

This document includes draft resolutions for:

Maharam Refinancing  
Meadows Amended Resolution  
Omega PILOT Extension  
UTEP Amended Resolution  
Quality King / Pro Choice Resolution

Date: October 15, 2014

At a meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), held at 1 Independence Hill, Farmingville, New York 11738 on the 15th day of October, 2014, the following members of the Agency were:

Present:

Absent:

Also Present:

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on proposed real estate transactions and the authorization of mortgage financing and the execution of related loan documents in connection with a certain industrial development facility more particularly described below (MS.Bobby LLC/Maharam Fabric Corporation 2008 Facility), and approving the execution and delivery of related documents.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN  
INDUSTRIAL DEVELOPMENT AGENCY APPROVING  
CERTAIN REAL ESTATE TRANSACTIONS AND  
AUTHORIZING MORTGAGE FINANCING AND THE  
EXECUTION AND DELIVERY OF LOAN DOCUMENTS IN  
CONNECTION THEREWITH FOR THE MS. BOBBY  
LLC/MAHARAM FABRIC CORPORATION FACILITY AND  
APPROVING THE FORM, SUBSTANCE, EXECUTION AND  
DELIVERY OF SUCH RELATED DOCUMENTS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as the same may be amended from time to time (collectively, the “**Act**”), the Town of Brookhaven Industrial Development Agency (the “**Agency**”), was created with the authority and power among other things, to assist with certain industrial development projects as authorized by the Act; and

WHEREAS, the Agency has previously assisted in the acquisition of an industrial development facility to EMRG LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having an office at 200 13<sup>th</sup> Avenue, Ronkonkoma, New York 11779 (the “**Company**”), consisting of the acquisition of an approximately 6.997 acre parcel of land located at 4600 M Industrial Court, Hamlet of Bellport, Town of Brookhaven, Suffolk County, New York and the construction and equipping of an approximately 92,000 square foot building located thereon, currently used by Over & Back, Inc., a business corporation duly organized and validly existing under the laws of the State of New York, having an office at 200 13<sup>th</sup> Avenue, Ronkonkoma, New York 11779 (the “**Sublessee**”), for the importation, assembly and wholesale distribution of floral gift sets, floral items and gift baskets, floral arrangements, plant hardware, supplies and plant stands (collectively, the “**Facility**”); and

WHEREAS, the Agency previously leased the Facility to the Company pursuant to and in accordance with the terms of a certain Lease Agreement, dated as of July 1, 2005 (the “**Lease Agreement**”), by and between the Agency and the Company, and a Memorandum of Lease Agreement, dated as of July 1, 2005, was to be recorded in the Suffolk County Clerk’s Office; and

WHEREAS, the Company previously subleased the Facility to the Sublessee pursuant to and in accordance with the terms of a certain Lease which provided for the rental of the facility for a term commencing on the 1<sup>st</sup> day of the calendar month after the issuance of a temporary or permanent Certificate of Occupancy for the property (the “**Sublease Agreement**”), by and between the Company, as sublessor, and the Sublessee, as sublessee, and a Memorandum of Sublease Agreement, dated as of July 1, 2005, was to be recorded in the Suffolk County Clerk’s Office; and

WHEREAS, in connection with such Lease, the Agency and the Sublessee entered into an Agency Compliance Agreement, dated as of July 1, 2005 (the “**Agency Compliance**”

**Agreement**”), whereby the Sublessee made certain representations, warranties and agreements in connection with its use and operation of the Facility; and

WHEREAS, in connection with the leasing and the subleasing of the Facility, the Agency, the Company and the Sublessee entered into a Payment-in-Lieu-of-Tax Agreement, dated as of July 1, 2005 (the “**PILOT Agreement**”), which provided for the Company and the Sublessee to make payments in lieu of real property taxes on the Facility; and

WHEREAS, in connection with the leasing and the subleasing of the Facility, the Agency, the Company and the Sublessee entered into an Environmental Compliance and Indemnification Agreement, dated as of July 1, 2005 (the “**Environmental Compliance and Indemnification Agreement**”), whereby the Company and the Sublessee agreed to comply with all Environmental Laws (as defined therein) applicable to the Facility; and

WHEREAS, the Agency previously consented to the assignment and assumption of the Company’s leasehold interest in the Facility (the “**Assignment**”), by MS. Bobby LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York (the “**Assignee**”); and

WHEREAS, in connection with such assignment and assumption, the Assignee subleased the Facility to Maharam Fabric Corporation, a business corporation duly organized and validly existing under the laws of the State of New York (“**Maharam**”), pursuant to a Sublease Agreement, dated April 2, 2008 (the “**Maharam Sublease Agreement**”), between the Assignee and Maharam, for the distribution and warehousing of contract textiles; and

WHEREAS, the Lease Agreement, the PILOT Agreement and the Environmental Compliance and Indemnification Agreement were assigned by the Company to the Assignee and the Lease Agreement was amended pursuant to and in accordance with a certain Assignment, Assumption and Release Agreement, dated as of April 2, 2008 (the “**2008 Assignment and Assumption Agreement**”), by and among the Company, the Assignee, Maharam and the Agency, and the Assignee and Maharam assumed all of the right, title, interest, liability, duty and obligations of the Company and the Sublessee in, to, and under the Lease Agreement, the PILOT Agreement and the Environmental Compliance and Indemnification Agreement, subject to the limitations outlined therein; and

WHEREAS, in connection with such Maharam Sublease Agreement, the Agency and Maharam entered into an Amended and Restated Agency Compliance Agreement, originally dated as of July 1, 2005, as amended and restated as of April 2, 2008 (the “**Amended and Restated Agency Compliance Agreement**”), by and between Maharam and the Agency; and

