h) If the Member is an individual, the Member's death, incapacity or adjudication by a court of competent jurisdiction as incompetent to manage the Member's person or property;

(i) If the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust;

(j) If the Member is a partnership or limited liability company, the dissolution of the partnership or limited liability company;

(k) If the Member is a corporation, the dissolution of the corporation or the revocation of its charter; or

(l) If the Member is an estate, the distribution by the fiduciary of the estate's entire interest in the Company.

"**Law**" means the New York Limited Liability Company Law, as amended from time to time.

"**Member**" means each Person signing this Agreement and any Person who subsequently is admitted as a member of the Company with Voting and/or Non-Voting Membership Interests.

"**Membership Interest**" means all of the rights of a Member in the Company, including a Member's: (i) Economic Interest; (ii) right to inspect the Company's books and records; (iii) right to participate in the management of and vote on matters coming before the Company; and (iv) unless this Agreement or the Articles of Organization provide to the contrary, right to act as an agent of the Company.

"**Minimum Gain**" has the meaning set forth in Regulation Section 1.704-2(d). Minimum Gain shall be computed separately for each Economic Interest Holder in a manner consistent with the Regulations under Code Section 704(b).

"**Negative Capital Account**" means a Capital Account with a balance of less than zero.

"**Non-Voting Member**" means a Member who owns a Non-Voting Membership Interest.



**"Percentage"** means, as to a Member, the percentage set forth after the Member's name on **Exhibit A**, as amended from time to time, and as to an Economic Interest Holder who is not a Member, the Percentage of the Member whose Economic Interest has been acquired by such Economic Interest Holder, to the extent the Economic Interest Holder has succeeded to that Member's Economic Interest.

**"Person"** means and includes an individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

**"Positive Capital Account"** means a Capital Account with a balance greater than zero.

**"Profit"** and **"Loss"** means, for each taxable year of the Company (or other period for which Profit or Loss must be computed), the Company's taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

(a) All items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss; and

(b) Any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss; and

(c) Any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss; and

(d) Gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes; and

(e) In lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and

(f) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 4.3 hereof shall not be taken into account in computing Profit or Loss.

**"Regulation"** means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

**"Transfer"** means - when used as a noun - any sale, hypothecation, pledge, assignment, attachment, or other transfer - and, when used as a verb - means to sell, hypothecate, pledge, assign, or otherwise transfer.

"**Unpaid Capital Contribution**" means an outstanding obligation to make an additional capital contribution (to the extent thereof) required pursuant to Section 3.2 of this Agreement.

"**Voluntary Withdrawal**" means a Member's disassociation with the Company by means other than a Transfer or an Involuntary Withdrawal.

"**Voting Member**" means a Member who owns a Voting Membership Interest.

## ARTICLE II

### FORMATION AND NAME: OFFICE; PURPOSE; TERM

**2.1 Organization.** The parties hereby organize a limited liability company pursuant to the Law and the provisions of this Agreement and, for that purpose, have caused Articles of Organization to be prepared, executed, and filed with the Office of the Secretary of State, the State of New York on the 29<sup>th</sup> day of March, 2021.

**2.2 Name of the Company.** The name of the Company shall be Beacon Armory LLC. The Company may do business under that name and under any other name or names upon which the Members agree. If the Company does business under a name other than that set forth in its Articles of Organization, then the Company shall file a certificate as required by General Business Law §130.

**2.3 Purpose.** The Company is organized to engage in any business permitted under the Law, except to do in New York any business for which any statute of New York other than the Law specifically requires some other business entity to be formed or natural person to be used for such business.

**2.4 Term.** The term of the Company shall begin upon the filing of the Articles of Organization with the New York Department of State and shall continue until its existence is sooner terminated pursuant to Article VIII of this Agreement.

**2.5 Location.** The County within the State of New York in which the office of the Company is located is as stated in the Company's Articles of Organization.

**2.6 Registered Agent.** The Secretary of State, State of New York is designated as the Company's agent upon whom process against the Company may be served.

**2.7 Members.** The name, present mailing address, and Percentage of each Member are set forth on **Exhibit A**.

## ARTICLE III

### MEMBERS; CAPITAL; CAPITAL ACCOUNTS

**3.1 Initial Capital Contributions.** Upon the execution of this Agreement, the Members shall contribute to the Company the property respectively set forth on **Exhibit A**.

**3.2 Additional Capital Contributions.**

(a) **Limitation on Additional Contributions.** No Member shall be required to contribute any additional capital to the Company, unless required by a vote of the Members holding at least a majority (over 50%) of Percentages in Voting Membership Interests.

(b) **No Personal Liability.** None of the foregoing shall make any Member or Economic Interest Holder personally liable for any obligations of the Company.

**3.3 No Interest on Capital Contributions.** Economic Interest Holders shall not be paid interest on their Capital Contributions.

**3.4 Return of Capital Contributions.** Except as otherwise provided in this Agreement, no Economic Interest Holder shall have the right to receive any return of any Capital Contribution.

**3.5 Form of Return of Capital.** If an Economic Interest Holder is entitled to receive a return of a Capital Contribution, the Company may distribute cash, notes, property, or a combination thereof to the Economic Interest Holder in return of the Capital Contribution.

**3.6 Capital Accounts.** A separate Capital Account shall be established and maintained for each Economic Interest Holder in accordance with Regulation Section 1.704-1(b)(2)(iv).

**3.7 Loans.** Any Member may, at any time, make or cause a loan to be made to the Company in any amount and on those terms as approved by a majority in interest of the Voting Members.

**3.8 Certificates.** Ownership in the Company shall be based solely on the Members' respective Percentages, and, except as otherwise set forth herein, shall not be represented by certificates and/or ownership units of any kind.

## ARTICLE IV

### PROFIT, LOSS AND DISTRIBUTIONS

**4.1 Distributions.**

(a) **Distributions.** The Voting Member(s) may from time to time in the discretion of the Voting Members(s), make distributions to the Economic Interest Holders. All distributions shall be made to the Economic Interest Holders in proportion to their Percentages as of the record date set for such distribution.

(b) **Distributions to Economic Interest Holders for Payment of Taxes.** Provided that there exists sufficient cash flow in the opinion of the Voting Member(s), the Company shall make distribution(s) at least annually of cash to its Economic Interest Holders in sufficient amounts to pay self-employment taxes and federal, state and local income taxes on the net distributive share of income, losses, deductions and credits that have passed through to the Economic Interest Holders under Section 704 of the Internal Revenue Code (the "**Code**") as shown on each Economic Interest Holder's Schedule K-1 of the Company's informational tax return form 1065. In no event shall an Economic Interest Holder receive a distribution pursuant to this subparagraph (b) that exceeds his or her actual tax liability for such taxes.

**4.2 Allocation of Profit or Loss.** After giving effect to the special allocations set forth in Section 4.3, for any taxable year of the Company, Profit or Loss shall be allocated to the Economic Interest Holders in proportion to their Percentages.

#### **4.3 Regulatory Allocations**

(a) **Qualified Income Offset.** No Economic Interest Holder shall be allocated Losses or deductions if the allocation causes the Economic Interest Holder to have an Adjusted Capital Account Deficit. If an Economic Interest Holder unexpectedly receives an adjustment, allocation or distribution described in Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), such Economic Interest Holder will be allocated items of income and gain of the Company (consisting of a pro rata portion of each item of Company income, including gross income and gain) for that taxable year in an amount sufficient to eliminate such Adjusted Capital Account Deficit as quickly as possible.

(b) **Minimum Gain Chargeback.** Except as set forth in Regulation Section 1.704-2(f)(2), (3) and (4), if, during any taxable year, there is a net decrease in Minimum Gain, each Economic Interest Holder, prior to any other allocation pursuant to this Article IV, shall be specially allocated items of gross income and gain for such taxable year (and, if necessary, subsequent taxable years) in an amount equal to that Economic Interest Holder's share of the net decrease of Minimum Gain, computed in accordance with Regulation Section 1.704-2(g). Allocations of gross income and gain pursuant to this Section 4.3(b) shall be made first from gain recognized from the disposition of Company assets subject to non-recourse liabilities (within the meaning of the Regulations promulgated under Code Section 752), to the extent of the Minimum Gain attributable to those assets, and thereafter, from a pro rata portion of the Company's other items of income and gain for the taxable year. It is the intent of the parties hereto that any allocation pursuant to this Section 4.3(b) shall constitute a "minimum gain chargeback" under Regulation Section 1.704-2(f).

(c) **Contributed Property and Book-Ups.**

(i) Generally, the Capital Accounts of Economic Interest Holders shall be adjusted in accordance with Regulations Section 1.704-1(b)(2)(iv)(g) for allocations to them of income, gain, loss, and deduction (including depreciation, depletion, amortization or other cost recovery) as computed for book purposes, with respect to property of the Company.

(ii) Notwithstanding Section 4.3(c)(i) hereof, if, with respect to a property, the Company chooses to eliminate distortions caused by the ceiling rule (as defined in Regulations Section 1.704-3(b)(1)) by means of the Remedial Allocation Method (as defined in Regulations Section 1.704-3(d) and as provided in Section 4.3(c) herein), then the Capital Accounts of Economic Interest Holders shall be adjusted in accordance with Regulations Section 1.704-3(d)(2) for allocations to them of income, gain, loss, and deduction (including depreciation, depletion, amortization or other cost recovery) as computed for book purposes, with respect to such property.

(d) **Curative Allocations.** Economic Interest Holders who contribute (or are deemed to contribute under Regulation §1.704-1(b)(2)(iv)(g)) property with a fair market book value that differs from the adjusted basis of the property for federal income tax purposes shall have specifically allocated to them income, gain or deduction that reflects the difference between the fair market book value and the adjusted basis of such property according to §704(c) and Regulations §1.704-3(c), or (d).

**4.4 Liquidation and Dissolution.**

(a) **Assets Distributed Upon Liquidation.** If the Company is liquidated, the assets of the Company shall be distributed to the Economic Interest Holders in accordance with the balances in their respective Capital Accounts, after taking into account the allocations of Profit or Loss pursuant to Section 4.2, if any, and distributions, if any, of cash pursuant to Section 4.1 or of property.

(b) **No Obligation to Make Up Negative Capital Account.** No Economic Interest Holder shall be obligated to restore a Negative Capital Account.

**4.5 Miscellaneous Rules Concerning Distributions and Allocations.**

(a) **Timing and Amount of Distributions.** Except as otherwise provided in this Agreement, the timing and amount of all distributions shall be determined by the Voting Member(s).

(b) **Distributions in Kind.** If any assets of the Company are distributed in kind to the Economic Interest Holders, those assets shall be valued on the basis of their fair market value, and any Economic Interest Holder entitled to any interest in those assets shall receive that interest as a tenant-in-common with all other Economic Interest Holders so entitled. Unless the Members otherwise agree, the fair market value of the assets shall be determined by an independent

appraiser who shall be selected by the Voting Member(s). The Profit or Loss for each unsold asset shall be determined as if the asset had been sold at its fair market value, and the Profit or Loss shall be allocated as provided in Section 4.2 and shall be properly credited or charged to the Capital Accounts of the Economic Interest Holders prior to the distribution of the assets in liquidation pursuant to Section 4.4.

(c) **To Whom Allocations and Distributions are Made.** All Profit and Loss shall be allocated, and all distributions shall be made to the Persons shown on the records of the Company to have been Economic Interest Holders as of the last day of the taxable year for which the allocation or distribution is to be made. Notwithstanding the foregoing, unless the Company's taxable year is separated into segments, if there is a Transfer or an Involuntary Withdrawal during the taxable year, the Profit and Loss shall be allocated between the original Economic Interest Holder and the successor on the basis of the number of days each was an Economic Interest Holder during the taxable year; provided, however, the Company's taxable year shall be segregated into two or more segments in order to account for Profit, Loss or proceeds attributable to any extraordinary non-recurring items of the Company.

(d) **Members' Power to Amend Article IV.** The Members are hereby authorized, upon the advice of the Company's tax counsel, to amend this Article IV to comply with the Code and the Regulations promulgated under Code Section 704(b); provided, however, that no amendment shall materially affect distributions to an Economic Interest Holder without the Economic Interest Holder's prior written consent.

## ARTICLE V

### MANAGEMENT: RIGHTS, POWERS AND DUTIES

#### 5.1 Management.

(a) **Voting Member Managed.** The Company shall be managed by the Voting Members pursuant to this Article V. Except as otherwise provided in this Agreement, each Voting Member shall have the right to act for and bind the Company in the ordinary course of its business. The Voting Members may, in their sole discretion, elect officers to carry on the duties as set forth in this Agreement.

(b) **General Powers.** The Voting Members shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated, and to make all decisions affecting such business and affairs that may properly come before the Voting Members.

5.2 **Personal Service.** No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the Voting Members, no Member shall be entitled to compensation for services performed for the Company. However, upon substantiation of the amount and purpose thereof, the Members shall be entitled to reimbursement for expenses reasonably incurred in connection with the activities of the Company.

### 5.3 Duties of Parties.

(a) **No Exclusive Duty to Company.** The Voting Members shall not be required to manage the Company as their sole and exclusive function, and they may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right pursuant to this Agreement to share or participate in such other business interests or activities or to the income or proceeds derived therefrom. The Voting Members shall incur no liability to the Company or any Member as a result of engaging in any other business interests or activities.

(b) **Freedom to Engage in Competitive Business.** Except as otherwise expressly provided in Section 5.3(c), nothing in this Agreement shall be deemed to restrict in any way the rights of any Member, or of any Affiliate of any Member, to conduct any other business or activity whatsoever, and no Member shall be accountable to the Company or to any other Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to the Members' respective rights (or the rights of their respective Affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of any other Member or the Member's Affiliates by virtue of being a Member of this Company.

(c) **Arm's-Length Dealings.** Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms.

### 5.4 Liability and Indemnification.

(a) **Liability for Certain Acts.** The Members shall perform their duties in good faith, in a manner he or she reasonably believes to be in the best interests of the Company and with such care as an ordinary prudent person in a similar position would use under similar circumstances. A Member who so performs such duties shall not have any liability by reason of being or having been a Member. A Member shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of the gross negligence or willful misconduct of such Member. Without limiting the generality of the preceding sentence, a Member does not in any way guaranty the return of any capital contribution to a Member or a profit for the Member from the operations of the Company.

(b) **Indemnification.** The Company shall indemnify and hold harmless each Member for any liability incurred for any act performed by the Member with respect to Company matters, except for fraud, bad faith, gross negligence, or an intentional breach of this Agreement.

**5.5 Approval of All Members.** The following actions shall require the unanimous approval of the Voting Members and Non-Voting Members:

(a) The sale or all or substantially all of the assets of the Company or the merger or consolidation or other business combination of the Company with or into another entity;

(b) Any tax election or substantial change in tax or accounting methods or auditing practices that could have a material impact on the Members, and matters affecting the tax status of the Company if such matters relate to treatment of the Company as other than a partnership; and

(c) Matters affecting the limited liability status of the Members as members of a limited liability company.

