

Date: June 8, 2016

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held at Brookhaven Town Hall, 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 on the 8th day of June, 2016, the following members of the Agency were:

Present: Frederick C. Braun, Martin Callahan, Felix J. Grucci, Jr.
Scott Middleton, Gary Pollakusky & Ann-Marie Scheidt

Recused:

Absent: Michael Kelly

Also Present: Lisa M. G. Mulligan, Chief Executive Officer

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 the adoption of a Recapture and Termination Policy.

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

Voting Aye

Braun
Callahan
Grucci
Middleton
Pollakusky
Scheidt

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY
AUTHORIZING AND ADOPTING A RECAPTURE AND
TERMINATION POLICY NECESSARY TO IMPLEMENT
THE PROVISIONS OF THE ACT, AS AMENDED 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 38 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 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, pursuant to Sections 874(10) and (11) of the Act, the Agency is required to establish a policy (i) for the discontinuance or suspension of any financial assistance provided by the Agency to a project or the modification of any payment in lieu of tax agreement, and (ii) for the return of all or part of the financial assistance provided by the Agency to a project for which financial assistance was provided by the Agency; and

WHEREAS, the establishment of a Recapture and Termination Policy would provide for the circumstances upon which the Agency may suspend, discontinue or modify the assistance granted to a project and would allow the Agency to suspend, modify, or discontinue benefits and recapture such benefits at its discretion; and

WHEREAS, in connection with the foregoing, the Agency desires to adopt a Recapture and Termination Policy; and

WHEREAS, to carry out the Agency’s purposes under the Act, as amended, the Agency has the power under the Act to adopt the Recapture and Termination Policy; 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) Authorizing and adopting the Recapture and Termination Policy will allow the Agency to formally establish circumstances upon which the Agency may suspend,

discontinue or modify the assistance granted to projects for which financial assistance will be provided by the Agency.

- (c) Authorizing and adopting the Recapture and Termination Policy will allow the Agency to recapture all or part of the financial assistance provided by the Agency to a project for which financial assistance was provided by the Agency.
- (d) It is desirable and in the public interest for the Agency to adopt the Recapture and Termination Policy.

Section 2. In consequence of the foregoing, the Agency hereby determines to adopt the Recapture and Termination Policy, a copy of which is attached hereto as Exhibit A 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 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 8th day of June, 2016, 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 Recapture and Termination Policy 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 8th day of June, 2016.

By _____  _____
Secretary

Exhibit A

RECAPTURE AND TERMINATION POLICY

**TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY
EFFECTIVE JUNE 8, 2016**

Pursuant to Sections 874(10) and (11) of Title 1 of Article 18-A of the New York State General Municipal Law (the “**Act**”), the Town of Brookhaven Industrial Development Agency (the “**Agency**”) is required to adopt policies (i) for the discontinuance or suspension of any financial assistance provided by the Agency to a project or the modification of any payment in lieu of tax agreement and (ii) for the return of all or part of the financial assistance provided by the Agency to a project. This Recapture and Termination Policy was adopted pursuant to a resolution enacted by the members of the Agency on June 8, 2016.

I. Termination or Suspension of Financial Assistance

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so) to terminate or suspend the Financial Assistance (defined below) provided to a project upon the occurrence of an Event of Default, as such term is defined and described in the Lease Agreement entered into by the Agency and a project applicant (the “**Applicant**”) or any other document entered into by such parties in connection with a project (the “**Project Documents**”). Such Events of Default may include, but shall not be limited to, the following:

- 1) Sale or closure of the Facility (as such term is defined in the Project Documents);
- 2) Failure by the Applicant to pay or cause to be paid amounts specified to be paid pursuant to the Project Documents on the dates specified therein;
- 3) Failure by the Applicant to create and/or maintain the FTEs as provided in the Project Documents;
- 4) A material violation of the terms and conditions of the Project Agreements; and
- 5) A material misrepresentation contained in the application for Financial Assistance, any Project Agreements or any other materials delivered pursuant to the Project Agreements.

The decision of whether to terminate or suspend Financial Assistance and the timing of such termination or suspension of Financial Assistance shall be determined by the Agency, in its sole discretion, on a case-by-case basis, and shall be subject to the notice and cure periods provided for in the Project Documents.

For the purposes of this policy, the term “**Financial Assistance**” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency’s participation in the transaction contemplated by the Project Agreements including, but not limited to:

- (i) any exemption from any applicable mortgage recording tax with respect to the Facility on mortgages granted by the Agency on the Facility at the request of the Applicant;

- (ii) sales tax exemption savings realized by or for the benefit of the Applicant, including and savings realized by any agent of the Applicant pursuant to the Project Agreements in connection with the Facility; and
- (iii) real property tax abatements granted under the Project Agreements.

II. Recapture of Financial Assistance

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so) to recapture all or part of the Financial Assistance provided to a project upon the occurrence of a Recapture Event, as such term is defined and described in the Project Documents. Such Recapture Events may include, but shall not be limited to the following:

- 1) Sale or closure of the Facility (as such term is defined in the Project Documents);
- 2) Failure by the Applicant to pay or cause to be paid amounts specified to be paid pursuant to the Project Documents on the dates specified therein;
- 3) Failure by the Applicant to create and/or maintain the FTEs as provided in the Project Documents;
- 4) A material violation of the terms and conditions of the Project Agreements; and
- 5) A material misrepresentation contained in the application for Financial Assistance, any Project Agreements or any other materials delivered pursuant to the Project Agreements.

The timing of the recapture of the Financial Assistance shall be determined by the Agency, in its sole discretion, on a case-by-case basis, and is subject to the notice and cure periods provided for in the Project Documents. The percentage of such Financial Assistance to be recaptured shall be determined by the provisions of the Project Documents.

All recaptured amounts of Financial Assistance shall be redistributed to the appropriate affected taxing jurisdiction, unless agreed to otherwise by any local taxing jurisdiction.

For the avoidance of doubt, the Agency may determine to terminate, suspend and/or recapture Financial Assistance in its sole discretion. Such actions may be exercised simultaneously or separately and are not mutually exclusive of one another.

III. Modification of Payment In Lieu of Tax Agreement

In the case of any Event of Default or Recapture Event, in lieu of terminating, suspending or recapturing the Financial Assistance, the Agency may, in its sole discretion, adjust the payments in lieu of taxes due under the Project Agreements, so that the payments in lieu of taxes payable under the Project Agreements are adjusted upward retroactively and/or prospectively for each tax year until such time as the Applicant has complied with the provisions of the Project Agreements. The amount of such adjustments shall be determined by the provisions of the Project Documents.