WHEREAS, the Lease Agreement was assigned by the Company to the Assignee pursuant to and in accordance with a certain Assignment and Assumption of Lease Agreement, dated as of April 2, 2008 (the “**Lease Assignment**”), among the Company, the Assignee and the Agency, and the Assignee assumed all of the right, title, interest, liability, duty and obligations of the Company in, to and under the Lease Agreement; and

WHEREAS, the PILOT Agreement was assumed by the Assignee and Maharam pursuant to and in accordance with a certain Amended and Restated Payment-in-Lieu-of-Tax Agreement, originally dated as of July 1, 2005, as amended and restated as of April 2, 2008, (the “**Amended and Restated PILOT Agreement**”), by and among the Assignee, Maharam and the Agency; and

WHEREAS, the Agency, the Assignee and Maharam entered into an Amended and Restated Environmental Compliance and Indemnification Agreement, originally dated as of July 1, 2005, as amended and restated as of April 2, 2008 (the “**Amended and Restated Environmental Compliance and Indemnification Agreement**”), by and among the Assignee, Maharam and the Agency; and

WHEREAS, in connection with the Assignment, the Assignee obtained financing (the “**2008 Loan**”) from Citibank, N.A. (the “**2008 Lender**”), and in connection with the 2008 Loan, the Assignee and the Agency granted a mortgage on the Facility (the “**2008 Mortgage**”), together with an assignments of leases and rents (the “**2008 Assignment of Leases and Rents**”) and other such documents necessary to effect and evidence the 2008 Loan (the “**Ancillary 2008 Loan Documents**”; and together with the 2008 Mortgage and the 2008 Assignment of Leases and Rents, the “**2008 Loan Documents**”); and

WHEREAS, subsequent to the Assignment, the Assignee caused the Series 2008 Loan Documents to be satisfied and discharged of record; and]

WHEREAS, the Assignee has now requested the Agency’s consent to the sale of the ownership interests of Maharam to Herman Miller, Inc., a Michigan business corporation authorized to transact business in the State of New York (“**Herman Miller**”); and

WHEREAS, pursuant to the terms of the Amended and Restated Agency Compliance Agreement, Maharam may not dissolve, liquidate or otherwise dispose of all of substantially all of its assets, and may not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it, with the consent of the Agency; and

WHEREAS, Maharam will continue to operate under its name and for the Agency’s previously approved purposes; and

WHEREAS, the Assignee further desires to enter into a loan from Valley National Bank or such other lender as may be determined (the “**2014 Lender**”), on the Facility in an amount presently estimated to be \$8,400,000 but not to exceed 9,000,000; and

WHEREAS, as security for such mortgage loan (the “**2014 Loan**”) being made to the Assignee by the 2014 Lender, the Assignee has submitted a request to the Agency that it join with the Assignee in executing and delivering to the 2014 Lender one or more mortgages and such other loan documents, satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably requested by the 2014 Lender (the “**2014 Loan Documents**”); and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company, consistent with the policies of the Agency, in the form of an exemption from mortgage recording taxes; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York;

WHEREAS, the Assignee and Maharam have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the financing of the Facility and the consent of the sale of Maharam and the continued leasing and subleasing of the Facility.

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

- (a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act.
- (b) The Facility continues to constitute a “project”, as such term is defined in the Act.
- (c) The refinancing of the Facility will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven, Suffolk County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act.
- (d) The refinancing of the Facility as contemplated in this resolution is reasonably necessary to maintain the competitive position of the Assignee in its industry.
- (e) Based upon representations of the Assignee and counsel to the Assignee, the Facility continues to conform with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local land use plans for the area in which the Facility is located.
- (f) It is desirable and in the public interest for the Agency to assist in the refinancing of the Facility.
- (g) The 2014 Loan Documents will be effective instruments whereby the Agency and the Assignee agree to secure the 2014 Loan and assign to the 2014 Lender their respective rights under the Lease Agreement (except the Agency’s Unassigned Rights as defined therein).

- (h) The Agency consents to the sale of the ownership interests of Maharam to Herman Miller and the continued subleasing by the Assignee to Maharam.
- (i) It is desirable and in the public interest for the Agency to consent to the continued subleasing of the Facility by the Assignee to Maharam.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) grant a mortgage lien on and security interest in and to the Facility pursuant to the 2014 Loan Documents, and (ii) execute, deliver and perform the 2014 Loan Documents and such other related documents as may be necessary or appropriate to effect the 2014 Loan.

Section 3. The Agency is hereby authorized to do all things necessary or appropriate for the execution, delivery and performance of the 2014 Loan Documents and such other related documents as may be necessary or appropriate to effect the 2014 Loan, and all acts heretofore taken by the Agency with respect to such refinancing are hereby approved, ratified and confirmed; provided that the form and substance of the 2014 Loan Documents and such other related documents shall be satisfactory in all material respects to Agency Counsel and Transaction Counsel and to the officer of the Agency executing the 2014 Loan Documents and such other related documents.

Section 4. The Agency is hereby authorized to provide the consents contemplated by this resolution and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such consents are hereby approved, ratified and confirmed.

Section 6. (a) The Chairman, Vice Chairman, Chief Executive Officer, and all other members of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the 2014 Loan Documents together with such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, Vice Chairman, Chief Executive Officer, or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, Chief Executive Officer, and any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives of the Agency.

Section 7. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 8. This resolution shall take effect immediately.

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

I, the undersigned Secretary of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the “**Agency**”), including the resolutions contained therein, held on October 15, 2014, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings is in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 15<sup>th</sup> day of October, 2014.