**5.6 Officers.** As provided in Article VI hereof, the Voting Members may designate one or more individuals as officers of the Company, who shall have such titles and exercise and perform such powers and duties as shall be assigned to them from time to time by the Voting Members.

## ARTICLE VI

### MEETINGS OF MEMBERS

**6.1 Annual Meeting.** The annual meeting of the Voting Members and the Non-Voting Members shall be held on each first (1<sup>st</sup>) Tuesday in December or at such other time as shall be determined by the vote or written consent of the Members for the purpose of the transaction of any business as may come before such meeting.

**6.2 Special Meetings.** Special meetings of the Members, for any purpose or purposes, may be called by any Voting Member or any Non-Voting Member holding not less than ten percent (10%) of the Membership Interests in aggregate.

**6.3 Place of Meetings.** Meetings of the Members may be held at any place, within or outside the State of New York, for any meeting of the Members designated in any notice of such meeting. If no such designation is made, the place of any such meeting shall be the executive office of the Company.

**6.4 Notice of Meetings.** Written notice stating the place, day and hour of the meeting indicating that it is being issued by or at the direction of the person or persons calling the meeting, stating the purpose or purposes for which the meeting is called shall be delivered no fewer than ten (10) nor more than sixty (60) days before the date of the meeting.

**6.5 Record Date.** For the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or any adjournment of such meeting, or Members entitled to receive payment of any Distribution, or to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution



declaring Distribution is adopted, as the case may be, shall be the record date for making such a determination. When a determination of Members entitled to vote at any meeting of Members has been made pursuant to this Section, the determination shall apply to any adjournment of the meeting.

**6.6 Quorum.** Members holding not less than a majority (over 50%) of all Voting Membership Interests, represented in person or by proxy, shall constitute a quorum at any meeting of the Members. In the absence of a quorum at any meeting of the Members, a majority of the Voting Membership Interests so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at such meeting. At an adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. The Voting Members present at a meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of Voting Membership Interests whose absence results in less than a quorum being present.

**6.7 Manner of Acting.** If a quorum is present at any meeting, the vote or written consent of Members holding not less than a majority (over 50%) of Voting Membership Interests shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Law, the Articles of Organization or this Agreement.

**6.8 Proxies.**

(a) A Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact.

(b) Every proxy must be signed by the Member or his or her attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it, except as otherwise provided in this Section.

(c) The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the Member who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by any Voting Member.

(d) Except when other provision shall have been made by written agreement between the parties, the record holder of a Membership Interest which he, she or it holds as pledgee or otherwise as security or which belong to another, shall issue to the pledgor or to such owner of such Membership Interest, upon demand therefor and payment of necessary expenses thereof, a proxy to vote or take other action thereon.

(e) A proxy which is entitled "irrevocable proxy" and which states that it is irrevocable, is irrevocable when it is held by (i) a pledgee, (ii) a Person who has purchased or

agreed to purchase the Membership Interest, (iii) a creditor or creditors of the Company who extend or continue credit to the Company in consideration of the proxy if the proxy states that it was given in consideration of such extension or continuation of credit, the amount thereof, and the name of the person extending or continuing credit, (iv) a Person who has contracted to perform services as an officer of the Company, if a proxy is required by the contract of employment, if the proxy states that it was given in consideration of such contract of employment, the name of the employee and the period of employment contracted for, or (v) a nominee of any of the Persons described in clauses (i)-(iv) of this sentence.

(f) Notwithstanding a provision in a proxy, stating that it is irrevocable, the proxy becomes revocable after the pledge is redeemed, or the debt of the Company is paid, or the period of employment provided for in the contract of employment has terminated and, in a case provided for in Section 6.8(e) (iii) or (iv) of this Agreement, becomes revocable three (3) years after the date of the proxy or at the end of the period, if any, specified therein, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this Section. This paragraph does not affect the duration of a proxy under paragraph (b) of this Section.

(g) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of a Membership Interest without knowledge of the existence of such proxy.

#### **6.9 Action by Members Without a Meeting.**

(a) Whenever the Members of the Company are required or permitted to take any action by vote, such action may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken shall be signed by the Members who hold the voting interests having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the Members entitled to vote therein were present and voted and shall be delivered to the office of the Company, its principal place of business or a Voting Member, employee or agent of the Company. Delivery made to the office of the Company shall be by hand or by certified or registered mail, return receipt requested.

(b) Every written consent shall bear the date of signature of each Member who signs the consent, and no written consent shall be effective to take the action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this Section to the Company, written consents signed by a sufficient number of Members to take the action are delivered to the office of the Company, its principal place of business or a Voting Member, employee or agent of the Company having custody of the records of the Company. Delivery made to such office, principal place of business of a Voting Member, employee or agent shall be by hand or by certified or registered mail, return receipt requested.

(c) Prompt notice of the taking of the action without a meeting by less than unanimous written consent shall be given to each Member who has not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.

**6.10 Waiver of Notice.** Notice of a meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him or her.

**6.11 Voting Agreements.** An agreement between two (2) or more Voting Members, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the Membership Interest held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

**6.12 Telephonic Conferences.** The Members may participate in a meeting of the Members by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence of the Person at the meeting. Participation by such means by a Member shall constitute presence in person at a meeting.

**6.13 Member Deadlock.** In the event of a deadlock between the Voting Members on any issue which issue cannot be resolved after the Voting Members have met on two (2) separate occasions held at least three (3) and not more than ten (10) business days apart, then the Voting Members will select, by mutual agreement, an independent third party to resolve the dispute. The determination by the independent third party will be binding on the Voting Members. In the event the Voting Members cannot mutually agree upon the selection of an independent third party then the issue shall be submitted to expedited arbitration in Onondaga County, New York, pursuant to the then-current rules of the American Arbitration Association. The expenses associated with any dispute resolution or arbitration proceeding required hereunder shall be equally shared among the Voting Members. In the event there are more than two (2) such disputes submitted for resolution within a twelve (12) month period, the Voting Members hereby agree to take immediate action to dissolve the Company in accordance with the provisions herein, unless the parties otherwise agree in writing.

## ARTICLE VII

### TRANSFER OF INTERESTS, WITHDRAWAL OF MEMBERS AND ADDITION OF MEMBERS

**7.1 Transfers.** A Member (or transferee) at any time and from time to time may Transfer all or any portion of such person's Economic Interest. The Transfer of all or a portion of an Economic Interest does not entitle the transferee to become a Member or to exercise any rights of a Member. The transferee shall be entitled to receive, to the extent transferred, only the distributions and allocations of profits and losses to which the transferor would be entitled; and the transferee shall not be admitted as a Member unless approved by the unanimous consent of all Voting Members, which consent may be withheld by a Member in his or her sole discretion.

**7.2 Voluntary Withdrawal.** No Member shall have the right or power to Voluntarily Withdraw from the Company if such withdrawal would cause the Company to no longer be eligible to be taxed as a partnership pursuant to Section 9.6(c) below. Any withdrawal in violation of this Agreement shall be null and void and shall entitle the Company to damages for breach, which may be offset against the amounts otherwise distributable to such Member.

**7.3 Involuntary Withdrawal.** Immediately upon the occurrence of an Involuntary Withdrawal, the successor of the Withdrawn Member shall thereupon become an Economic Interest Holder but shall not become a Member. The successor Economic Interest Holder shall have all the rights of an Economic Interest Holder but shall not be entitled to receive in liquidation of the Economic Interest, the fair market value of the Member's Economic Interest as of the date the Member Involuntarily withdrew from the Company.

**7.4 Additional Members.** Additional persons may be admitted to the Company as Members only upon the unanimous approval of the Voting Members and provided any such new Member signs an Adherence Agreement in the form and substance as **Exhibit B** (or such other agreement as counsel for the Company shall determine), and Membership Interests may be created and issued to those persons and to existing Members upon the unanimous approval of the Voting Members on such terms and conditions as they may determine at the time of admission. Any funds contributed by such additional persons shall be used in such a manner as may be mutually agreed upon by the Voting Members. The terms of admission or issuance must specify the percentage applicable thereto and may provide for the creation of different classes or groups of Membership Interests having different rights, powers and duties. The creation of any new class or group shall be reflected in an amendment to the Operating Agreement indicating the different rights, powers and duties. The provisions of this Section shall not apply to transfers of existing Membership Interests.

## ARTICLE VIII

### DISSOLUTION, LIQUIDATION AND TERMINATION OF THE COMPANY

**8.1 Events of Dissolution.** The Company shall be dissolved upon the happening of any of the following events:

(a) **Written Agreement.** Upon the affirmative vote of the Voting Members holding a majority (over 50 percent) or more of the Voting Membership Interests then held by the Voting Members; or

(b) **Judicial Decree.** Upon the entry of a decree of judicial dissolution.

**8.2 Procedure for Winding Up and Distribution.** If the Company is dissolved, the Voting Member(s) or remaining Members shall wind up its affairs. On winding up of the Company, the assets of the Company shall be distributed, first, to creditors of the Company, including Members and Economic Interest Holders who are creditors, to the extent permitted by law, in satisfaction of the liabilities of the Company, and then to the Members and Economic Interest Holders in accordance with Section 4.4 of this Agreement.

**8.3 Filing of Articles of Dissolution.** If the Company is dissolved, the Voting Member(s) or Members shall promptly file Articles of Dissolution with the New York Secretary of State. If there are no remaining Members, the Articles of Dissolution shall be filed by the last Person to be a Member; if there are no remaining Members, or a Person who last was a Member, the Articles of Dissolution shall be filed by the legal or personal representatives of the Person who last was a Member.

## ARTICLE IX

### BOOKS, RECORDS, ACCOUNTING AND TAX ELECTIONS

**9.1 Bank Accounts.** All funds of the Company shall be deposited in a bank account or accounts opened in the Company's name. The Voting Member(s) shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

**9.2 Books and Records.** The Voting Member(s) shall keep or cause to be kept complete and accurate books and records of the Company as required under Section 1102 of the Law as well as supporting documentation of transactions with respect to the conduct of the Company's business. The books and records shall be maintained in accordance with sound accounting practices and shall be available at the Company's principal office for examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours.

**9.3 Annual Accounting Period.** The annual accounting period of the Company shall be its taxable year. The Company's taxable year shall be selected by the Members, subject to the requirements and limitations of the Code.

**9.4 Reports.** Within seventy-five (75) days after the end of each taxable year of the Company, the Voting Member(s) shall cause to be sent to each Person who was a Member at any time during the taxable year then ended a complete accounting of the affairs of the Company for the taxable year then ended. In addition, within seventy five (75) days after the end of each taxable year of the Company, the Voting Member(s) shall cause to be sent to each Person who was an Economic Interest Holder at any time during the taxable year then ended, that tax information concerning the Company which is necessary for preparing the Economic Interest Holder's income tax returns for that year. At the request of any Member, and at the Member's expense, the Voting Member(s) shall cause an audit of the Company's books and records to be prepared by independent accountants for the period requested by the Member.

**9.5 Tax Matters Member.** The Voting Member(s) shall designate a Member to be the Company's tax matters Member ("**Tax Matters Member**"). The Tax Matters Member shall have all powers and responsibilities provided in Code Section 6221, et seq. The Tax Matters Member shall keep the Voting Member(s) and all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Member. The

Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Tax Matters Member in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Member shall not compromise any dispute with the Internal Revenue Service without the approval of the Voting Member(s) and Members.

**9.6 Tax Elections.** Unless otherwise determined by the Voting Members after having consulted with the Company's Certified Public Accountant, all elections required or permitted to be made by the Company under the Code shall be made by the Voting Members. In particular:

(a) **Organizational Expenses.** The Company shall elect to deduct expenses incurred in organizing the Company as permitted in Section 709 of the Code and in the following manner:

(i) the Company shall deduct expenses incurred in organizing the Company in the taxable year in which it began business in an amount equal to the lesser of:

(A) the amount of organizational expenses with respect to the Company; or

(B) Five Thousand Dollars (\$5,000.00), reduced (but not below zero) by the amount by which such organizational expenses exceed Fifty Thousand Dollars (\$50,000.00); and

(ii) the remainder of such organizational expenses, if any, shall be deducted ratably over the 180-month period beginning with the month in which the Company began business.

(b) **Transfer of Economic Interest.** In case of a transfer of all or part of any Economic Interest, the Company may elect, in a timely manner pursuant to Section 754 of the Code and pursuant to corresponding provisions of applicable State and local tax laws, to adjust the basis of Company property pursuant to Sections 734 and 743 of the Code.

(c) **Taxation as Partnership.** The Company shall not elect to be excluded from the application of the provisions of Subchapter K of Chapter 1 of Subtitle A of the Code or corresponding provisions of State or local law.

## ARTICLE X

### GENERAL PROVISIONS

**10.1 Title to Company Property.** All real and personal property acquired by the Company shall be acquired and held by the Company in its name.

**10.2 Assurances.** Each Member shall execute all certificates and other documents and shall do all such filing, recording, publishing, and other acts as the Members deem appropriate to comply with the requirements of law for the formation and operation of the Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the property of the Company.

**10.3 Notifications.** Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a "**notice**") required or permitted under this Agreement must be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, return receipt requested or by facsimile transmission, provided receipt is actually acknowledged by the Member or Member's agent. A notice must be addressed to a Member at the Member's last known address on the records of the Company. A notice to the Company must be addressed to the Company's principal office. A notice delivered personally will be deemed given only when acknowledged in writing by the person to whom it is delivered. A notice that is sent by mail will be deemed given three (3) business days after it is mailed. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees. A notice sent by facsimile is deemed given when receipt is acknowledged.

**10.4 Specific Performance.** The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party who may be injured (in addition to any other remedies which may be available to that party) shall be entitled to one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

**10.5 Complete Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement among the Members with respect to the subject matter thereof. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty. Except as expressly provided otherwise herein, this Agreement may not be amended without the written consent of the Voting Members holding at least a majority (over 50%) or more of the Percentages then held by the Voting Members.

**10.6 Applicable Law.** All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of New York.

**10.7 Article and Section Titles.** The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

**10.8 Binding Provisions.** This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

**10.9 Exclusive Jurisdiction and Venue.** Any suit involving any dispute or matter arising under this Agreement may only be brought in a United States District Court, for the Northern District of New York or the New York State Supreme Court, County of Onondaga. All Members hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

**10.10 Terms.** Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the Person may in the context require.

**10.11 Separability of Provisions.** Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

**10.12 Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.


**[Signatures on Following Page]**




IN WITNESS WHEREOF, the parties have executed, or caused this Agreement to be executed as of the date set forth hereinabove.

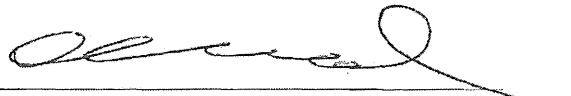
**COMPANY:**

**Beacon Armory LLC**

By:   
Jeffrey Appel  
Member

By:   
John J. Caraccioli  
Member

**VOTING MEMBERS:**

  
Jeffrey Appel  
Individually


  
John J. Caraccioli  
Individually

EXHIBIT "A"

LIST OF VOTING MEMBERS, CAPITAL AND

PERCENTAGES OF INTEREST

In alphabetical order, list name of Member, Membership Interest, address, taxpayer identification number and amount of capital contribution:

JEFFREY APPEL  
Name of Member

Fifty Percent (50%)  
Membership Percentage Int.

325 S. Salina Street, Fl 3  
Street Address

Syracuse, New York 13202  
City, State and Zip Code

JOHN J. CARACCIOLI  
Name of Member

Fifty Percent (50%)  
Membership Percentage Int.

325 S. Salina Street, Fl 3  
Street Address

Syracuse, New York 13202  
City, State and Zip Code

**EXHIBIT B**

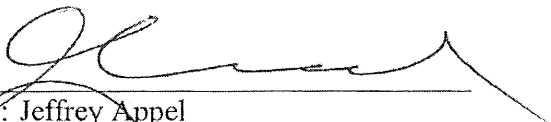
**ADHERENCE AGREEMENT**

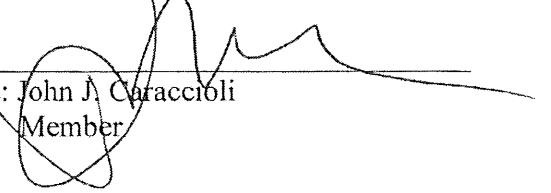
The undersigned hereby acknowledges that he/she has read the Operating Agreement, dated entered into effective as of the 12th day of December, 2012 by and among **Beacon Armory LLC** (the "**Company**") and its Members, as stated in the Operating Agreement. By signing this Adherence Agreement, the undersigned hereby agrees to adhere to and be bound by the terms and conditions set forth in the Operating Agreement as if an original signatory.

By signing this Adherence Agreement, **Beacon Armory LLC**, its Members and Officers acknowledge that the undersigned is a member of the Company who upon execution of this Adherence Agreement shall be subject to and bound by the same terms and conditions, and entitled to the same rights and obligations as if an original signatory.

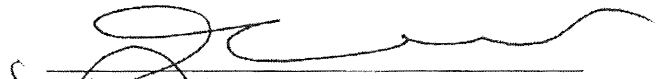
The parties have executed this Adherence Agreement on this 9 day of Dec, 2021.


**Beacon Armory LLC**

By:   
Name: Jeffrey Appel  
Title: Member

By:   
Name: John J. Caraccioli  
Title: Member

**CURRENT MEMBERS:**

  
Jeffrey Appel  
Individually

  
John J. Caraccioli  
Individually

**EXHIBIT "C"**  
**GOOD STANDING CERTIFICATE**

STATE OF NEW YORK

DEPARTMENT OF STATE

Certificate of Status

I, ROSSANA ROSADO, Secretary of State of the State of New York and custodian of the records required by law to be filed in my office, do hereby certify that upon a diligent examination of the records of the Department of State, as of the date and time of this certificate, the following entity information is reflected:

<b>Entity Name:</b>	BEACON ARMORY LLC
<b>DOS ID Number:</b>	5974971
<b>Entity Type:</b>	DOMESTIC LIMITED LIABILITY COMPANY
<b>Entity Status:</b>	EXISTING
<b>Date of Initial Filing with DOS:</b>	03/29/2021
<b>Statement Status:</b>	CURRENT
<b>Statement Due Date:</b>	03/31/2023

I certify that the following is a list of documents on file in the Department of State for said entity:

<b>Document Type:</b>	ARTICLES OF ORGANIZATION
<b>Date of Filing:</b>	03/29/2021
<b>Entity Name:</b>	BEACON ARMORY LLC

Above space is left blank intentionally.

No information is available from this office regarding the financial condition, business activity or practices of this entity.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on August 06, 2021 at 02:18 P.M.

ROSSANA ROSADO, Secretary of State



*Brendan C. Hughes*

By Brendan C. Hughes  
Executive Deputy Secretary of State

Authentication Number: 10000205197 To Verify the authenticity of this document you may access the  
Division of Corporation's Document Authentication Website at <http://ecorp.dos.ny.gov>

**EXHIBIT "D"**  
**RESOLUTION**

UNANIMOUS WRITTEN CONSENT OF

BEACON ARMORY LLC

THE UNDERSIGNED, being all of the Members of BEACON ARMORY LLC, a New York State limited liability company (the “Company”), hereby consent to the adoption of the following as resolutions of the members of the Company in lieu of a meeting thereof:

RESOLVED that the Company be and it hereby is authorized to enter into a Mortgage with Solvay Bank to secure a loan on certain commercial real property located in the City of Syracuse, County of Onondaga, State of New York, and more commonly known as 120-24 Walton Street (101.-04-09.0), and 229-37 West Fayette Street (101.-04-03.0), Syracuse, New York, collectively known as 212 West Fayette Street, Syracuse, New York, in the principal amount of Six Million Five Hundred Sixty Two Thousand Five Hundred Dollars (\$6,562,500.00). Said real property consists of a commercial masonry building situate on both lots which are identified in the records of Onondaga County as Tax Map Parcel Nos. 101.-04-09.0 and 101.-04-03.0 respectively; and it is

FURTHER RESOLVED that the Company be and it hereby is authorized to enter into the application with the City of Syracuse Industrial Development Agency (“SIDA”) for financing the project to be completed on the subject premises; and it is further

FURTHER RESOLVED that the Company be and it hereby is authorized to execute and deliver any and all other such instruments, documents or agreements as may be reasonably required by Solvay Bank in order to consummate the loan transaction authorized herein; and it is

FURTHER RESOLVED that Jeffrey Appel is authorized and empowered to execute and deliver for and on behalf of the Company, each of the instruments, documents and agreements as may be necessary to complete the authorized transaction and to carry out any of the foregoing resolutions, all with such changes, and in such form, as he may in its sole discretion approve, the execution and delivery of each document to be conclusive evidence of the approval of the Company; and it is



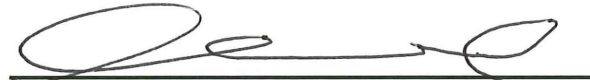
carrying out the purposes of these resolutions is confirmed, approved and ratified in all respects; and it is

FURTHER RESOLVED that this resolution may be executed in any number of counterparts, if applicable, all of which shall constitute one and the same instrument, and the parties hereto may execute this resolution by signing and delivering one or more counterparts, and the parties may rely on electronic mail transmissions of this resolution, signed by the parties, as if they were originals.

There being no further business, the meeting was adjourned.

Dated: Dec 9, 2021

BEACON ARMORY LLC

  
By: Jeffrey Appel, Member

  
By: John J. Caraccioli, Member

**EXHIBIT "E"**  
**LOCAL ACCESS AGREEMENT**

**City of Syracuse**  
**Industrial Development Agency**

**Local Access Agreement**

Beacon Armory LLC/ Spilco Properties LLC (the Company) understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation, reconstruction and equipping of the Project unless a written waiver is first received from the Agency, and agrees to provide the information requested below as a way to provide access for local participation.

<b>Company</b>		Beacon Armory LLC/ Spilco Properties LLC				<b>General Contractor</b>		Metropolitan Group of New York LLC			
<b>Representative for Contract Bids and Awards</b>		Jeffrey Appel				<b>Contact</b>		Spiro Spiliotis			
<b>Address</b>		325 South Salina Street 3 <sup>rd</sup> Floor				<b>Address</b>		325 South Salina Street 3 <sup>rd</sup> Floor			
<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13202	<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13202
<b>Phone</b>	917.848.0152	<b>Fax</b>		<b>Phone</b>	917.494.6042	<b>Fax</b>					
<b>Email</b>	jeff@armoryboys.com				<b>Email</b>	SPIRO.SPILIOTIS@GMAIL.COM					
<b>Project Address</b>	120-124 Walton Street				<b>Construction Start Date</b>	2/1/2022					
<b>City</b>	Syracuse	ST	NY	<b>13202</b>	<b>Occupancy Date</b>	3/1/2023					

**Project Components – Indicate those for which bids will be sought:**

<b>Item</b>	<b>Estimated Value</b>	<b>Bid Date</b>	<b>Contact</b>
Site work/Demolition	150000	2.1.2022	Spiro Spiliotis
Foundation and footings	30000	2.1.2022	Spiro Spiliotis
Building	400000	3.1.2022	Spiro Spiliotis
Masonry	30000	3.1.2022	Spiro Spiliotis
Metals	150000	2.1.2022	Spiro Spiliotis
Wood/casework	100000	2.1.2022	Spiro Spiliotis
Thermal/moisture proof	100000	2.2.2022	Spiro Spiliotis
Doors, windows, glazing	100000	2.2.2022	Spiro Spiliotis
Finishes	500000	3.1.2022	Spiro Spiliotis
Electrical	400000	3.1.2022	Spiro Spiliotis
HVAC	400000	3.1.2022	Spiro Spiliotis
Plumbing	300000	3.1.2022	Spiro Spiliotis
Specialties	35000	4.1.2022	Spiro Spiliotis
Machinery & Equipment	100000	4.1.2022	Spiro Spiliotis
Furniture and Fixtures	100000	4.1.2022	Spiro Spiliotis
Utilities	100000	4.1.2022	Spiro Spiliotis
Paving			
Landscaping			
Other (identify)			

**City of Syracuse**  
**Industrial Development Agency**

Finishes	500000	3.1.2022	Spiro Spiliotis
Electrical	400000	3.1.2022	Spiro Spiliotis
HVAC	400000	3.1.2022	Spiro Spiliotis
Plumbing	300000	3.1.2022	Spiro Spiliotis
Specialties	35000	4.1.2022	Spiro Spiliotis
Machinery & Equipment	100000	4.1.2022	Spiro Spiliotis
Furniture and Fixtures	100000	4.1.2022	Spiro Spiliotis
Utilities	100000	4.1.2022	Spiro Spiliotis
Paving			
Landscaping			
Other (identify)			

Date: 12/15/2021  
LLC

Company: Beacon Armory/ Spilco Properties

Signature:   
Spiliotis

Name: Jeffrey Appel/ Spiro





**GENERAL CERTIFICATE OF  
SPILCO PROPERTIES, LLC**

This certificate is made in connection with the execution by Spilco Properties, LLC, a New York limited liability company (“*Spilco*”) of the Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the Environmental Compliance and Indemnification Agreement and any other document now or hereafter executed by Spilco in connection with the City of Syracuse Industrial Development Agency (the “*Agency*”) agreeing, at the request of Spilco and Beacon Armory LLC (collectively, the “*Company*”), to undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the “*Building*”) located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the “*Land*”); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the subterranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Land and the Facility are connected to an adjacent building located at 229-37 West Fayette Street, Syracuse, New York (the land and building collectively referred to as the “*Adjacent Building*”) which is owned by the Company.

To satisfy certain lender requirements, the Adjacent Building is being pledged as collateral to support a note to cover, among other things, the construction costs of the Project and the Company requested, and the Agency agreed, to spread its interest in the Project Facility to include the Adjacent Building solely for the purposes of the approved mortgage recording tax exemption with the understanding that all of the State and local sales and use tax exemption benefits authorized by the Agency will be realized from the work done solely on the Project Facility.

The Project Facility is owned by the Company. Spilco will lease its respective interests in the Land, the Facility and the Adjacent Building to the Agency pursuant to a Company Lease Agreement dated as of December 1, 2021 (the “*Company Lease*”) and the Company will transfer its interests in the Equipment to the Agency pursuant to a bill of sale dated as of December 1, 2021 (the “*Bill of Sale*”) and the Agency will sublease the Project Facility and the Adjacent Building back to the Company pursuant to an Agency Lease Agreement dated as of December 1, 2021 (the

“*Agency Lease*”).

Capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to such terms in the Agency Lease, except that, for purposes of this certificate: (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this Certificate and not as of any future date; and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

The undersigned does hereby certify as follows:

1. Attached hereto as **Exhibit “A”** is a true, correct and complete copy of the Articles of Organization of Spilco and any amendments thereto filed with the New York State Secretary of State with proof of publication thereof attached thereto, which Articles (including any amendments) are in full force and effect on the date hereof.

2. Attached hereto as **Exhibit “B”** is a true, correct and complete copy of Spilco’s Operating Agreement, and any amendments thereto, and such Operating Agreement, as may have been amended, is in full force and effect on the date hereof.

3. Spilco is, and at all times will be, a limited liability company, duly organized, validly existing and in good standing under the laws of New York State and authorized and licensed under the laws of New York State to transact business as a business corporation for the purpose of owning and operating the Project Facility in the State of New York. Attached hereto as **Exhibit “C”** is a true and correct copy of a Certificate of Good Standing of Spilco issued by the New York State Secretary of State.

4. Spilco has full legal right, power and authority to execute and deliver the Company Documents and to consummate the transactions on the part of Spilco contemplated by the Company Documents. The Company Documents have been duly authorized, executed, and delivered by the Managing Member on behalf of Spilco and are in full force and effect as of the date hereof. Attached hereto as **Exhibit “D”** is a true, correct and complete copy of the authorizing resolution of the Managing Member of Spilco (the “**Resolution**”) in respect of the execution, delivery and performance of the Company Documents.

5. Spilco understands and agrees that, unless a written waiver is first obtained from the Agency, Spilco and its Additional Agents shall utilize local labor, contractors and suppliers for the construction, renovation, reconstruction and equipping of the Project Facility. The term “**local**” shall mean Onondaga, Oswego, Madison, Cayuga, Oneida and Cortland Counties. Spilco further understands and agrees that failure to comply with these local labor requirements may result in the revocation or recapture of benefits provided/approved to the Project by the Agency. In furtherance thereof, Appendix I to the Agency’s Application entitled “Local Access Agreement” has been completed and is attached hereto as **Exhibit “E”**.

6. Spilco understands and agrees that it is the preference of the Agency that Spilco provide opportunities for the purchase of goods and services from: (i) business enterprises located in the City; (ii) certified minority and or women-owned business enterprises; and (iii)

business enterprises that employ residents of the City. Spilco further understands and acknowledges that consideration will be given by the Agency to Spilco's efforts to comply, and compliance, with this objective at any time an extension of benefits is sought or involvement by the Agency with the Project is requested by Spilco.

7. All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of Spilco or for the execution and delivery by Spilco of the Company Documents or the consummation on the part of Spilco of the transactions contemplated thereby have been obtained.

8. After performing due diligence, there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or threatened against or affecting Spilco or, to the knowledge of Spilco, any basis therefor: (i) in any way affecting the organization, existence or good standing of Spilco; (ii) contesting or materially affecting the validity or enforceability of the Company Documents; (iii) contesting the powers of Spilco or its authority with respect to the Company Documents; (iv) contesting the authority of Spilco to act on behalf of Spilco or the authority of the representatives of Spilco to act on behalf of Spilco; (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on: (A) the financial condition or operations of Spilco; or (B) the consummation on the part of Spilco of the transactions contemplated by any Company Documents.

9. The execution and delivery by Spilco of the Company Documents and the consummation by Spilco of the transactions contemplated thereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under: (i) the organizational documents of Spilco; (ii) any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which Spilco is subject; or (iii) any contract, agreement, mortgage, lease, guaranty, commitment or other obligation or instrument to which Spilco is a party or by which Spilco or its properties is bound.