By: \_\_\_\_\_  
Secretary



Date: October 15, 2014

At a meeting of the Town of Brookhaven Industrial Development Agency (the “**Agency**”), held at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738, on the 15th day of October, 2014, the following members of the Agency were:

Present:

Recused:

Absent:

Also Present:

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of a leasehold interest in and title to a certain industrial development facility more particularly described below (The Meadows at Yaphank Facility) and the leasing of the facility to Rose-Breslin Associates LLC.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

AMENDED RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY FOR ROSE-BRESLIN ASSOCIATES LLC, A LIMITED LIABILITY COMPANY ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF ROSE-BRESLIN ASSOCIATES LLC AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as amended from time to time (collectively, the “**Act**”), the Town of Brookhaven Industrial Development Agency (the “**Agency**”) was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, Rose-Breslin Associates LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, on behalf of itself and/or the principals of Rose-Breslin Associates LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”) has requested the Agency’s assistance with the acquisition, construction and equipping of a mixed-use industrial development facility to be known as The Meadows at Yaphank, and which initial phase also known as Phase 1a, will consist of (i) the acquisition of an approximately 17.82 acres of land located on the northwest corner of William Floyd Parkway and the Long Island Expressway in Yaphank (collectively, the “**Land**”), and (ii) the construction and equipping of an approximate 240 unit apartment complex consisting of ten separate buildings of 26,690 square feet, 80 garages at 200 square feet, 1 clubhouse of 6,250 square feet, and a cabana of 750 square feet (collectively, the “**Equipment**” and “**Improvements**”; and, together with the Land, the “**Facility**”), for lease by the Agency to the Company for further sublease by the Company to various sublessees yet to be determined (the “**Sublessees**”), in addition, in connection with the Facility, certain public improvements, including utilities, sewers, roadways, sidewalks, curbs, and parking lots may need to be constructed, renovated, or improved on or across land, lots, and roadways owned or controlled by the Town of Brookhaven adjacent to or in the vicinity of the Facility, including the following as they relate to the acquisition, construction and equipping of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, construction and equipping of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the acquisition, construction and equipping of the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under such Facility; and

WHEREAS, the Agency, by resolution duly adopted on September 17, 2014 (the “**Authorizing Resolution**”), decided to proceed under the provisions of the Act and authorized the acquisition, construction and equipping of the Facility and entering into a straight lease transaction; and

WHEREAS, the Agency now intends to amend such Authorizing Resolution in order to correct a scrivener’s error as to the amount of proposed sales tax benefits and based on updated information received from the Company, to increase the proposed exemptions from mortgage recording taxes; and

WHEREAS, the Authorizing Resolution stated the Agency contemplates that it will provide financial assistance to the Company consistent with the policies of the Agency, in the form of (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$36,000,000 but not to exceed \$38,000,000, in connection with the financing of the acquisition, demolition, constructing and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, demolishing, constructing and equipping the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$256,363, in connection with the purchase or lease of equipment, building materials, services or other personal property, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C thereof), consistent with the policies of the Agency; and

WHEREAS, the Company has notified the Agency that the estimates for the development budget related to Phase 1a were received in excess of the anticipated amounts and therefore the Company has increased the proposed mortgage financing required for the Facility from an estimated \$36,000,000 mortgage to an amount presently estimated to be \$45,000,000 but not to exceed \$48,000,000; and

WHEREAS, subsequent to the Authorizing Resolution, the Agency noted a scrivener’s error in said Authorizing Resolution in connection with the proposed exemptions of sales tax benefits; and

WHEREAS, the cost benefits analysis prepared by the Agency and made available at each of the public hearings listed the correct amount of proposed sales tax exemptions to be \$1,894,243, however a scrivener’s error incorrectly listed the amount of \$256,363, in the Authorizing Resolution; and

WHEREAS, the Agency intends to amend the Authorizing Resolution to accurately reflect the anticipated proposed benefits with respect to exemptions from sales tax and exemptions from mortgage recording taxes to read as follows (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$45,000,000 but not to exceed \$48,000,000, in connection with the financing of the acquisition, demolition, constructing and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, demolishing, constructing and equipping the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$1,894,243, in connection with the purchase or lease of equipment, building materials, services or other personal property; and

WHEREAS, the Agency ratifies and confirms all terms contemplated under the Authorizing Resolution, as amended by this Amended Authorizing Resolution, including the Agency Documents (as defined therein); and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility to the Agency and the lease of the Facility to the Company; and

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby amends the Authorizing Resolution to accurately reflect the proposed benefits with respect to exemptions from sales tax and exemptions from mortgage recording taxes in connection with the Facility to be as follows (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$45,000,000 but not to exceed \$48,000,000, in connection with the financing of the acquisition, demolition, constructing and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, demolishing, constructing and equipping the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$1,894,243, in connection with the purchase or lease of equipment, building materials, services or other personal property.

Section 2. The Agency hereby ratifies and confirms all terms contemplated by the Authorizing Resolution, as amended by this Amended Authorizing Resolution, including the Agency Documents.

Section 3. This amended resolution shall take effect immediately.

ADOPTED: October 15, 2014

**ROSE-BRESLIN ASSOCIATES LLC**

ACCEPTED: \_\_\_\_\_ 2014

By: \_\_\_\_\_  
Name:  
Title:



Date: October 15, 2014

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held at 1 Independence Hill, 3<sup>rd</sup> Floor, Farmingville, New York 11738 on the 15th day of October, 2014 the following members of the Agency were:

Present:

Absent:

Also Present:

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action pertaining to the modification and extension of certain payment-in-lieu-of tax benefits for a certain industrial development facility more particularly described below (BKP Realty Associates, LLC/Omega Moulding Company, Ltd. Facility).