10. All information concerning the Project Facility and Spilco submitted to the Agency and any Mortgagee by Spilco is true and correct in all material respects and does not omit to state a material fact necessary to make the statements therein not misleading.

11. Assuming the valid authorization, execution and delivery of the Agency Lease and the other Company Documents by the other parties thereto, the Agency Lease and the other Company Documents are the legal, valid and binding obligations of Spilco, enforceable against Spilco in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally or by the exercise of judicial discretion in accordance with general principles of equity. No default by Spilco or, to the best of knowledge of the undersigned, no event of default on the part of any other party to the Company Documents has occurred or is continuing and no event has occurred which, with the giving of notice or passage of time or both, would be such an event of default. Spilco has duly authorized the taking of and has taken all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Company Documents.



duly authorized the taking of and has taken all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Company Documents.


12. All permits (including building permits), licenses and authorizations necessary for the construction, ownership and operation of the Project in the manner contemplated by each of the Company Documents have been obtained or will be obtained, and said construction, ownership and operation will not, to the best knowledge of Spilco, conflict with any zoning or similar ordinance applicable to the Project. To the best of Spilco's knowledge, the Project conforms to all material environmental regulations.

13. There is no Event of Default or default on the part of Spilco under the Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the Environmental Compliance and Indemnification Agreement or any other Company Document, and no event has occurred and is continuing which, after notice or passage of time or both, would give rise to a default under any thereof.

14. The Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the Environmental Compliance and Indemnification Agreement and the other Company Documents are in full force and effect and Spilco has not assigned or pledged any of its rights under these documents.

15. Spilco restates and affirms all of the obligations, representations and covenants in the Agency Lease and the Project Agreement and incorporates same herein by reference as if fully set forth herein.

16. The authorized representatives of Spilco who, pursuant to the Resolution, are authorized to execute the Company Documents and the office held by each person are as set forth below. The signature set opposite the name of such officer, if any, is a genuine specimen of such officer's signature:

<u>Name</u>	<u>Signature</u>	<u>Office/Title</u>
Spiro Spiliotis		Managing Member

IN WITNESS WHEREOF, I have set my hand and signature as officer of Spilco as of ~~October~~ 1, 2021.  
*December*

**SPILCO PROPERTIES, LLC**

By:   
Spiro Spiliotis, Managing Member

**EXHIBIT "A"**  
**ARTICLES OF ORGANIZATION**

FILING RECEIPT

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ENTITY NAME: SPILCO PROPERTIES, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: MONR

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FILED:12/11/2012 DURATION:\*\*\*\*\* CASH#:121211000665 FILM #:121211000614  
DOS ID:4331133

FILER:

EXIST DATE

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DAVIDSON FINK LLP  
28 EAST MAIN STREET SUITE 1700

-----  
12/11/2012

ROCHESTER, NY 14614

ADDRESS FOR PROCESS:

-----  
THE LLC  
91 VAN CORTLANDT AVENUE WEST  
BRONX, NY 10463

REGISTERED AGENT:



The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the biennial statement is due will only be made via email. Please go to [www.email.ebiennial.dos.ny.gov](http://www.email.ebiennial.dos.ny.gov) to provide an email address to receive an email notification when the Biennial Statement is due.

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121211000614

**ARTICLES OF ORGANIZATION  
OF  
SPILCO PROPERTIES, LLC**

Under Section 203 of the Limited Liability Company Law of the State of New York

THE UNDERSIGNED, being a natural person of at least eighteen (18) years of age and acting as the organizer of the limited liability company (the "Company") hereby being formed under Section 203 of the Limited Liability Company Law of the State of New York (the "Act"), certifies that:

FIRST: The name of the Company is Spilco Properties, LLC.

SECOND: The purpose of the Company is to engage in any lawful act or activity for which limited liability companies may be organized under the Act.

THIRD: The county within the State of New York in which the office of the Company is to be located is Monroe.

FOURTH: The Secretary of State is designated as the agent of the Company upon whom process against the Company may be served. The post office address within or without the State of New York to which the Secretary of State shall mail a copy of any process against the company served upon such Secretary of State is 91 Van Cortlandt Avenue West, Bronx, New York 10463.

FIFTH: The Company is to be managed by one or more members or a class or classes of members.

SIXTH: The Company may, from time to time, establish classes, or series of classes, of members, with such relative rights, designations, qualifications, preferences and duties as may be adopted as set forth in the Company's Operating Agreement from time to time.

IN WITNESS WHEREOF, these Articles of Organization have been subscribed by the undersigned, who affirms the foregoing as true under the penalties of perjury, this 10<sup>th</sup> day of December, 2012.

/s/ Leslie W. Kernan, Jr.  
Leslie W. Kernan, Jr., Sole Organizer  
28 East Main Street, Suite 1700  
Rochester, New York 14614

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ARTICLES OF ORGANIZATION  
OF  
SPILCO PROPERTIES, LLC

Under Section 203 of the Limited Liability Company Law of the State of New York

*lcc*  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED DEC 11 2012  
TAXS 0  
BY: *[Signature]*

LCS  
DRAWDOWN - #AL

Filed by:  
Davidson Fink LLP  
28 East Main Street, Suite 1700  
Rochester, New York 14614

*665*

Customer Ref. # 44629

**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 13, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

**EXHIBIT "B"**  
**OPERATING AGREEMENT**

**OPERATING AGREEMENT**

**OF**

**SPILCO PROPERTIES, LLC**



**INDEX**

<b>ARTICLE I</b>	<b>DEFINED TERMS</b> .....	1
	Adjusted Basis .....	1
	Adjusted Capital Account Deficit .....	1
	Adjusted Capital Balance.....	1
	Affiliate .....	2
	Agreement .....	2
	Capital Account .....	2
	Capital Contribution.....	2
	Capital Transaction .....	2
	Cash Flow .....	3
	Code .....	3
	Company .....	3
	Economic Interest .....	3
	Economic Interest Holder .....	3
	Involuntary Withdrawal .....	3
	Law .....	4
	Member .....	4
	Membership Interest .....	4
	Minimum Gain.....	4
	Negative Capital Account.....	4
	Non-Voting Member.....	4
	Percentage .....	5
	Person .....	5
	Positive Capital Account.....	5
	Profit and Loss .....	5
	Regulation.....	5
	Transfer .....	5
	Unpaid Capital Contribution.....	6
	Voluntary Withdrawal .....	6
	Voting Member .....	6
<b>ARTICLE II</b>	<b>FORMATION AND NAME; OFFICE; PURPOSE; TERM</b> .....	6
2.1	Organization.....	6
2.2	Name of Company .....	6
2.3	Purpose.....	6
2.4	Term .....	6
2.5	Location .....	6
2.6	Registered Agent .....	6
2.7	Members .....	6
<b>ARTICLE III</b>	<b>MEMBERS; CAPITAL; CAPITAL ACCOUNTS</b> .....	7
3.1	Initial Capital Contributions .....	7

3.2	Additional Capital Contributions.....	7
	(a) Limitation on Additional Contributions.....	7
	(b) No Personal Liability .....	7
3.3	No Interest on Capital Contributions.....	7
3.4	Return of Capital Contributions.....	7
3.5	Form of Return of Capital.....	7
3.6	Capital Accounts.....	7
3.7	Loans.....	7
3.8	Certificates .....	7
<b>ARTICLE IV</b>	<b>PROFIT, LOSS AND DISTRIBUTIONS.....</b>	<b>8</b>
4.1	Distributions.....	8
	(a) Distributions.....	8
	(b) Distributions to Economic Interest Holders for Payment of Taxes .....	8
4.2	Allocation of Profit or Loss .....	8
4.3	Regulatory Allocations .....	8
	(a) Qualified Income Offset .....	8
	(b) Minimum Gain Chargeback.....	8
	(c) Contributed Property and Book-Ups.....	9
	(d) Curative Allocations .....	9
4.4	Liquidation and Dissolution.....	9
	(a) Assets Distributed Upon Liquidation.....	9
	(b) No Obligation to Make Up Negative Capital Account.....	9
4.5	Miscellaneous Rules Concerning Distributions and Allocations.....	9
	(a) Timing and Amount of Distributions.....	9
	(b) Distributions in Kind.....	10
	(c) To Whom Allocations and Distributions are Made .....	10
	(d) Members' Power to Amend Article IV .....	10
<b>ARTICLE V</b>	<b>MANAGEMENT: RIGHTS, POWERS AND DUTIES.....</b>	<b>10</b>
5.1	Management.....	10
	(a) Voting Member Managed .....	10
	(b) General Powers .....	10
5.2	Personal Service.....	11
5.3	Duties of Parties.....	11
	(a) No Exclusive Duty to Company .....	11
	(b) Freedom to Engage in Competitive Business .....	11
	(c) Arm's-Length Dealings .....	11
5.4	Liability and Indemnification .....	11
	(a) Liability for Certain Acts.....	11
	(b) Indemnification .....	12
5.5	Approval of All Members.....	12
5.6	Officers .....	12
<b>ARTICLE VI</b>	<b>MEETINGS OF MEMBERS.....</b>	<b>12</b>
6.1	Annual Meeting .....	12

6.2	Special Meetings.....	12
6.3	Place of Meetings.....	12
6.4	Notice of Meetings.....	12
6.5	Record Date .....	13
6.6	Quorum .....	13
6.7	Manner of Acting.....	13
6.8	Proxies.....	13
6.9	Action by Members Without a Meeting .....	14
6.10	Waiver of Notice.....	15
6.11	Voting Agreements .....	15
6.12	Telephonic Conferences.....	15
6.13	Member Deadlock.....	15
<b>ARTICLE VII</b>	<b>TRANSFER OF INTERESTS, WITHDRAWAL OF MEMBERS AND ADDITION OF MEMBERS .....</b>	<b>16</b>
7.1	Transfers .....	16
7.2	Voluntary Withdrawal .....	16
7.3	Involuntary Withdrawal.....	16
7.4	Additional Members .....	16
<b>ARTICLE VIII</b>	<b>DISSOLUTION, LIQUIDATION AND TERMINATION OF THE COMPANY.....</b>	<b>17</b>
8.1	Events of Dissolution.....	17
	(a) Written Agreement.....	17
	(b) Judicial Decree.....	17
8.2	Procedure for Winding Up and Distribution.....	17
8.3	Filing of Articles of Dissolution .....	17
<b>ARTICLE IX</b>	<b>BOOKS, RECORDS, ACCOUNTING AND TAX ELECTIONS .....</b>	<b>17</b>
9.1	Bank Accounts .....	17
9.2	Books and Records .....	17
9.3	Annual Accounting Period.....	18
9.4	Reports .....	18
9.5	Tax Matters Member.....	18
9.6	Tax Elections .....	18
	(a) Organizational Expenses.....	18
	(b) Transfer of Economic Interest .....	19
	(c) Taxation as Partnership.....	19
<b>ARTICLE X</b>	<b>GENERAL PROVISIONS.....</b>	<b>19</b>
10.1	Title to Company Property.....	19
10.2	Assurances .....	19
10.3	Notifications.....	19
10.4	Specific Performance.....	19
10.5	Complete Agreement .....	20
10.6	Applicable Law .....	20

10.7 Article and Section Titles..... 20  
10.8 Binding Provisions..... 20  
10.9 Exclusive Jurisdiction and Venue..... 20  
10.10 Terms ..... 20  
10.11 Separability of Provisions ..... 20  
10.12 Counterparts..... 20

**EXHIBIT A** Membership Listing  
**EXHIBIT B** Adherence Agreement

## OPERATING AGREEMENT

**THIS OPERATING AGREEMENT** (this "**Agreement**") is entered into as of the <sup>9th</sup> day of NOVEMBER, 2021 by and among **Spilco Properties, LLC**, a New York limited liability company (the "**Company**"), **Spiro Spiliotis** ("**Member**") and such other individuals or entities who may become "**Members**", each of which may be hereinafter referred to individually as "**Member**" and collectively as the "**Members**").

### EXPLANATORY STATEMENT

The parties have agreed to organize and operate a limited liability company in accordance with the terms and subject to the conditions set forth in this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the parties, intending to be legally bound, agree as follows:

### ARTICLE I

#### DEFINED TERMS

The following capitalized terms shall have the meaning specified in this Article I. Other terms are defined in the text of this Agreement; and, throughout this Agreement, those terms shall have the meanings respectively ascribed to them.

**"Adjusted Basis"** means the adjusted basis for determining gain or loss from the sale or exchange or other disposition of property as determined according to Code Section 1011(a).

**"Adjusted Capital Account Deficiency"** means, with respect to any Economic Interest Holder, the deficit balance, if any, in the Economic Interest Holder's Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments:

(a) The deficit shall be decreased by the amounts which the Economic Interest Holder is deemed obligated to restore pursuant to Regulation Section 1.704-1(b)(2)(ii)(c); and

(b) The deficit shall be increased by the items described in Regulation Sections 1.704-1(b)(2)(ii)-(d)(4), (5) and (6).

**"Adjusted Capital Balance"** means, as of any day, an Economic Interest Holder's total Capital Contributions less all amounts of cash and property actually distributed to the Economic Interest Holder including those pursuant to Sections 4.1 and 4.4 hereof. If any Economic Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Adjusted Capital Balance of the transferor to the extent the Adjusted Capital Balance relates to the Economic Interest transferred.

"**Affiliate**" means, with respect to any Member, any Person: (i) which owns more than fifty percent (50%) of the voting interests in the Member; or (ii) in which the Member owns more than fifty percent (50%) of the voting interests; or (iii) in which more than fifty percent (50%) of the voting interests are owned by a Person who has a relationship with the Member described in clause (i) or (ii) above or who otherwise controls, is controlled by, or under common control with, another such Person.

"**Agreement**" means this Operating Agreement, as amended from time to time.

"**Capital Account**" means the account to be maintained by the Company for each Economic Interest Holder in accordance with the following provisions:

(a) An Economic Interest Holder's Capital Account shall be credited with the Economic Interest Holder's Capital Contributions, the amount of any Company liabilities assumed by the Economic Interest Holder within the meaning of Regulation Section 1.704-1(b)(2)(iv)(c) (or which are secured by Company property distributed to the Economic Interest Holder), the Economic Interest Holder's distributive share of Profit and any item in the nature of income or gain specially allocated to the Economic Interest Holder pursuant to the provisions of Article IV (other than Section 4.3(c)); and

(b) An Economic Interest Holder's Capital Account shall be debited with the amount of money and the fair market value of any Company property distributed to the Economic Interest Holder, the amount of any liabilities of the Economic Interest Holder assumed by the Company within the meaning of Regulation Section 1.704-1(b)(2)(iv)(c) (or which are secured by property contributed by the Economic Interest Holder to the Company), the Economic Interest Holder's distributive share of Loss and any item in the nature of expenses or losses specially allocated to the Economic Interest Holder pursuant to the provisions of Article IV (other than Section 4.3(c)).