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE MODIFICATION AND EXTENSION OF THE PILOT BENEFITS OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY FOR BKP REALTY ASSOCIATES, LLC AND OMEGA MOULDING COMPANY, LTD., AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AMENDMENT AND AN AMENDED AND RESTATED PAYMENT-IN-LIEU OF TAX AGREEMENT AND APPROVING THE FORM, SUBSTANCE AND EXECUTION AND DELIVERY OF RELATED DOCUMENTS.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as the same may be amended from time to time (collectively, the “**Act**”), the Town of Brookhaven Industrial Development Agency (the “**Agency**”) was created with the authority and power, among other things, to assist with certain industrial development projects as authorized by the Act; and

WHEREAS, the Agency previously assisted in the acquisition of an approximately 10.5 acre parcel of land located at 1 Sawgrass Drive, Bellport, New York (the “**Land**”), and the construction and equipping thereon of an approximately 130,000 square foot building including, without limitation, the furnishing and equipping of corporate office and warehouse space (the “**Improvements and Equipment**”; and, together with the Land, the “**Facility**”), which Facility is being leased by the Agency to BKP Realty Associates, LLC, a limited liability company organized and existing under the laws of the State of New York (the “**Company**”), and subleased by the Company to, and used by, Omega Moulding Company, Ltd., a business corporation organized and existing under the laws of the State of New York and/or its affiliates (collectively, the “**Sublessee**”), for the manufacturing, importing and distribution of stock and custom wood and pre-finished mouldings, frames and picture frame hardware; and

WHEREAS, the Agency currently leases the Facility to the Company pursuant to a certain Lease Agreement, dated as of February 1, 2003 (the “**Original Lease Agreement**”), between the Agency and the Company, a memorandum of which Original Lease Agreement was to be recorded in the Suffolk County Clerk’s office; and

WHEREAS, the Company subleased the Original Facility to the Sublessee pursuant to and in accordance with a certain Sublease Agreement, dated as of February 1, 2003 (the “**Sublease Agreement**”), between the Company and the Sublessee, and a memorandum of which Sublease Agreement was to be recorded in the Suffolk County Clerk’s office; and

WHEREAS, in connection with the leasing and the subleasing of the Original Facility, the Agency, the Company and the Sublessee entered into a Payment-in-Lieu-of-Tax Agreement, dated as of February 1, 2003 (the “**Original PILOT Agreement**”), whereby the Company and the Sublessee agreed to make certain payments-in-lieu-of real property taxes on the Original Facility (as defined therein); and

WHEREAS, in connection with the leasing and the subleasing of the Original Facility, the Agency, the Company and the Sublessee entered into an Environmental Compliance and Indemnification Agreement, dated as of February 1, 2003 (the “**Environmental Compliance and Indemnification Agreement**”), whereby the Company and the Sublessee agreed to comply with all Environmental Laws (as defined therein) applicable to the Original Facility; and

WHEREAS, the Agency previously consented to a request from the Company to amend the Original Lease Agreement pursuant to the terms of an Amendment of Lease Agreement, dated as of February 1, 2004 (the “**Amendment of Lease**”), to reflect a refinancing by the Company with the First Mortgagee and the Second Mortgagee (as defined therein); and

WHEREAS, the Company and the Sublessee have now requested the Agency’s assistance in connection with an extension of the abatement of real property taxes on the Facility for a term of up to five (5) additional years (the “**PILOT Extension**”); and

WHEREAS, the PILOT Extension will permit the Company and the Sublessee to retain the more than 100 jobs at the Facility and to provide the Company and the Sublessee with much needed economic relief as the expenses and costs of doing business on Long Island increases each year; and

WHEREAS, the PILOT Extension shall coincide with the terms of the Original Lease Agreement, as amended by the Amendment of Lease, as further amended pursuant to a certain Second Amendment of Lease, dated as of October 1, 2014 or such other date as may be determined by the Chairman, Chief Executive Officer or counsel to the Agency (the “**Second Amendment of Lease**”); and, together with the Original Lease and the Amendment of Lease, the “**Lease Agreement**”), between the Agency and the Company; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company and the Sublessee consistent with the policies of the Agency, in the form of the PILOT Extension, consistent with the policies of the Agency, all pursuant to a certain Amended and Restated PILOT Agreement, dated as of October 1, 2014 or such other date as may be determined by the Chairman, Chief Executive Officer or counsel to the Agency (the “**Amended and Restated PILOT**”); and, together with the Original PILOT Agreement, the “**PILOT Agreement**”); and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, a public hearing (the “**Hearing**”) was held on September 26, 2014, so that all persons with views in favor of or opposed to either the financial assistance contemplated by the Agency or the location or nature of the Facility could be heard; and



WHEREAS, notice of the Hearing was given on September 15, 2014, and such notice (together with proof of publication) is substantially in the form annexed hereto as Exhibit A; and

WHEREAS, the minutes of the Hearing will be annexed hereto as Exhibit B; and

WHEREAS, the Agency has given due consideration to the application of the Company and the Sublessee and to the representations by the Company and the Sublessee that the actions of the Agency as contemplated by this resolution, the Second Amendment of Lease and the Amended and Restated PILOT Agreement, are either an inducement to the Company and the Sublessee to maintain and expand the Facility in the Town of Brookhaven or are necessary to maintain the competitive positions of the Company and the Sublessee in their respective industries; and

WHEREAS, the Company and the Sublessee have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the PILOT Extension and the continued leasing of the Facility to the Company; and

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;

(b) The Facility constitutes a “project”, as such term is defined in the Act;

(c) The continued leasing of the Facility by the Agency to the Company and further subleasing by the Company to the Sublessee will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven and the State of New York and improve their standard of living and thereby serve the public purposes of the Act;

(d) Based upon representations of the Company, the Sublessee and their counsel, the Facility continues to conform with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local land use plans for the area in which the Facility are located;

(e) The Facility and the operations conducted therein does not have a significant effect on the environment, as determined in accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder;

(f) The Agency has determined that the proposed PILOT Extension will promote and further the purposes of the Act;

(g) It is desirable and in the public interest for the Agency consent to the PILOT Extension and to continue to lease the Facility to the Company for further subleasing of the Facility by the Company to the Sublessee;

(h) The Second Amendment of Lease will be an effective instrument whereby the Agency and the Company agree to extend the term of the Original Lease for a term of up to five (5) years and the Agency will continue to lease the Facility to the Company and the Company will sublease the Facility to the Sublessee; and

(i) The Amended and Restated Payment-in-Lieu-of-Tax Agreement, will be an effective instrument whereby the Agency, the Company and the Sublessee set forth the terms and conditions of the PILOT Extension regarding the Company's and the Sublessee's payments in lieu of real property taxes in connection with the Facility.

Section 2. Subject to the provisions of this resolution, the Agency hereby determines to: (i) grant an extension of the Original Lease Agreement for an additional term of up to five (5) years Facility to the Company pursuant to the Second Amendment of Lease, (ii) execute, deliver and perform the Second Amendment of Lease, and (iii) amend and restate the Original PILOT Agreement pursuant to the Amended and Restated PILOT Agreement to reflect the PILOT Extension, (iv) execute, deliver and perform the Amended and Restated PILOT Agreement.

Section 3. Subject to the provisions of this resolution, the Agency is hereby authorized to grant the PILOT Extension and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 4. The form and substance of the Second Amendment of Lease and the Amended and Restated PILOT Agreement to which the Agency is a party (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 5. Subject to the provisions of this resolution,

(a) the Chairman, Vice Chairman, Chief Executive Officer, or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Second Amendment of Lease and the Amended and Restated PILOT Agreement in substantially the form thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Chief Executive Officer, or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "**Agency Documents**"). The execution thereof by the Chairman, Chief Executive Officer, or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Chief Executive Officer, or any member of the Agency is further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency.

Section 6. Subject to the provisions of this resolution, the Agency hereby authorizes and approves the following economic benefits to be granted to the Company and the Sublessee in connection with the Facility in the form of the PILOT Extension (as set forth in the PILOT Schedule attached as Exhibit C hereof), consistent with the policies of the Agency, consistent with the policies of the Agency.

Section 7. The Company and the Sublessee hereby agree to comply with Section 875 of the Act. The Company and the Sublessee further agree that the PILOT Extension pursuant to the Act is subject to termination and recapture of benefits pursuant to Section 875 of the Act.

Section 8. The law firm of Nixon Peabody LLP is hereby appointed Transaction Counsel to the Agency.

Section 9. Counsel to the Agency and Transaction Counsel are hereby authorized to work with counsel to the Company and others to prepare, for submission to the Agency, all documents necessary to effect the described PILOT Extension in the foregoing resolution.

Section 10. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 11. Any fees, expenses, including without limitation, legal fees and expenses, incurred by the Agency with respect to the Facility shall be paid by the Company and the Sublessee. By acceptance hereof, the Company and the Sublessee agree to pay such fees and expenses and further agrees to defend and indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility.

Section 12. This resolution shall take effect immediately.

ADOPTED: October 15, 2014

ACCEPTED: \_\_\_\_\_ 2014

**BKP REALTY ASSOCIATES, LLC**

By: \_\_\_\_\_

Name:

Title:

**OMEGA MOULDING COMPANY, LTD.**

By: \_\_\_\_\_

Name:

Title:

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

I, the undersigned Secretary of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the “**Agency**”), including the resolutions contained therein, held on the 15th day of October, 2014, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 15th day of October, 2014.

By: \_\_\_\_\_  
Secretary

EXHIBIT A

---

NOTICE OF PUBLIC HEARING

---

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York State General Municipal Law, will be held by the Town of Brookhaven Industrial Development Agency on the 26th day of September, 2014 at 10:00 a.m., local time, at One Independence Hill, 3rd Floor, Farmingville, New York, in connection with the following matters:

The Town of Brookhaven Industrial Development Agency (the “**Agency**”), has previously assisted in the acquisition of an approximately 10.5 acre parcel of land located at 1 Sawgrass Drive, Bellport, New York (the “**Land**”), and the construction and equipping thereon of an approximately 130,000 square foot building including, without limitation, the furnishing and equipping of corporate office and warehouse space (the “**Improvements and Equipment**”); and, together with the Land, the “**Facility**”), which Facility is being leased by the Agency to BKP Realty Associates, LLC, a limited liability company organized and existing under the laws of the State of New York (the “**Company**”), and subleased by the Company to, and used by, Omega Moulding Company, Ltd., a business corporation organized and existing under the laws of the State of New York and/or its affiliates (collectively, the “**Sublessee**”), for the manufacturing, importing and distribution of stock and custom wood and pre-finished mouldings, frames and picture frame hardware. The Facility is owned by the Company and operated by the Sublessee.

The Company and the Sublessee have requested the Agency’s assistance in connection with an extension of the abatement of real property taxes on the Facility for a term of up to five (5) additional years.

The Agency contemplates that it will provide financial assistance to the Company and the Sublessee in the form of an extension of the abatement of real property taxes for a period of up to five (5) years, consistent with the policies of the Agency.

A representative of the Agency will at the above-stated time and place hear and accept written comments from all persons with views in favor of or opposed to the proposed financial assistance to the Company and the Sublessee.

Dated: September 15, 2014

TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY

By: Lisa MG Mulligan  
Title: Chief Executive Officer

AFFIDAVIT OF PUBLICATION

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

\_\_\_\_\_, being duly sworn, says that he is an officer of \_\_\_\_\_,  
the publisher of a newspaper circulated generally throughout the Town of Brookhaven, New  
York, and that the notice annexed hereto was published in said paper on the 15th day of  
September, 2014.

\_\_\_\_\_

Officer

Copy of  
Legal Notice

Sworn to before me this \_\_\_\_  
day of \_\_\_\_\_, 2014

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

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON  
September 26, 2014

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY  
(BKP Realty Associates, LLC/Omega Moulding Company, Ltd. Facility)

---

1. Lisa MG Mulligan, Chief Executive Officer of the Town of Brookhaven Industrial Development Agency (the “**Agency**”) called the hearing to order.