If any Economic Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Economic Interest. If the book value of Company property is adjusted pursuant to Section 4.3(c), the Capital Account of each Economic Interest Holder shall be adjusted to reflect the aggregate adjustment in the same manner as if the Company had recognized gain or loss equal to the amount of such aggregate adjustment. It is intended that the Capital Accounts of all Economic Interest Holders shall be maintained in compliance with the provisions of Regulation Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Regulation.

"**Capital Contribution**" means the total amount of cash and the fair market value of any other assets contributed (or deemed contributed under Regulation Section 1.704-1(b)(2)(iv)(d)) to the Company by a Member, net of liabilities assumed or to which the assets are subject.

"**Capital Transaction**" means any transaction not in the ordinary course of business which results in the Company's receipt of cash or other consideration other than Capital Contributions,

including, without limitation, proceeds of sales or exchanges or other dispositions of property not in the ordinary course of business, financings, refinancings, condemnations, recoveries of damages, awards and insurance proceeds.

**"Cash Flow"** means all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any noncash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for incurred but unpaid expenses, future expenses, debt payments, capital improvements, and replacements as determined by the Members. Cash Flow shall not include Capital Proceeds but shall be increased by the reduction of any reserve previously established.

**"Code"** means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

**"Company"** means the limited liability company formed in accordance with this Agreement.

**"Economic Interest"** means a Person's share of the Profits and Losses of, and the right to receive distributions from, the Company.

**"Economic Interest Holder"** means any Person who holds an Economic Interest, whether as a Member or an unadmitted assignee of a Member.

**"Involuntary Withdrawal"** means, with respect to any Member, the occurrence of any of the following events:

- (a) The Member makes an assignment for the benefit of creditors;
- (b) The Member files a voluntary petition of bankruptcy;
- (c) The Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;
- (d) The Member files a petition seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
- (e) The Member seeks, consents to, or acquiesces in the appointment of a trustee for, receiver for, or liquidation of the Member or of all or any substantial part of the Member's properties;
- (f) The Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in subsections (a) through (e);

(g) Any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, that continues for one hundred twenty (120) days after the commencement thereof, or the appointment of a trustee, receiver, or liquidator for the Member of all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed for one hundred twenty (120) days or, if the appointment is stayed, for one hundred twenty (120) days after the expiration of the stay during which period the appointment is not vacated;

(h) If the Member is an individual, the Member's death, incapacity or adjudication by a court of competent jurisdiction as incompetent to manage the Member's person or property;

(i) If the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust;

(j) If the Member is a partnership or limited liability company, the dissolution of the partnership or limited liability company;

(k) If the Member is a corporation, the dissolution of the corporation or the revocation of its charter; or

(l) If the Member is an estate, the distribution by the fiduciary of the estate's entire interest in the Company.

"**Law**" means the New York Limited Liability Company Law, as amended from time to time.

"**Member**" means each Person signing this Agreement and any Person who subsequently is admitted as a member of the Company with Voting and/or Non-Voting Membership Interests.

"**Membership Interest**" means all of the rights of a Member in the Company, including a Member's: (i) Economic Interest; (ii) right to inspect the Company's books and records; (iii) right to participate in the management of and vote on matters coming before the Company; and (iv) unless this Agreement or the Articles of Organization provide to the contrary, right to act as an agent of the Company.

"**Minimum Gain**" has the meaning set forth in Regulation Section 1.704-2(d). Minimum Gain shall be computed separately for each Economic Interest Holder in a manner consistent with the Regulations under Code Section 704(b).

"**Negative Capital Account**" means a Capital Account with a balance of less than zero.

"**Non-Voting Member**" means a Member who owns a Non-Voting Membership Interest.



**"Percentage"** means, as to a Member, the percentage set forth after the Member's name on **Exhibit A**, as amended from time to time, and as to an Economic Interest Holder who is not a Member, the Percentage of the Member whose Economic Interest has been acquired by such Economic Interest Holder, to the extent the Economic Interest Holder has succeeded to that Member's Economic Interest.

**"Person"** means and includes an individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

**"Positive Capital Account"** means a Capital Account with a balance greater than zero.

**"Profit"** and **"Loss"** means, for each taxable year of the Company (or other period for which Profit or Loss must be computed), the Company's taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

(a) All items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss; and

(b) Any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss; and

(c) Any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss; and

(d) Gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes; and

(e) In lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and

(f) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 4.3 hereof shall not be taken into account in computing Profit or Loss.

**"Regulation"** means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

**"Transfer"** means - when used as a noun - any sale, hypothecation, pledge, assignment, attachment, or other transfer - and, when used as a verb - means to sell, hypothecate, pledge, assign, or otherwise transfer.

"**Unpaid Capital Contribution**" means an outstanding obligation to make an additional capital contribution (to the extent thereof) required pursuant to Section 3.2 of this Agreement.

"**Voluntary Withdrawal**" means a Member's disassociation with the Company by means other than a Transfer or an Involuntary Withdrawal.

"**Voting Member**" means a Member who owns a Voting Membership Interest.

## ARTICLE II

### FORMATION AND NAME: OFFICE; PURPOSE; TERM

**2.1 Organization.** The parties hereby organize a limited liability company pursuant to the Law and the provisions of this Agreement and, for that purpose, have caused Articles of Organization to be prepared, executed, and filed with the Office of the Secretary of State, the State of New York on the 11<sup>th</sup> day of December, 2012.

**2.2 Name of the Company.** The name of the Company shall be Spilco Properties LLC. The Company may do business under that name and under any other name or names upon which the Members agree. If the Company does business under a name other than that set forth in its Articles of Organization, then the Company shall file a certificate as required by General Business Law §130.

**2.3 Purpose.** The Company is organized to engage in any business permitted under the Law, except to do in New York any business for which any statute of New York other than the Law specifically requires some other business entity to be formed or natural person to be used for such business.

**2.4 Term.** The term of the Company shall begin upon the filing of the Articles of Organization with the New York Department of State and shall continue until its existence is sooner terminated pursuant to Article VIII of this Agreement.

**2.5 Location.** The County within the State of New York in which the office of the Company is located is as stated in the Company's Articles of Organization.

**2.6 Registered Agent.** The Secretary of State, State of New York is designated as the Company's agent upon whom process against the Company may be served.

**2.7 Members.** The name, present mailing address, and Percentage of each Member are set forth on **Exhibit A**.

## ARTICLE III

### MEMBERS; CAPITAL; CAPITAL ACCOUNTS

**3.1 Initial Capital Contributions.** Upon the execution of this Agreement, the Members shall contribute to the Company the property respectively set forth on **Exhibit A**.

**3.2 Additional Capital Contributions.**

(a) **Limitation on Additional Contributions.** No Member shall be required to contribute any additional capital to the Company, unless required by a vote of the Members holding at least a majority (over 50%) of Percentages in Voting Membership Interests.

(b) **No Personal Liability.** None of the foregoing shall make any Member or Economic Interest Holder personally liable for any obligations of the Company.

**3.3 No Interest on Capital Contributions.** Economic Interest Holders shall not be paid interest on their Capital Contributions.

**3.4 Return of Capital Contributions.** Except as otherwise provided in this Agreement, no Economic Interest Holder shall have the right to receive any return of any Capital Contribution.

**3.5 Form of Return of Capital.** If an Economic Interest Holder is entitled to receive a return of a Capital Contribution, the Company may distribute cash, notes, property, or a combination thereof to the Economic Interest Holder in return of the Capital Contribution.

**3.6 Capital Accounts.** A separate Capital Account shall be established and maintained for each Economic Interest Holder in accordance with Regulation Section 1.704-1(b)(2)(iv).

**3.7 Loans.** Any Member may, at any time, make or cause a loan to be made to the Company in any amount and on those terms as approved by a majority in interest of the Voting Members.

**3.8 Certificates.** Ownership in the Company shall be based solely on the Members' respective Percentages, and, except as otherwise set forth herein, shall not be represented by certificates and/or ownership units of any kind.

## ARTICLE IV

### PROFIT, LOSS AND DISTRIBUTIONS

**4.1 Distributions.**

(a) **Distributions.** The Voting Member(s) may from time to time in the discretion of the Voting Members(s), make distributions to the Economic Interest Holders. All distributions shall be made to the Economic Interest Holders in proportion to their Percentages as of the record date set for such distribution.

(b) **Distributions to Economic Interest Holders for Payment of Taxes.** Provided that there exists sufficient cash flow in the opinion of the Voting Member(s), the Company shall make distribution(s) at least annually of cash to its Economic Interest Holders in sufficient amounts to pay self-employment taxes and federal, state and local income taxes on the net distributive share of income, losses, deductions and credits that have passed through to the Economic Interest Holders under Section 704 of the Internal Revenue Code (the "**Code**") as shown on each Economic Interest Holder's Schedule K-1 of the Company's informational tax return form 1065. In no event shall an Economic Interest Holder receive a distribution pursuant to this subparagraph (b) that exceeds his or her actual tax liability for such taxes.

**4.2 Allocation of Profit or Loss.** After giving effect to the special allocations set forth in Section 4.3, for any taxable year of the Company, Profit or Loss shall be allocated to the Economic Interest Holders in proportion to their Percentages.

#### **4.3 Regulatory Allocations**

(a) **Qualified Income Offset.** No Economic Interest Holder shall be allocated Losses or deductions if the allocation causes the Economic Interest Holder to have an Adjusted Capital Account Deficit. If an Economic Interest Holder unexpectedly receives an adjustment, allocation or distribution described in Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), such Economic Interest Holder will be allocated items of income and gain of the Company (consisting of a pro rata portion of each item of Company income, including gross income and gain) for that taxable year in an amount sufficient to eliminate such Adjusted Capital Account Deficit as quickly as possible.

(b) **Minimum Gain Chargeback.** Except as set forth in Regulation Section 1.704-2(f)(2), (3) and (4), if, during any taxable year, there is a net decrease in Minimum Gain, each Economic Interest Holder, prior to any other allocation pursuant to this Article IV, shall be specially allocated items of gross income and gain for such taxable year (and, if necessary, subsequent taxable years) in an amount equal to that Economic Interest Holder's share of the net decrease of Minimum Gain, computed in accordance with Regulation Section 1.704-2(g). Allocations of gross income and gain pursuant to this Section 4.3(b) shall be made first from gain recognized from the disposition of Company assets subject to non-recourse liabilities (within the meaning of the Regulations promulgated under Code Section 752), to the extent of the Minimum Gain attributable to those assets, and thereafter, from a pro rata portion of the Company's other items of income and gain for the taxable year. It is the intent of the parties hereto that any allocation pursuant to this Section 4.3(b) shall constitute a "minimum gain chargeback" under Regulation Section 1.704-2(f).

(c) **Contributed Property and Book-Ups.**

(i) Generally, the Capital Accounts of Economic Interest Holders shall be adjusted in accordance with Regulations Section 1.704-1(b)(2)(iv)(g) for allocations to them of income, gain, loss, and deduction (including depreciation, depletion, amortization or other cost recovery) as computed for book purposes, with respect to property of the Company.

(ii) Notwithstanding Section 4.3(c)(i) hereof, if, with respect to a property, the Company chooses to eliminate distortions caused by the ceiling rule (as defined in Regulations Section 1.704-3(b)(1)) by means of the Remedial Allocation Method (as defined in Regulations Section 1.704-3(d) and as provided in Section 4.3(c) herein), then the Capital Accounts of Economic Interest Holders shall be adjusted in accordance with Regulations Section 1.704-3(d)(2) for allocations to them of income, gain, loss, and deduction (including depreciation, depletion, amortization or other cost recovery) as computed for book purposes, with respect to such property.

(d) **Curative Allocations.** Economic Interest Holders who contribute (or are deemed to contribute under Regulation §1.704-1(b)(2)(iv)(g)) property with a fair market book value that differs from the adjusted basis of the property for federal income tax purposes shall have specifically allocated to them income, gain or deduction that reflects the difference between the fair market book value and the adjusted basis of such property according to §704(c) and Regulations §1.704-3(c), or (d).

#### **4.4 Liquidation and Dissolution.**

(a) **Assets Distributed Upon Liquidation.** If the Company is liquidated, the assets of the Company shall be distributed to the Economic Interest Holders in accordance with the balances in their respective Capital Accounts, after taking into account the allocations of Profit or Loss pursuant to Section 4.2, if any, and distributions, if any, of cash pursuant to Section 4.1 or of property.

(b) **No Obligation to Make Up Negative Capital Account.** No Economic Interest Holder shall be obligated to restore a Negative Capital Account.

#### **4.5 Miscellaneous Rules Concerning Distributions and Allocations.**

(a) **Timing and Amount of Distributions.** Except as otherwise provided in this Agreement, the timing and amount of all distributions shall be determined by the Voting Member(s).

(b) **Distributions in Kind.** If any assets of the Company are distributed in kind to the Economic Interest Holders, those assets shall be valued on the basis of their fair market value, and any Economic Interest Holder entitled to any interest in those assets shall receive that interest as a tenant-in-common with all other Economic Interest Holders so entitled. Unless the Members otherwise agree, the fair market value of the assets shall be determined by an independent appraiser who shall be selected by the Voting Member(s). The Profit or Loss for each unsold asset shall be determined as if the asset had been sold at its fair market value, and the Profit or

Loss shall be allocated as provided in Section 4.2 and shall be properly credited or charged to the Capital Accounts of the Economic Interest Holders prior to the distribution of the assets in liquidation pursuant to Section 4.4.

(c) **To Whom Allocations and Distributions are Made.** All Profit and Loss shall be allocated, and all distributions shall be made to the Persons shown on the records of the Company to have been Economic Interest Holders as of the last day of the taxable year for which the allocation or distribution is to be made. Notwithstanding the foregoing, unless the Company's taxable year is separated into segments, if there is a Transfer or an Involuntary Withdrawal during the taxable year, the Profit and Loss shall be allocated between the original Economic Interest Holder and the successor on the basis of the number of days each was an Economic Interest Holder during the taxable year; provided, however, the Company's taxable year shall be segregated into two or more segments in order to account for Profit, Loss or proceeds attributable to any extraordinary non-recurring items of the Company.

(d) **Members' Power to Amend Article IV.** The Members are hereby authorized, upon the advice of the Company's tax counsel, to amend this Article IV to comply with the Code and the Regulations promulgated under Code Section 704(b); provided, however, that no amendment shall materially affect distributions to an Economic Interest Holder without the Economic Interest Holder's prior written consent.

## ARTICLE V

### MANAGEMENT: RIGHTS, POWERS AND DUTIES

#### 5.1 Management.

(a) **Voting Member Managed.** The Company shall be managed by the Voting Members pursuant to this Article V. Except as otherwise provided in this Agreement, each Voting Member shall have the right to act for and bind the Company in the ordinary course of its business. The Voting Members may, in their sole discretion, elect officers to carry on the duties as set forth in this Agreement.

(b) **General Powers.** The Voting Members shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated, and to make all decisions affecting such business and affairs that may properly come before the Voting Members.

5.2 **Personal Service.** No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the Voting Members, no Member shall be entitled to compensation for services performed for the Company. However, upon substantiation of the amount and purpose thereof, the Members shall be entitled to reimbursement for expenses reasonably incurred in connection with the activities of the Company.

### **5.3 Duties of Parties.**

(a) **No Exclusive Duty to Company.** The Voting Members shall not be required to manage the Company as their sole and exclusive function and they may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right pursuant to this Agreement to share or participate in such other business interests or activities or to the income or proceeds derived therefrom. The Voting Members shall incur no liability to the Company or any Member as a result of engaging in any other business interests or activities.

(b) **Freedom to Engage in Competitive Business.** Except as otherwise expressly provided in Section 5.3(c), nothing in this Agreement shall be deemed to restrict in any way the rights of any Member, or of any Affiliate of any Member, to conduct any other business or activity whatsoever, and no Member shall be accountable to the Company or to any other Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to the Members' respective rights (or the rights of their respective Affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of any other Member or the Member's Affiliates by virtue of being a Member of this Company.

(c) **Arm's-Length Dealings.** Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms.

### **5.4 Liability and Indemnification.**

(a) **Liability for Certain Acts.** The Members shall perform their duties in good faith, in a manner he or she reasonably believes to be in the best interests of the Company and with such care as an ordinary prudent person in a similar position would use under similar circumstances. A Member who so performs such duties shall not have any liability by reason of being or having been a Member. A Member shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of the gross negligence or willful misconduct of such Member. Without limiting the generality of the preceding sentence, a Member does not in any way guaranty the return of any capital contribution to a Member or a profit for the Member from the operations of the Company.

(b) **Indemnification.** The Company shall indemnify and hold harmless each Member for any liability incurred for any act performed by the Member with respect to Company matters, except for fraud, bad faith, gross negligence, or an intentional breach of this Agreement.

**5.5 Approval of All Members.** The following actions shall require the unanimous approval of the Voting Members and Non-Voting Members:

(a) The sale or all or substantially all of the assets of the Company or the merger or consolidation or other business combination of the Company with or into another entity;

(b) Any tax election or substantial change in tax or accounting methods or auditing practices that could have a material impact on the Members, and matters affecting the tax status of the Company if such matters relate to treatment of the Company as other than a partnership; and

(c) Matters affecting the limited liability status of the Members as members of a limited liability company.

**5.6 Officers.** As provided in Article VI hereof, the Voting Members may designate one or more individuals as officers of the Company, who shall have such titles and exercise and perform such powers and duties as shall be assigned to them from time to time by the Voting Members.

## ARTICLE VI

### MEETINGS OF MEMBERS

**6.1 Annual Meeting.** The annual meeting of the Voting Members and the Non-Voting Members shall be held on each first (1<sup>st</sup>) Tuesday in December or at such other time as shall be determined by the vote or written consent of the Members for the purpose of the transaction of any business as may come before such meeting.

**6.2 Special Meetings.** Special meetings of the Members, for any purpose or purposes, may be called by any Voting Member or any Non-Voting Member holding not less than ten percent (10%) of the Membership Interests in aggregate.

**6.3 Place of Meetings.** Meetings of the Members may be held at any place, within or outside the State of New York, for any meeting of the Members designated in any notice of such meeting. If no such designation is made, the place of any such meeting shall be the executive office of the Company.

**6.4 Notice of Meetings.** Written notice stating the place, day and hour of the meeting indicating that it is being issued by or at the direction of the person or persons calling the meeting, stating the purpose or purposes for which the meeting is called shall be delivered no fewer than ten (10) nor more than sixty (60) days before the date of the meeting.

**6.5 Record Date.** For the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or any adjournment of such meeting, or Members entitled to receive payment of any Distribution, or to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring Distribution is adopted, as the case may be, shall be the record date for making such a determination. When a determination of Members entitled to vote at any meeting of Members



has been made pursuant to this Section, the determination shall apply to any adjournment of the meeting.

**6.6 Quorum.** Members holding not less than a majority (over 50%) of all Voting Membership Interests, represented in person or by proxy, shall constitute a quorum at any meeting of the Members. In the absence of a quorum at any meeting of the Members, a majority of the Voting Membership Interests so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at such meeting. At an adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. The Voting Members present at a meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of Voting Membership Interests whose absence results in less than a quorum being present.

**6.7 Manner of Acting.** If a quorum is present at any meeting, the vote or written consent of Members holding not less than a majority (over 50%) of Voting Membership Interests shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Law, the Articles of Organization or this Agreement.

**6.8 Proxies.**

(a) A Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact.

(b) Every proxy must be signed by the Member or his or her attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it, except as otherwise provided in this Section.

(c) The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the Member who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by any Voting Member.

(d) Except when other provision shall have been made by written agreement between the parties, the record holder of a Membership Interest which he, she or it holds as pledgee or otherwise as security or which belong to another, shall issue to the pledgor or to such owner of such Membership Interest, upon demand therefor and payment of necessary expenses thereof, a proxy to vote or take other action thereon.

(e) A proxy which is entitled "irrevocable proxy" and which states that it is irrevocable, is irrevocable when it is held by (i) a pledgee, (ii) a Person who has purchased or agreed to purchase the Membership Interest, (iii) a creditor or creditors of the Company who extend or continue credit to the Company in consideration of the proxy if the proxy states that it

was given in consideration of such extension or continuation of credit, the amount thereof, and the name of the person extending or continuing credit, (iv) a Person who has contracted to perform services as an officer of the Company, if a proxy is required by the contract of employment, if the proxy states that it was given in consideration of such contract of employment, the name of the employee and the period of employment contracted for, or (v) a nominee of any of the Persons described in clauses (i)-(iv) of this sentence.

(f) Notwithstanding a provision in a proxy, stating that it is irrevocable, the proxy becomes revocable after the pledge is redeemed, or the debt of the Company is paid, or the period of employment provided for in the contract of employment has terminated and, in a case provided for in Section 6.8(e) (iii) or (iv) of this Agreement, becomes revocable three (3) years after the date of the proxy or at the end of the period, if any, specified therein, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this Section. This paragraph does not affect the duration of a proxy under paragraph (b) of this Section.

(g) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of a Membership Interest without knowledge of the existence of such proxy.

#### **6.9 Action by Members Without a Meeting.**

(a) Whenever the Members of the Company are required or permitted to take any action by vote, such action may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken shall be signed by the Members who hold the voting interests having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the Members entitled to vote therein were present and voted and shall be delivered to the office of the Company, its principal place of business or a Voting Member, employee or agent of the Company. Delivery made to the office of the Company shall be by hand or by certified or registered mail, return receipt requested.

(b) Every written consent shall bear the date of signature of each Member who signs the consent, and no written consent shall be effective to take the action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this Section to the Company, written consents signed by a sufficient number of Members to take the action are delivered to the office of the Company, its principal place of business or a Voting Member, employee or agent of the Company having custody of the records of the Company. Delivery made to such office, principal place of business of a Voting Member, employee or agent shall be by hand or by certified or registered mail, return receipt requested.

(c) Prompt notice of the taking of the action without a meeting by less than unanimous written consent shall be given to each Member who has not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.

**6.10 Waiver of Notice.** Notice of a meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him or her.

**6.11 Voting Agreements.** An agreement between two (2) or more Voting Members, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the Membership Interest held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

**6.12 Telephonic Conferences.** The Members may participate in a meeting of the Members by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence of the Person at the meeting. Participation by such means by a Member shall constitute presence in person at a meeting.

**6.13 Member Deadlock.** In the event of a deadlock between the Voting Members on any issue which issue cannot be resolved after the Voting Members have met on two (2) separate occasions held at least three (3) and not more than ten (10) business days apart, then the Voting Members will select, by mutual agreement, an independent third party to resolve the dispute. The determination by the independent third party will be binding on the Voting Members. In the event the Voting Members cannot mutually agree upon the selection of an independent third party then the issue shall be submitted to expedited arbitration in Onondaga County, New York, pursuant to the then-current rules of the American Arbitration Association. The expenses associated with any dispute resolution or arbitration proceeding required hereunder shall be equally shared among the Voting Members. In the event there are more than two (2) such disputes submitted for resolution within a twelve (12) month period, the Voting Members hereby agree to take immediate action to dissolve the Company in accordance with the provisions herein, unless the parties otherwise agree in writing.

## ARTICLE VII

### TRANSFER OF INTERESTS, WITHDRAWAL OF MEMBERS AND ADDITION OF MEMBERS

**7.1 Transfers.** A Member (or transferee) at any time and from time to time may Transfer all or any portion of such person's Economic Interest. The Transfer of all or a portion of an Economic Interest does not entitle the transferee to become a Member or to exercise any rights of a Member. The transferee shall be entitled to receive, to the extent transferred, only the distributions and allocations of profits and losses to which the transferor would be entitled; and the transferee shall not be admitted as a Member unless approved by the unanimous consent of all Voting Members, which consent may be withheld by a Member in his or her sole discretion.

**7.2 Voluntary Withdrawal.** No Member shall have the right or power to Voluntarily Withdraw from the Company if such withdrawal would cause the Company to no longer be eligible to be taxed as a partnership pursuant to Section 9.6(c) below. Any withdrawal in violation of this Agreement shall be null and void and shall entitle the Company to damages for breach, which may be offset against the amounts otherwise distributable to such Member.

**7.3 Involuntary Withdrawal.** Immediately upon the occurrence of an Involuntary Withdrawal, the successor of the Withdrawn Member shall thereupon become an Economic Interest Holder, but shall not become a Member. The successor Economic Interest Holder shall have all the rights of an Economic Interest Holder, but shall not be entitled to receive in liquidation of the Economic Interest, the fair market value of the Member's Economic Interest as of the date the Member Involuntarily withdrew from the Company.

**7.4 Additional Members.** Additional persons may be admitted to the Company as Members only upon the unanimous approval of the Voting Members and provided any such new Member signs an Adherence Agreement in the form and substance as **Exhibit B** (or such other agreement as counsel for the Company shall determine), and Membership Interests may be created and issued to those persons and to existing Members upon the unanimous approval of the Voting Members on such terms and conditions as they may determine at the time of admission. Any funds contributed by such additional persons shall be used in such a manner as may be mutually agreed upon by the Voting Members. The terms of admission or issuance must specify the percentage applicable thereto and may provide for the creation of different classes or groups of Membership Interests having different rights, powers and duties. The creation of any new class or group shall be reflected in an amendment to the Operating Agreement indicating the different rights, powers and duties. The provisions of this Section shall not apply to transfers of existing Membership Interests.

## ARTICLE VIII

### DISSOLUTION, LIQUIDATION AND TERMINATION OF THE COMPANY

**8.1 Events of Dissolution.** The Company shall be dissolved upon the happening of any of the following events:

(a) **Written Agreement.** Upon the affirmative vote of the Voting Members holding a majority (over 50 percent) or more of the Voting Membership Interests then held by the Voting Members; or

(b) **Judicial Decree.** Upon the entry of a decree of judicial dissolution.

**8.2 Procedure for Winding Up and Distribution.** If the Company is dissolved, the Voting Member(s) or remaining Members shall wind up its affairs. On winding up of the Company, the assets of the Company shall be distributed, first, to creditors of the Company, including Members and Economic Interest Holders who are creditors, to the extent permitted by

law, in satisfaction of the liabilities of the Company, and then to the Members and Economic Interest Holders in accordance with Section 4.4 of this Agreement.

**8.3 Filing of Articles of Dissolution.** If the Company is dissolved, the Voting Member(s) or Members shall promptly file Articles of Dissolution with the New York Secretary of State. If there are no remaining Members, the Articles of Dissolution shall be filed by the last Person to be a Member; if there are no remaining Members, or a Person who last was a Member, the Articles of Dissolution shall be filed by the legal or personal representatives of the Person who last was a Member.

## ARTICLE IX

### BOOKS, RECORDS, ACCOUNTING AND TAX ELECTIONS

**9.1 Bank Accounts.** All funds of the Company shall be deposited in a bank account or accounts opened in the Company's name. The Voting Member(s) shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

**9.2 Books and Records.** The Voting Member(s) shall keep or cause to be kept complete and accurate books and records of the Company as required under Section 1102 of the Law as well as supporting documentation of transactions with respect to the conduct of the Company's business. The books and records shall be maintained in accordance with sound accounting practices and shall be available at the Company's principal office for examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours.

**9.3 Annual Accounting Period.** The annual accounting period of the Company shall be its taxable year. The Company's taxable year shall be selected by the Members, subject to the requirements and limitations of the Code.

**9.4 Reports.** Within seventy-five (75) days after the end of each taxable year of the Company, the Voting Member(s) shall cause to be sent to each Person who was a Member at any time during the taxable year then ended a complete accounting of the affairs of the Company for the taxable year then ended. In addition, within seventy five (75) days after the end of each taxable year of the Company, the Voting Member(s) shall cause to be sent to each Person who was an Economic Interest Holder at any time during the taxable year then ended, that tax information concerning the Company which is necessary for preparing the Economic Interest Holder's income tax returns for that year. At the request of any Member, and at the Member's expense, the Voting Member(s) shall cause an audit of the Company's books and records to be prepared by independent accountants for the period requested by the Member.

**9.5 Tax Matters Member.** The Voting Member(s) shall designate a Member to be the Company's tax matters Member ("**Tax Matters Member**"). The Tax Matters Member shall have all powers and responsibilities provided in Code Section 6221, et seq. The Tax Matters

Member shall keep the Voting Member(s) and all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Member. The Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Tax Matters Member in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Member shall not compromise any dispute with the Internal Revenue Service without the approval of the Voting Member(s) and Members.

**9.6 Tax Elections.** Unless otherwise determined by the Voting Members after having consulted with the Company's Certified Public Accountant, all elections required or permitted to be made by the Company under the Code shall be made by the Voting Members. In particular:

(a) **Organizational Expenses.** The Company shall elect to deduct expenses incurred in organizing the Company as permitted in Section 709 of the Code and in the following manner:

(i) the Company shall deduct expenses incurred in organizing the Company in the taxable year in which it began business in an amount equal to the lesser of:

(A) the amount of organizational expenses with respect to the Company; or

(B) Five Thousand Dollars (\$5,000.00), reduced (but not below zero) by the amount by which such organizational expenses exceed Fifty Thousand Dollars (\$50,000.00); and

(ii) the remainder of such organizational expenses, if any, shall be deducted ratably over the 180-month period beginning with the month in which the Company began business.

(b) **Transfer of Economic Interest.** In case of a transfer of all or part of any Economic Interest, the Company may elect, in a timely manner pursuant to Section 754 of the Code and pursuant to corresponding provisions of applicable State and local tax laws, to adjust the basis of Company property pursuant to Sections 734 and 743 of the Code.

(c) **Taxation as Partnership.** The Company shall not elect to be excluded from the application of the provisions of Subchapter K of Chapter 1 of Subtitle A of the Code or corresponding provisions of State or local law.

## ARTICLE X

### GENERAL PROVISIONS

**10.1 Title to Company Property.** All real and personal property acquired by the Company shall be acquired and held by the Company in its name.

**10.2 Assurances.** Each Member shall execute all certificates and other documents and shall do all such filing, recording, publishing, and other acts as the Members deem appropriate to comply with the requirements of law for the formation and operation of the Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the property of the Company.