2. The Chief Executive Officer then described the location and nature of the Facility to be financed as follows:

The Agency has previously assisted in the acquisition of an approximately 10.5 acre parcel of land located at 1 Sawgrass Drive, Bellport, New York (the “**Land**”), and the construction and equipping thereon of an approximately 130,000 square foot building including, without limitation, the furnishing and equipping of corporate office and warehouse space (the “**Improvements and Equipment**”; and, together with the Land, the “**Facility**”), which Facility is being leased by the Agency to BKP Realty Associates, LLC, a limited liability company organized and existing under the laws of the State of New York (the “**Company**”), and subleased by the Company to, and used by, Omega Moulding Company, Ltd., a business corporation organized and existing under the laws of the State of New York and/or its affiliates (collectively, the “**Sublessee**”), for the manufacturing, importing and distribution of stock and custom wood and pre-finished mouldings, frames and picture frame hardware. The Facility is owned by the Company and operated by the Sublessee.

The Company and the Sublessee have requested the Agency’s assistance in connection with an extension of the abatement of real property taxes on the Facility for a term of up to five (5) additional years.

The Agency contemplates that it will provide financial assistance to the Company and the Sublessee in the form of an extension of the abatement of real property taxes for a period of up to five (5) years, consistent with the policies of the Agency

3. The hearing officer then opened up the hearing for comments from the floor for or against the location and nature of the Facility. The following is a listing of the persons heard and a summary of their views:



4. The \_\_\_\_\_ then asked if there were any further comments and, there being none, the hearing was closed at \_\_\_\_\_ .m.

---

Secretary

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

I, the undersigned Secretary of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the foregoing copy of the minutes of a public hearing held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on September 26, 2014, at 10:00 a.m. local time, at the Town of Brookhaven Department of Economic Development, 1 Independence Hill, 3<sup>rd</sup> Floor, Farmingville, New York 11738, with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of the minutes in connection with such matter.

IN WITNESS WHEREOF, I have hereunto set my hand as of September 26, 2014.

---

Secretary

## EXHIBIT C

### Form of Proposed PILOT Benefits

Formula for In-Lieu-of-Taxes Payment: Town of Brookhaven, (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Suffolk County, Longwood Central School District and Appropriate Special Districts

Land Assessed Value	5,010.00
Building Assessed Value	67,790.00
Total Assessed Value	72,800.00
Tax Rate	315.396
Tax Rate Increase	2%

Year	Increase	Tax Rate	Land AV	Building AV	Pilot AV	Pilot Payment
Base	0%	\$315.50	5,010	67,790	5,010	\$ 15,801.34
1	20%	321.70	5,010	67,790	18,568	59,733.98
2	40%	328.14	5,010	67,790	32,126	105,417.61
3	60%	334.70	5,010	67,790	45,684	152,904.69
4	80%	341.39	5,010	67,790	59,242	202,249.09
5	100%	348.22	5,010	67,790	72,800	253,506.10

Date: October 15, 2014

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738, on the 15th day of October, 2014, the following members of the Agency were:

Present:

Recused:

Absent:

Also Present:

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to re-adopting the Town of Brookhaven Industrial Development Agency’s Uniform Tax Exemption Policy.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN  
INDUSTRIAL DEVELOPMENT AGENCY  
AUTHORIZING AND ADOPTING AMENDED  
UNIFORM TAX EXEMPTION POLICY OF THE  
TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as amended (collectively, the “**Act**”), the Town of Brookhaven Industrial Development Agency (the “**Agency**”) was created with the authority and power, among other things, to promote, develop, encourage and assist in the acquisition, construction, improvement, maintenance, equipping and furnishing of certain industrial, manufacturing, warehousing, commercial, research, and recreation facilities as authorized by the Act in order to promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven, New York and of the State of New York and to improve their standard of living; and

WHEREAS, on February 8, 1999, the Agency adopted its Uniform Tax-Exemption Policy, as amended and re-adopted to date (collectively, the “**Existing Policy**”); and

WHEREAS, the Agency desires to amend its Existing Policy in order to continue to provide financial assistance to various business entities to acquire, locate, construct, renovate, equip and/or expand in the Town of Brookhaven, New York (the “**Town**”), which would generate additional revenues, housing and employment within the Town (hereinafter referred to as the “**Amended Policy**”); and

WHEREAS, a notice letter was given on September 30, 2014 (the “**Notice Letter**”), and the proposed Amended Policy was described therein, and such Notice Letter is substantially in the form annexed hereto as Exhibit A; and

WHEREAS, to carry out the Agency’s purposes under the Act, the Agency has the power under the Act to amend its Existing Policy.

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) Authorizing and adopting the Amended Policy will allow the Agency to continue to provide financial assistance to various business entities to acquire, locate, construct, renovate, equip and/or expand in the Town, which would generate additional revenues, housing and employment within the Town; and

(c) It is desirable and in the public interest for the Agency to adopt the Amended Policy.

Section 2. In consequence of the foregoing, the Agency hereby determines to adopt the Amended Policy, a copy of which is attached hereto as Exhibit B and made a part hereof.

Section 3. The Agency is hereby authorized to do all things necessary or appropriate for the accomplishment of the purposes of this resolution, and all acts heretofore taken by the Agency with respect to such increase in the project fee are hereby approved, ratified and confirmed.

Section 4. This resolution shall take effect immediately.

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

I, the undersigned Secretary of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the “**Agency**”), including the resolutions contained therein, held on the 15th day of October, 2014, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, as amended, that all members of said Agency had due notice of said meeting and that said meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 15th day of October, 2014.