**10.3 Notifications.** Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a "**notice**") required or permitted under this Agreement must be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, return receipt requested or by facsimile transmission, provided receipt is actually acknowledged by the Member or Member's agent. A notice must be addressed to a Member at the Member's last known address on the records of the Company. A notice to the Company must be addressed to the Company's principal office. A notice delivered personally will be deemed given only when acknowledged in writing by the person to whom it is delivered. A notice that is sent by mail will be deemed given three (3) business days after it is mailed. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees. A notice sent by facsimile is deemed given when receipt is acknowledged.

**10.4 Specific Performance.** The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party who may be injured (in addition to any other remedies which may be available to that party) shall be entitled to one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

**10.5 Complete Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement among the Members with respect to the subject matter thereof. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty. Except as expressly provided otherwise herein, this Agreement may not be amended without the written consent of the Voting Members holding at least a majority (over 50%) or more of the Percentages then held by the Voting Members.

**10.6 Applicable Law.** All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of New York.

**10.7 Article and Section Titles.** The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

**10.8 Binding Provisions.** This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

**10.9 Exclusive Jurisdiction and Venue.** Any suit involving any dispute or matter arising under this Agreement may only be brought in a United States District Court, for the Northern District of New York or the New York State Supreme Court, County of Onondaga. All Members hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

**10.10 Terms.** Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the Person may in the context require.

**10.11 Separability of Provisions.** Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

**10.12 Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

**[Signatures on Following Page]**



IN WITNESS WHEREOF, the parties have executed, or caused this Agreement to be executed as of the date set forth hereinabove.

**COMPANY:**

**Spileo Properties LLC**

By: \_\_\_\_\_

**Spiro Spiliotis**  
Member

**VOTING MEMBERS:**

\_\_\_\_\_  
**Spiro Spiliotis**  
Individually

EXHIBIT A

LIST OF MEMBERS, BENEFICIARIES, CAPITAL, AND PERCENTAGES

<u>Name</u>	<u>Voting Percentage</u>	<u>Non-Voting Percentage</u>	<u>Total Percentage</u>
<b>Spiro Spiliotis (Member)</b>	100%	-----	100%

EXHIBIT B

ADHERENCE AGREEMENT

The undersigned hereby acknowledges that he/she has read the Operating Agreement, dated entered into effective as of the 12th day of December, 2012 by and among **Spilco Properties, LLC** (the "**Company**") and its Members, as stated in the Operating Agreement. By signing this Adherence Agreement, the undersigned hereby agrees to adhere to and be bound by the terms and conditions set forth in the Operating Agreement as if an original signatory.

By signing this Adherence Agreement, **Spilco Properties, LLC**, its Members and Officers acknowledge that the undersigned is a member of the Company who upon execution of this Adherence Agreement shall be subject to and bound by the same terms and conditions, and entitled to the same rights and obligations as if an original signatory.

The parties have executed this Adherence Agreement on this 9 day of Nov, 21.


**Spilco Properties, LLC**

By: 

Name: Spiro Spiliotis

Title: Member

**CURRENT MEMBERS:**

  
Spiro Spiliotis

Individually

**EXHIBIT "C"**  
**GOOD STANDING CERTIFICATE**

STATE OF NEW YORK

DEPARTMENT OF STATE

Certificate of Status

I, ROSSANA ROSADO, Secretary of State of the State of New York and custodian of the records required by law to be filed in my office, do hereby certify that upon a diligent examination of the records of the Department of State, as of the date and time of this certificate, the following entity information is reflected:

Entity Name: SPILCO PROPERTIES, LLC  
DOS ID Number: 4331133  
Entity Type: DOMESTIC LIMITED LIABILITY COMPANY  
Entity Status: EXISTING  
Date of Initial Filing with DOS: 12/11/2012  
Statement Status: CURRENT  
Statement Due Date: 12/31/2022

I certify that the following is a list of documents on file in the Department of State for said entity:

---

Document Type: ARTICLES OF ORGANIZATION  
Date of Filing: 12/11/2012  
Entity Name: SPILCO PROPERTIES, LLC

---

Document Type: CERTIFICATE OF PUBLICATION  
Date of Filing: 02/22/2013

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Document Type: BIENNIAL STATEMENT  
Date of Filing: 03/31/2015  
Effective Date: 12/01/2014

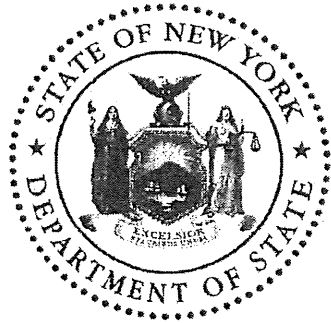
Document Type: BIENNIAL STATEMENT  
Date of Filing: 07/10/2020  
Effective Date: 12/01/2018

Document Type: BIENNIAL STATEMENT  
Date of Filing: 12/14/2020  
Effective Date: 12/01/2020

Document Type: BIENNIAL STATEMENT  
Date of Filing: 12/14/2020  
Effective Date: 12/01/2020

No information is available from this office regarding the financial condition, business activity or practices of this entity.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on October 18, 2021 at 04:13 P.M.



ROSSANA ROSADO, Secretary of State

*Brendan C. Hughes*

By Brendan C. Hughes  
Executive Deputy Secretary of State

Authentication Number: 100000504221 To Verify the authenticity of this document you may access the  
Division of Corporation's Document Authentication Website at <http://excorp.dos.ny.gov>

**EXHIBIT "D"**  
**RESOLUTION**

UNANIMOUS WRITTEN CONSENT OF

SPILCO PROPERTIES LLC

THE UNDERSIGNED, being the Members of SPILCO PROPERTIES LLC, a New York State limited liability company (the "Company"), hereby consents to the adoption of the following as resolutions of the sole member of the Company in lieu of a meeting thereof:

RESOLVED that the Company be and it hereby is authorized to enter into a Mortgage with Solvay Bank to secure a loan on certain commercial real property located in the City of Syracuse, County of Onondaga, State of New York, and more commonly known as 120-24 Walton Street (101.-04-09.0), and 229-37 West Fayette Street (101.-04-03.0), Syracuse, New York, collectively known as 212 West Fayette Street, Syracuse, New York, in the principal amount of Six Million Five Hundred Sixty Two Thousand Five Hundred Dollars (\$6,562,500.00). Said real properties consist of a commercial masonry building situate on both lots which are identified in the records of Onondaga County as Tax Map Parcel Nos. 101.-04-09.0 and 101.-04-03.0 respectively; and it is

FURTHER RESOLVED that the Company be and it hereby is authorized to enter into the application with the City of Syracuse Industrial Development Agency ("SIDA") for financing the project to be completed on the subject premises; and it is further

FURTHER RESOLVED that the Company be and it hereby is authorized to execute and deliver any and all other such instruments, documents or agreements as may be reasonably required by Solvay Bank and by SIDA in order to consummate the loan transaction authorized herein; and it is

FURTHER RESOLVED that Spiro Spiliotis is authorized and empowered to execute and deliver for and on behalf of the Company, each of the instruments, documents and agreements as may be necessary to complete the authorized transaction and to carry out any of the foregoing resolutions, all with such changes, and in such form, as he may in its sole discretion approve, the execution and delivery of each document to be conclusive evidence of the approval of the Company; and it is



FURTHER RESOLVED that SPILCO PROPERTIES LLC has been authorized to do and perform all such further acts and things as may be necessary or convenient in order to consummate the transactions authorized in the foregoing resolutions and any actions heretofore or hereafter taken by such authorized person in carrying out the purposes of these resolutions is confirmed, approved and ratified in all respects; and it is

FURTHER RESOLVED that this resolution may be executed in any number of counterparts, if applicable, all of which shall constitute one and the same instrument, and the parties hereto may execute this resolution by signing and delivering one or more counterparts, and the parties may rely on electronic mail transmissions of this resolution, signed by the parties, as if they were originals.

There being no further business, the meeting was adjourned.

Dated: Dec 10, 2021

SPILCO PROPERTIES LLC

  
\_\_\_\_\_  
By: Spiro Spiliotis, Member

**EXHIBIT "E"**  
**LOCAL ACCESS AGREEMENT**

**City of Syracuse**  
**Industrial Development Agency**

**Local Access Agreement**

Beacon Armory LLC/ Spilco Properties LLC (the Company) understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation, reconstruction and equipping of the Project unless a written waiver is first received from the Agency, and agrees to provide the information requested below as a way to provide access for local participation.

<b>Company</b>				Beacon Armory LLC/ Spilco Properties LLC				<b>General Contractor</b>				Metropolitan Group of New York LLC			
<b>Representative for Contract Bids and Awards</b>				Jeffrey Appel				<b>Contact</b>				Spiro Spiliotis			
<b>Address</b>				325 South Salina Street 3 <sup>rd</sup> Floor				<b>Address</b>				325 South Salina Street 3 <sup>rd</sup> Floor			
<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13202	<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13202				
<b>Phone</b>	917.848.0152			<b>Fax</b>		<b>Phone</b>	917.494.6042			<b>Fax</b>					
<b>Email</b>				jeff@armoryboys.com				<b>Email</b>				SPIRO.SPILIOTIS@GMAIL.COM			
<b>Project Address</b>				120-124 Walton Street				<b>Construction Start Date</b>				2/1/2022			
<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13202	<b>Occupancy Date</b>				3/1/2023					

**Project Components – Indicate those for which bids will be sought:**

Item	Estimated Value	Bid Date	Contact
Site work/Demolition	150000	2.1.2022	Spiro Spiliotis
Foundation and footings	30000	2.1.2022	Spiro Spiliotis
Building	400000	3.1.2022	Spiro Spiliotis
Masonry	30000	3.1.2022	Spiro Spiliotis
Metals	150000	2.1.2022	Spiro Spiliotis
Wood/casework	100000	2.1.2022	Spiro Spiliotis
Thermal/moisture proof	100000	2.2.2022	Spiro Spiliotis
Doors, windows, glazing	100000	2.2.2022	Spiro Spiliotis
Finishes	500000	3.1.2022	Spiro Spiliotis
Electrical	400000	3.1.2022	Spiro Spiliotis
HVAC	400000	3.1.2022	Spiro Spiliotis
Plumbing	300000	3.1.2022	Spiro Spiliotis
Specialties	35000	4.1.2022	Spiro Spiliotis
Machinery & Equipment	100000	4.1.2022	Spiro Spiliotis
Furniture and Fixtures	100000	4.1.2022	Spiro Spiliotis
Utilities	100000	4.1.2022	Spiro Spiliotis
Paving			
Landscaping			
Other (identify)			

# City of Syracuse

## Industrial Development Agency

Finishes	500000	3.1.2022	Spiro Spiliotis
Electrical	400000	3.1.2022	Spiro Spiliotis
HVAC	400000	3.1.2022	Spiro Spiliotis
Plumbing	300000	3.1.2022	Spiro Spiliotis
Specialties	35000	4.1.2022	Spiro Spiliotis
Machinery & Equipment	100000	4.1.2022	Spiro Spiliotis
Furniture and Fixtures	100000	4.1.2022	Spiro Spiliotis
Utilities	100000	4.1.2022	Spiro Spiliotis
Paving			
Landscaping			
Other (identify)			

Date: 12/15/2021  
LLC

Company: Beacon Armory/ Spilco Properties

Signature:   
Spiliotis

Name: Jeffrey Appel/ Spiro







# BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET ▪ ONE LINCOLN CENTER ▪ SUITE 1000 ▪ SYRACUSE, NEW YORK 13202 ▪ PH: 315.422.1500 ▪ FX: 315.422.3549

December 22, 2021

City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202

Beacon Armory LLC  
325 South Salina Street, 3rd Floor  
Syracuse, New York 13202

Spilco Properties, LLC  
96 Locust Avenue  
New Rochelle, New York 10801

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
Beacon Armory LLC – Bentley Lofts Project

Ladies and Gentlemen:

We have acted as counsel to the City of Syracuse Industrial Development Agency (the “*Agency*”) in connection with a project (the “*Project*”) undertaken by the Agency at the request of Beacon Armory LLC (“*Beacon*”) and Spilco Properties, LLC (“*Spilco*”) and together with Beacon, collectively, the “*Company*”) consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the “*Building*”) located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the “*Land*”); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the “*Equipment*”) and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or their designee as an agent of the Agency in connection with the acquisition, reconstruction,



renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Land and the Facility are connected to an adjacent building located at 229-37 West Fayette Street, Syracuse, New York (the land and building collectively referred to as the "**Adjacent Building**") which is owned by the Company.

The Company has also requested the Agency grant the Financial Assistance to the Project. To satisfy certain lender requirements, the Adjacent Building is being pledged as collateral to support a note to cover, among other things, the construction costs of the Project and the Company requested, and the Agency agreed, to spread its interest in the Project Facility to include the Adjacent Building solely for the purposes of accommodating the financing structure.

Capitalized terms used herein which are not otherwise defined shall have the meanings ascribed to them in the Agency Lease Agreement, dated December 1, 2021, between the Agency and the Company.

As counsel to the Agency, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates, and documents as we have deemed necessary or appropriate for the purposes of the opinion expressed below. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies, and have assumed the accuracy and truthfulness of the factual information, expectations, conclusions, representations, warranties, covenants and opinions of the Company and its counsel and representatives as set forth in the various documents executed and delivered by them or any of them and identified in the Closing Memorandum in connection with the Project.

We are of the opinion that:

1. The Agency is a duly organized and existing corporate governmental agency constituting a public benefit corporation of the State of New York.

2. The Agency is duly authorized and empowered by law to acquire, construct, reconstruct, renovate and equip the Project, to lease the Land, the Facility and the Adjacent Building from the Company and Armory, as applicable, pursuant to the Company Lease; to accept an interest in the Equipment pursuant to the Bill of Sale from the Company; to sublease the Project Facility back to the Company and Armory pursuant to the Agency Lease, to provide the Financial Assistance to the Company and to appoint the Company as its agent for completion of the Project.



3. The Agency Documents have been authorized by and lawfully executed and delivered by the Agency and (assuming the authorization, execution, and delivery by the other respective parties thereto) are valid and legally binding obligations enforceable against the Agency in accordance with their respective terms.

In rendering this opinion, we advise you of the following:

The enforceability of the Agency Documents may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar law or enactment now or hereafter enacted by the State of New York or the Federal government affecting the enforcement of creditors' rights generally and the general principles of equity, including limitations on the availability of the remedy of specific performance which is subject to discretion of the court.

This opinion is rendered to the addressees named above and their successors and/or assigns, and may not be relied upon by any other person without our prior, express written consent.

Very truly yours,

BOUSQUET HOLSTEIN PLLC





*December 21*, 2021

Beacon Armory LLC  
325 S. Salina Street, 3rd Floor  
Syracuse, New York 13202

Spilco Properties, LLC  
96 Locust Avenue  
New Rochelle, New York 10801

City of Syracuse Industrial Development Agency  
City Hall Commons, 6<sup>th</sup> Floor  
201 East Washington Street  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
Beacon Armory LLC – Bentley Lofts Project

Ladies and Gentlemen:

We have acted as counsel to Beacon Armory LLC ("**Beacon**") and Spilco Properties, LLC ("**Spilco**"), and together with Beacon and Spilco, collectively, the "**Company**") in connection with a certain project (the "**Project**") undertaken by the City of Syracuse Industrial Development Agency (the "**Agency**") at Beacon and Spilco's request. The Project consists of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq .ft., six-story building (the "**Building**") located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the "**Land**"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq .ft. on the sub-terranean level and first floor for commercial use; (b) approximately 25,000 sq. ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq. ft. 2-bedroom units and twenty-five approximately 575-650 sq .ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874

of the General Municipal Law) (collectively, the “*Financial Assistance*”); (C) the appointment of the Beacon and Spilco or their designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Beacon and Spilco to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Land and the Facility are connected to an adjacent building located at 229-37 West Fayette Street, Syracuse, New York (the land and building collectively referred to as the “*Adjacent Building*”).

The Company has also requested the Agency grant the Financial Assistance to the Project. To satisfy certain lender requirements, the Adjacent Building is being pledged as collateral to support a note to cover, among other things, the construction costs of the Project and the Company requested, and the Agency agreed, to spread its interest in the Project Facility to include the Adjacent Building, among other documents, the Company Lease, the Agency Lease and the Environmental Compliance and Indemnification Agreement and any for the purposes of leasing its interests in the Adjacent Building to the Agency to satisfy the lender's requirements.

The Agency has acquired an interest in the Project Facility and the Adjacent Building pursuant to that certain Company Lease Agreement dated as of October 1, 2021 (the “*Company Lease*”) and Beacon and Spilco have transferred their respective interests in the Equipment to the Agency pursuant to a bill of sale dated as of October 1, 2021 (the “*Bill of Sale*”) and the Agency will sublease the Project Facility and the Adjacent Building back to the Company pursuant to an Agency Lease Agreement dated as of October 1, 2021 (the “*Agency Lease*”). Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agency Lease.

In that regard, we have examined the Project Agreement, the Company Lease, the Agency Lease, the Bill of Sale, the Mortgage, the Environmental Compliance and Indemnification Agreement and the other documents identified in the Closing Memorandum and as defined in the Agency Lease to which the Company is a party (collectively, the “*Company Documents*”).

We have also examined corporate documents and records of the Company and made such investigation of law and/or fact that we deem necessary or advisable in order to render this opinion. For purposes of such examination, we have assumed the genuineness of all certificates and the authenticity of all documents submitted to us as original counterparts or as certified or photostatic copies; the genuineness of all signatures of all parties to the Company Documents other than on behalf of the Company; and the due authorization, execution and delivery of the Company Documents by and the enforceability thereof against all parties thereto other than the Company.

December 21, 2021  
Page Three

As to questions of fact material to our opinion, we have relied upon the representations and warranties made by Beacon and Spilco in the Company Documents and upon one or more certificates of officers of each Beacon and Spilco. Whenever the phrase “to the best of our knowledge” is used in this opinion, it refers to actual knowledge of members of this firm obtained from our representation of the Company and inquiries of responsible officers of the Company made in connection with this opinion, but no further investigation or review has been conducted.

Based upon the foregoing, it is our opinion that:

1. Beacon and Spilco are each duly formed and validly existing New York limited liability companies and possess full corporate power and authority to own their property, to conduct their business, to execute and deliver the Company Documents, and to carry out and perform their obligations thereunder.

2. The execution, delivery and performance of the Company Documents have been duly authorized by each Beacon and Spilco and the Company Documents have been duly executed and delivered by an Authorized Representative of each Beacon and Spilco.

3. The Company Documents constitute the legal, valid and binding obligations of each Beacon and Spilco, enforceable against Beacon and Spilco in accordance with their terms, except as enforceability may be limited by applicable bankruptcy and insolvency laws and laws affecting creditors' rights generally and to the extent that the availability of the remedy of specific performance or injunctive relief or other equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

4. To the best of our knowledge, in reliance on the certificates and opinions specified herein, the execution and delivery by each Beacon and Spilco of the Company Documents, the execution and compliance with the provisions of each and the consummation of the transactions contemplated therein do not and will not constitute a breach of, or default under their respective Articles of Organization, Operating Agreements or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which Beacon or Spilco, or any of their property may be bound, for which a valid consent has not been secured; nor is any approval or any action by any governmental authority required in connection with the execution, delivery and performance thereof by Beacon or Spilco.

5. To the best of our knowledge, in reliance on the certificates and opinions specified herein, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against, or affecting Beacon or Spilco wherein an unfavorable decision, ruling or finding would in any way adversely affect in a material fashion the validity or enforceability of the Company Documents.

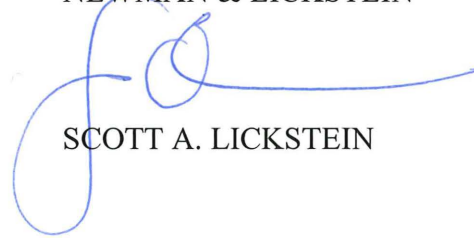
December 21, 2021  
Page Four

Our examination of law relevant to matters herein is limited to the laws of the State of New York and also the Federal law, where appropriate, and we express no opinion as to matters governed by the laws of any other state or jurisdiction.

This opinion is only for the benefit of and may be relied upon only by the Agency, its successors and assigns. The opinions set forth in this letter are limited to those expressly stated and no other opinion may be inferred nor is any implied. No other use of this opinion may be made without prior written consent. This opinion is given as of the date hereof and we undertake no obligation, and hereby disclaim any obligation, to update or supplement this opinion in response to a subsequent change in the law or future events affecting the documents identified in this letter.

Very truly yours,

NEWMAN & LICKSTEIN

A handwritten signature in blue ink, appearing to read "S. Lickstein", with a long horizontal flourish extending to the right.

SCOTT A. LICKSTEIN

SAL:mk



## CLOSING MEMORANDUM

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

### BEACON ARMORY LLC – BENTLEY LOFTS PROJECT

DATE AND TIME OF CLOSING: December 22, 2021

PLACE OF CLOSING: In Escrow

#### **I. Action Taken Prior to Closing**

At the request of Beacon Armory LLC ("**Beacon**") and Spilco Properties, LLC ("**Spilco**") and together with Beacon, the "**Company**", as tenants in common, the City of Syracuse Industrial Development Agency (the "**Agency**"), a public benefit corporation organized under the laws of the State of New York, has undertaken a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately .16 acres of land improved by an approximately 41,000 sq.ft., six-story building (the "**Building**") located at 120-24 Walton Street in the City of Syracuse, New York (Tax Map No. 101.-04-09.0) (the "**Land**"); (ii) the reconstruction and renovation of the Building for mixed-use including: (a) approximately 17,000 sq.ft. on the subterranean level and first floor for commercial use; (b) approximately 25,000 sq.ft. on floors 2-5 to be divided into 30 loft-style residences consisting of approximately five approximately 850 sq.ft. 2-bedroom units and twenty-five approximately 575-650 sq.ft. 1-bedroom units; and (c) upgrades to all building mechanicals and façade improvements (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or their designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Land and the Facility are connected to an adjacent building located at 229-37 West Fayette Street, Syracuse, New York (the land and building collectively referred to as the "**Adjacent Building**") which is owned by the Company.

The Company is the fee owner of the Land, the Facility and the Adjacent Building.

The Company has advised the Agency that its lender (the "*Lender*") will require a pledge of the Adjacent Building as additional collateral for the note and mortgage to be given in connection with the Project.

The Agency proposes to assist the Company's acquisition, reconstruction and equipping of the Project Facility and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company and/or their designees as its agent with respect to completing the Project; (2) leasing of the Land, Facility and the Adjacent Building by the Agency from the Company pursuant to a company lease agreement; (3) accepting an interest in the Equipment pursuant to a bill of sale from the Company; (4) subleasing the Land, the Facility and the Adjacent Building to the Company, as applicable, pursuant to an agency lease agreement; and (5) entering into one or more mortgages in favor of the Company's Lender.

In order to accommodate the Lender's collateral requirements, the Company has agreed to lease its interests in the Adjacent Building to the Agency and the Agency has agreed to extend its interest to the Adjacent Building solely for the purposes of the approved mortgage recording tax exemption, with the understanding that all of the State and local sales and use tax exemption benefits authorized by the Agency will be realized from the work done solely on the Project Facility (the "*Lender Requirements*").

The Company also requested that the Agency appoint them as its agent for purposes of completing the Project and the granting of certain Financial Assistance.

The Agency will acquire a leasehold interest in the Land, Facility and Adjacent Building from the Company pursuant to a Company Lease Agreement dated as of December 1, 2021 (the "*Company Lease*"), between the Company, as landlord and the Agency, as tenant; and an interest in the Equipment pursuant to a bill of sale from the Company, dated as of December 1, 2021 (the "*Bill of Sale*"). The Agency will sublease the Project Facility back to the Company, pursuant to an Agency Lease Agreement dated as of December 1, 2021 (the "*Agency Lease*") between the Agency, as sublessor and the Company, as sublessee. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in Exhibit "C" to the Agency Lease.

Among the actions taken by the Agency with respect to the Project prior to Closing were the following:

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|---------------|---|
| June 2, 2021  | The Company submitted an application for financial assistance for the project.  |
| June 15, 2021 | A resolution determining that the acquisition, construction and equipping of a mixed-use project constitutes a project; describing the financial assistance in connection therewith; and authorizing a public hearing (the " <i>Public Hearing Resolution</i> "). |
| June 30, 2021 | Notice of the Public Hearing was mailed to the chief executive officers of the affected tax jurisdictions pursuant to Section 859-a of the Act.   |



July 6, 2021 Notice of the Public Hearing was published in the Post-Standard pursuant to Section 859-a of the Act.

July 20, 2021 The Agency conducted the Public Hearing pursuant to Section 859-a of the Act.

September 21, 2021 A resolution classifying a certain project as an Unlisted Action pursuant to the State Environmental Quality Review Act, declaring the Agency lead agency for purposes of an uncoordinated review thereunder and determining that the Project will not have a significant effect on the environment.

September 21, 2021 A resolution authorizing the undertaking of the acquisition, reconstruction, renovation, equipping and completion of a project; appointing the Company as agents of the Agency for the purpose of the acquisition, reconstruction, renovation, equipping and completion of the Project Facility and authorizing the execution and delivery of an agreement between the Agency and the Company (the “***Inducement Resolution***”).

September 21, 2021 A resolution authorizing the execution and delivery of certain documents by the agency at the request of the Company (the “***Final Approving Resolution***”).

**II. Action To Be Taken At Closing**

The following documents, or copies thereof, are to be delivered (except as indicated) to the Agency (A), Agency’s Counsel (AC), Beacon (B), Spilco (S), the Company (C), Company’s Counsel (CC), Lender’s Counsel (LC) as follows:

<b>A.</b>	<b>Basic Documents</b>	<b>Responsible Party</b>	<b>Signatories</b>
1.	Application for Financial Assistance		
2.	Project Agreement	AC	B,S, A
3.	Company Lease Agreement	AC	C, A
4.	Memorandum of Company Lease Agreement with TP-584	AC	C, A
5.	Bill of Sale		B,S
6.	Agency Lease Agreement	AC	C, A
7.	Memorandum of Agency Lease Agreement with Form TP-584	AC	C, A
8.	Company Certification re: Local Labor Policy	AC	B,S
9.	Certificates of casualty, liability, workers' compensation and other required insurance	AC	
10.	Environmental Compliance and Indemnification Agreement	AC	C
11.	Closing Receipt	AC	C, A
12.	Sales Tax Exemption Letter	AC	A
13.	Form ST-60 indicating appointment of the Company to act as the agent of the Agency	AC	A
14.	Mortgage	LC	C, A
15.	Assignment of Leases and Rents	LC	[C, A]
16.	UCC-1 Financing Statement(s)	LC	
17.	Survey	CC	

**B. Items To Be Delivered By The Agency**

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|--|----|---|
| 1. General Certificate of the Agency relating to incumbency and signatures of officers, execution and delivery of Agency Documents to which it is a party, no litigation and continued existence, with the following items included as exhibits: | AC | A |
| Exhibit "A" - Chapter 641 of the Laws of 1979 of the State of New York, as amended   | A  |   |
| Exhibit "B" - Certificate of Establishment of the Agency and Certificates of appointment of current members  | A  |   |
| Exhibit "C" - By-laws  | A  |   |
| Exhibit "D" - Public Hearing Resolution  | AC |   |
| Exhibit "E" - Notice of Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions  | AC |   |
| Exhibit "F" - SEQRA Resolution   | AC |   |
| Exhibit "G" - Inducement Resolution  | AC |   |
| Exhibit "H" - Final Approving Resolution   | AC |   |
| 2. Mortgage Recording Tax Affidavit  | AC | A |

**C. Items To Be Delivered By Beacon Armory LLC**

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|---|----|---|
| 1. General Certificate of Beacon Armory LLC relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits: | AC | C |
| Exhibit "A" - Articles of Organization  | C  |   |
| Exhibit "B" - Operating Agreement   | C  | C |
| Exhibit "C" - Certificate of Good Standing  | C  |   |

Exhibit "D" - Resolution	C	
Exhibit "E" - Local Access Agreement	C	
<b>D. Items To Be Delivered By Spilco Properties, LLC</b>		
2. General Certificate of Spilco Properties, LLC relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits:	AC	
Exhibit "A" - Articles of Organization	C	
Exhibit "B" - Operating Agreement	C	
Exhibit "C" - Certificate of Good Standing	C	
Exhibit "D" - Resolution	C	
Exhibit "E" - Local Access Agreement	C	
<b>E. Opinions of Counsel</b>	C	
1. Opinion of Bousquet Holstein PLLC, counsel to the Agency, addressed to the Company and the Agency	AC	AC
2. Opinion of Newman & Lickstein, counsel to the Company, addressed to the Agency and the Company.	AC	CC

**III. Action To Be Required Concurrently With Or After Closing**

Memorandum of Company Lease Agreement, Memorandum of Agency Lease Agreement, Mortgage and Assignment of Leases and Rents are to be filed with the Onondaga County Clerk and the UCC-1 Financing Statement(s) are to be filed as appropriate under the Uniform Commercial Code.

**IV. Post-Closing**

Scan copy of Local Access Agreement to SIDA.

**SCHEDULE "A"**

**PERSONS APPEARING**

For the Agency:	City of Syracuse Industrial Development Agency Kathleen Murphy, Chair Judith DeLaney, Executive Director
For the Company:	Beacon Armory LLC Jeffrey Appel, Managing Member  Spilco Properties, LLC Spiro Spiliotis, Managing Member
Company Counsel:	Newman & Lickstein Scott A. Lickstein, Esq.
For the Lender:	Solvay Bank
Lender's counsel:	Barclay Damon LLP Alexadra S. Locke, Esq.
Agency's Counsel:	Bousquet Holstein PLLC Susan R. Katzoff, Esq.