By: \_\_\_\_\_  
Secretary

Exhibit A

Form of Notice Letter

TO: The Attached Distribution List:  
The Honorable Steven Bellone, Suffolk County Executive  
The Honorable Edward P. Romaine, Brookhaven Town Supervisor  
Village Mayors  
School Superintendents  
Library Districts  
Fire Districts  
Ambulance Districts

FROM: Town of Brookhaven Industrial Development Agency

DATE: September 30, 2014

RE: Town of Brookhaven Industrial Development Agency  
Re-Adoption of Uniform Tax Exemption Policy

The Town of Brookhaven Industrial Development Agency (the “**Agency**”) proposes to amend and re-adopt its Uniform Tax Exemption Policy, originally adopted on February 8, 1999, and as amended to date (the “**Existing Policy**”).

The proposed amendment and re-adoption of the Existing Policy (the “**UTEP**”) is necessary for the Agency to continue to provide financial assistance to various business entities to acquire, locate, construct, renovate, equip and/or expand in the Town of Brookhaven, New York (the “**Town**”), which would generate additional revenues, housing and employment within the Town.

On October 15, 2014, at 7:45 a.m. at Town of Brookhaven, 1 Independence Hill, 3<sup>rd</sup> Floor Work Session Room, Farmingville, New York 11738, the Agency will hold a board meeting to consider a resolution to adopt the UTEP. We are providing this notice to you, pursuant to Section 874 of the New York General Municipal Law, as a chief executive officer of a taxing jurisdiction located within the Town in order to notify you of the proposed UTEP. Prior to taking final action on the proposed new UTEP at such meeting, the Agency will review any correspondence received from any affected taxing jurisdiction regarding such proposed UTEP.

LMGM:jb  
Enclosure



Exhibit B

**Amended Uniform Tax Exempt Policy**

NOTICE LETTER FOR RE-ADOPTION OF THE  
UNIFORM TAX EXEMPTION POLICY

\_\_\_\_\_, 2014

**CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

[Name of Chief Executive Officer]  
[Name and Address of Each Tax Jurisdiction]

Re: Town of Brookhaven Industrial Development Agency  
Re-Adoption of Uniform Tax Exemption Policy

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

The Town of Brookhaven Industrial Development Agency (the “**Agency**”) proposes to amend and re-adopt its Uniform Tax Exemption Policy, originally adopted on February 8, 1999, as amended on June 20, 2012 (the “**Existing Policy**”).

The proposed amendment and re-adoption of the Existing Policy (the “**Re-Adopted UTEP**”) is necessary for the Agency to continue to provide financial assistance to various business entities to acquire, locate, construct, renovate, equip and/or expand in the Town of Brookhaven, New York (the “**Town**”), which would generate additional revenues, housing and employment within the Town.

On \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m. at the Town of Brookhaven Division of Economic Development, 1 Independence Hill, 2nd Floor, Farmingville, New York 11738, the Agency will hold a public hearing with respect to the Re-Adopted UTEP. We are providing this notice to you, pursuant to Section 874 of the New York General Municipal Law, as a chief executive officer of an affected tax jurisdiction located within the Town in order to notify you of the proposed Re-adopted UTEP. Prior to taking final action on the proposed Re-adopted UTEP at such meeting, the Agency will review any correspondence received from any affected tax jurisdiction regarding such proposed Re-Adopted UTEP. In addition, you or your representatives are welcome to attend such public hearing, at which time you will have an opportunity to address the Agency regarding the proposed Re-Adopted UTEP.

Very truly yours,

TOWN OF BROOKHAVEN  
INDUSTRIAL DEVELOPMENT  
AGENCY

By: Lisa MG Mulligan  
Title: Chief Executive Officer

Date: October 15, 2014

At a meeting of the Town of Brookhaven Industrial Development Agency (the “**Agency**”), held at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738, on the 15th day of October, 2014, the following members of the Agency were:

Present:

Recused:

Absent:

Also Present:

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of title to or a leasehold interest in a certain industrial development facility more particularly described below (Pro’s Choice Beauty Care, Inc. 2014 Facility) and the leasing or subleasing of the facility to Pro’s Choice Beauty Care, Inc.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN  
INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE  
ACQUISITION AND EQUIPPING OF A CERTAIN  
INDUSTRIAL DEVELOPMENT FACILITY TO BE LEASED  
TO PRO'S CHOICE BEAUTY CARE, INC., A NEW JERSEY  
BUSINESS CORPORATION AND APPROVING THE FORM,  
SUBSTANCE AND EXECUTION OF RELATED  
DOCUMENTS.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as amended from time to time (collectively, the "**Act**"), the Town of Brookhaven Industrial Development Agency (the "**Agency**") was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the Agency has previously assisted in the acquisition of an approximately 37.0 acre parcel of land located at 35 Sawgrass Drive, in the Brookhaven Industrial Park, Bellport, Town of Brookhaven, Suffolk County, New York and the construction and equipping of an approximately 560,000 square foot building located thereon, which is currently being leased by the Agency to 35 Sawgrass, LLC, a New York limited liability company (the "**Company**"), and subleased by the Company to, and used by, Quality King Distributors, Inc., a business corporation organized and existing under the laws of the State of New York (the "**Sublessee**"), and sub-subleased in part, by the Sublessee to Pro's Choice Beauty Care, Inc., a New Jersey business corporation ("**Pro's Choice**"), and other various subtenants (the "**Original Facility**"); and

WHEREAS, the Company and the Sublessee previously requested the Agency's assistance in the construction, installation and equipping of solar panels and related infrastructure to be installed on the roof of the Original Facility (the "**2011 Facility**"); and

WHEREAS, the Agency subsequently provided assistance to the Company and the Sublessee in the conversion of approximately 10,000 square feet of existing storage space located on the Original Facility to office space (the "**2013 Facility**"); and

WHEREAS, Pro's Choice has now requested the Agency's assistance in the acquisition and installation of certain automated warehouse equipment (the "**2014 Facility**"); and together with the Original Facility, the 2011 Facility and the 2013 Facility, the "**Facility**"); and

WHEREAS, the Agency will provide it's assistance in the installation and equipping of the 2014 Facility and lease or sell the 2014 Facility to Pro's Choice; and

WHEREAS, the Agency contemplates that it will provide financial assistance to Pro's Choice in the form of sales tax exemptions in the amount of \$690,000 for the costs of the installation and equipping of the 2014 Facility;

WHEREAS, the Agency will lease the 2014 Facility to Pro's Choice pursuant to a certain Equipment Lease Agreement, dated as of November 1, 2014, or such other date as may be determined by the Chairman, the Chief Executive Officer and counsel to the Agency (the "**Equipment Lease Agreement**"), by and between the Agency and Pro's Choice; and

WHEREAS, in connection with the leasing of the Facility, the Agency and Pro's Choice will enter into a certain Recapture Agreement, dated as of November 1, 2014, or such other date as may be determined by the Chairman, Chief Executive Officer and counsel to the Agency (the "**Recapture Agreement**"), between the Agency and Pro's Choice; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, Pro's Choice has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to Pro's Choice;

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) The acquisition and equipping of the 2014 Facility and the leasing of the 2014 Facility to Pro's Choice, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Town of Brookhaven, and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The acquisition and equipping of the 2014 Facility is reasonably necessary to induce Pro's Choice to maintain and expand its business operations in the State of New York; and

(e) Based upon representations of Pro's Choice and counsel to Pro's Choice, the Facility conforms with the local zoning laws and planning regulations of the Town of Brookhaven, Suffolk County, and all regional and local land use plans for the area in which the Facility is located; and

(f) The Facility and the operations conducted therein do not have a significant effect on the environment, as determined in accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder; and

(g) It is desirable and in the public interest for the Agency to lease the 2014 Facility to Pro's Choice; and

(h) The Equipment Lease Agreement will be an effective instrument whereby the Agency will lease or sublease the 2014 Facility to Pro's Choice and Pro's Choice will rent the 2014 Facility from the Agency; and

(i) The Recapture Agreement will be an effective instrument whereby the Agency and Pro's Choice agree to provide for the obligations of Pro's Choice under the Transaction Documents (as defined in the Equipment Lease Agreement) and describe the circumstances in which the Agency may recapture some or all of the benefits granted to Pro's Choice; and

(j) The Environmental Compliance and Indemnification Agreement, dated as of November 1, 2014, or such other date as may be determined by the Chairman, the Chief Executive Officer and counsel to the Agency (the "**Environmental Compliance and Indemnification Agreement**"), from Pro's Choice to the Agency will be an effective instrument whereby Pro's Choice agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) lease or sublease the 2014 Facility to Pro's Choice pursuant to the Equipment Lease Agreement, (ii) execute, deliver and perform the Equipment Lease Agreement, (iii) execute and deliver the Recapture Agreement, and (iv) execute and deliver the Environmental Compliance and Indemnification Agreement.

Section 3. The Agency is hereby authorized to acquire the personal property described in Exhibit A to the Equipment Lease Agreement, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 4. The Agency hereby authorizes and approves the following economic benefit to be granted to Pro's Choice in connection with the acquisition and equipping of the 2014 Facility in the form of exemptions from sales and use taxes in an amount not to exceed \$690,000 in connection with the purchase or lease of equipment, building materials, services or other personal property, consistent with the policies of the Agency.

Section 5. Subject to the provisions of this resolution, Pro's Choice is herewith and hereby appointed the agent of the Agency to acquire and equip the 2014 Facility. Pro's Choice is hereby empowered to delegate its status as agent of the Agency to its agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as Pro's Choice may choose in order to acquire and equip the 2014 Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of Pro's Choice as agents of the Agency solely for purposes of making sales or leases of goods, services and supplies to the 2014 Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and Pro's

Choice, as agents of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. This agency appointment expressly excludes the purchase by Pro's Choice of any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. Pro's Choice shall indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and Pro's Choice, as agent of the Agency. The aforesaid appointment of Pro's Choice, as agent of the Agency to acquire and equip the 2014 Facility shall expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which Pro's Choice has received exemptions from sales and use taxes in an amount not to exceed \$690,000 in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of Pro's Choice if such activities and improvements are not completed by such time. The aforesaid appointment of Pro's Choice is subject to the completion of the transaction and the execution of the documents contemplated by this resolution.

Section 6. Pro's Choice hereby agrees to comply with Section 875 of the Act. Pro's Choice further agrees that the exemption of sales and use tax provided pursuant to the Act and the appointment of Pro's Choice as agent of the Agency pursuant to this Authorizing Resolution is subject to termination and recapture of benefits pursuant to Section 875 of the Act and the Recapture Agreement.

Section 7. The form and substance of the Equipment Lease Agreement, the Recapture Agreement and the Environmental Compliance and Indemnification Agreement (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 8.

(a) The Chairman, Chief Executive Officer or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Equipment Lease Agreement, the Recapture Agreement, the Environmental Compliance and Indemnification Agreement, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Chief Executive Officer or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "**Agency Documents**"). The execution thereof by the Chairman, Chief Executive Officer or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Chief Executive Officer or any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 9. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and

things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 10. Any expenses incurred by the Agency with respect to the Facility shall be paid by Pro's Choice. By acceptance hereof, Pro's Choice agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility.

Section 11. This resolution shall take effect immediately.

ADOPTED: October 15, 2014

ACCEPTED: \_\_\_\_\_ 2014

**PRO'S CHOICE BEAUTY CARE, INC.**

By: \_\_\_\_\_  
Name:  
Title:



