

INTERCOUNTY ASSOCIATES II LLC

and

INTERCOUNTY APPLIANCE CORP.

and

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

---

AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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Town of Brookhaven Industrial Development Agency  
(Intercounty Associates II LLC/Intercounty Appliance Corp. 2013 Facility)

Originally Dated as of January 1, 2005

Amended and Restated as of September 1, 2013

Town of Brookhaven, Longwood School District

Districts: 0200

Sections: 812.00

Blocks: 03.00

Lots: 005.012 and 0005.013

AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of September 1, 2013 (this “**Amended and Restated PILOT Agreement**”), is by and among INTERCOUNTY ASSOCIATES II LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having its principal office at 10 National Boulevard, Medford, New York 11763 (the “**Company**”), INTERCOUNTY APPLIANCE CORP., a business corporation duly organized and validly existing under the laws of the State of New York, having its principal office at 10 National Boulevard, Medford, New York 11763 (the “**Lessee**”) and TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its principal office at 1 Independence Hill, 3rd Floor, Brookhaven, New York 11738 (the “**Issuer**”).

W I T N E S S E T H:

WHEREAS, the Issuer was created by Chapter 358 of the Laws of 1970 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended (collectively, the “**Act**”); and

WHEREAS, the Issuer has previously provided its assistance to the Company and the Lessee by issuing its \$9,000,000 Taxable Variable Rate Demand Industrial Development Revenue Bonds, Series 2005 (Intercounty Associates II LLC/Intercounty Appliance Corp. Facility) (the “**Series 2005 Bonds**”), which Series 2005 Bonds were used to finance certain costs of an industrial development facility consisting of the acquisition of an approximately 29.77 acre parcel of land located at 10 National Boulevard, Medford, New York, and the construction and equipping thereon of an approximately 250,000 square foot building (the “**Original Facility**”); and

WHEREAS, the Series 2005 Bonds were issued pursuant to the Act, a resolution of the Issuer adopted on September 20, 2004, and an Indenture of Trust, dated as of January 1, 2005 (the “**Original Indenture**”), by and between the Issuer and The Bank of New York Mellon, formerly known as The Bank of New York, as trustee for the benefit of the owners of the Series 2005 Bonds (the “**Trustee**”); and

WHEREAS, the Issuer is selling the Original Facility to the Company pursuant to an Installment Sale Agreement, dated as of January 1, 2005 (the “**Original Installment Sale Agreement**”), by and between the Issuer and the Company, and a memorandum of such Original Installment Sale Agreement was to be recorded in the Suffolk County Clerk’s office; and

WHEREAS, the Company leased the Original Facility to the Lessee pursuant to a Lease Agreement, dated January 26, 2005 (the “**Lease Agreement**”), by and between the Company and the Lessee, and a memorandum of such Lease Agreement was to be recorded in the Suffolk County Clerk’s office; and

WHEREAS, the Issuer assigned its rights and remedies under the Original Installment Sale Agreement to the Trustee and Capital One, National Association, successor in interest to North Fork Bank (the "**LOC Bank**"), pursuant to a certain Pledge and Assignment with Acknowledgment by the Company, dated as of January 1, 2005 (the "**Original Pledge and Assignment**"), among the Issuer, the Trustee and the LOC Bank, which such Original Pledge and Assignment was to be recorded in the Suffolk County Clerk's office; and

WHEREAS, the Series 2005 Bonds were secured pursuant to an irrevocable, direct-pay letter of credit (the "**Original Letter of Credit**") issued by the LOC Bank, pursuant to a Letter of Credit Reimbursement Agreement, dated as of January 26, 2005 (the "**Original Reimbursement Agreement**"), among the Company, the Lessee and the LOC Bank; and

WHEREAS, in order to further secure the Series 2005 Bonds, (i) the Company entered into a Guaranty Agreement, dated as of January 1, 2005 (the "**Original Guaranty**"), from the Company and the Lessee to the Trustee and the Issuer, guaranteeing, among other things, the payment of the principal of, Redemption Price of, Purchase Price of, and interest on the Series 2005 Bonds, and (ii) the Issuer and the Company granted a mortgage lien on and a security interest in the Facility to the LOC Bank pursuant to a Mortgage and Security Agreement, dated January 26, 2005 (the "**2005 Mortgage**"), by and among the Company, the Issuer and the LOC Bank, which 2005 Mortgage was to be recorded in the Suffolk County Clerk's office securing the principal amount of \$9,000,000; and

WHEREAS, in connection with the acquisition, renovation and equipping of the Original Facility, the Issuer, the Trustee, the LOC Bank, the Company and the Lessee entered into a Payment-in-Lieu-of-Tax Agreement, dated as of January 1, 2005 (the "**Original PILOT Agreement**"); and, together with this Amended and Restated PILOT Agreement, the "**PILOT Agreement**"), whereby the Company and the Lessee agreed to make certain payments-in-lieu-of real property taxes on the Original Facility (as defined therein); and

WHEREAS, in connection with the acquisition, renovation and equipping of the Original Facility, the Issuer, the Company and the Lessee entered into an Environmental Compliance and Indemnification Agreement, dated as of January 1, 2005 (the "**Original Environmental Compliance and Indemnification Agreement**"), whereby the Company and the Lessee 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 that the Issuer join with the Company in executing and delivering to Intercounty Appliance Corp. (the "**2011 Lender**"), a certain Mortgage and Security Agreement, dated March 6, 2011 (the "**2011 Mortgage**"), which 2011 Mortgage was intended to be recorded in the office of the Clerk of Suffolk County, securing a principal amount of \$5,258,802.98 and in connection therewith, the Issuer and the Company executed and delivered to the 2011 Lender, an Assignment of Leases and Rents, dated March 6, 2011 (the "**2011 Assignment of Leases and Rents**"), from the Company and the Issuer to the 2011 Lender, which such 2011 Assignment of Leases and Rents was intended to be recorded in said Clerk's office immediately after the recording of the 2011 Mortgage (the 2011 Mortgage and the 2011 Assignment of Leases and Rents are collectively, the "**2011 Loan Documents**"); and

WHEREAS, the Company and the Lessee have now requested the Issuer issue pursuant to Section 2.10 of the Original Indenture the issuance of a series of Additional Industrial Development Revenue Bonds, Series 2013 (Intercounty Associates II LLC/Intercounty Appliance Corp. 2013 Facility) (the “**Additional Bonds**”); and

WHEREAS, the proceeds of the Additional Bonds will be used for the acquisition, construction, renovation and equipping of an approximately 75,000 square foot addition to an existing approximately 250,000 square foot building located at the Original Facility all for use by the Lessee as warehouse and office space for the distribution of appliances (collectively, the “**2013 Facility**”; and, together with the Original Facility, the “**Facility**”); and

WHEREAS, in connection with the issuance of the Additional Bonds, the Original Indenture will be amended pursuant to a First Supplemental Indenture of Trust, dated as of September 1, 2013 (the “**First Supplemental Indenture**”; and, together with the Original Indenture, the “**Indenture**”), by and between the Issuer and the Trustee, which First Supplemental Indenture will provide for certain terms and conditions of the Additional Bonds; and

WHEREAS, in connection with the acquisition, construction, renovation and equipping of the 2013 Facility, the Original Installment Sale Agreement will be amended pursuant to a First Amendment to Installment Sale Agreement, dated as of September 1, 2013 (the “**First Amendment to Installment Sale Agreement**”; and, together with the Original Installment Sale Agreement, the “**Installment Sale Agreement**”), by and between the Issuer and the Company, which First Amendment to Installment Sale Agreement will allow for the Issuer to continue to sell the Facility to the Company; and

WHEREAS, in connection with the leasing and subleasing of the Facility, the Agency, the Company and the Lessee will enter into a certain Recapture Agreement, dated as of September 1, 2013 (the “**Recapture Agreement**”); and

WHEREAS, in connection with the acquisition construction, renovation and equipping of the 2013 Facility, the Issuer, the LOC Bank, the Trustee, the Company and the Lessee will enter into an Environmental Compliance and Indemnification Agreement, dated as of September 1, 2013 (the “**Environmental Compliance and Indemnification Agreement**”), whereby the Company and the Lessee agreed to comply with all Environmental Laws (as defined therein) applicable to the Facility; and

WHEREAS, pursuant to Section 874(1) of the Act, the Issuer is exempt from the payment of taxes and assessments imposed upon real property owned by it, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof within which the Facility is or may be wholly or partially located) which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Issuer, the Company and the Lessee deem it necessary and proper to enter into an agreement making provision for payments in lieu of taxes and such assessments by the Company and the Lessee to the Town of Brookhaven, any existing incorporated village or any village which may be incorporated after the date hereof within which the Facility is or may be wholly or partially located, Suffolk County, Longwood School District and appropriate special districts (hereinafter the “**Taxing Authorities**”) in which any part of the Facility is or is to be located;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the covenants herein contained, it is mutually agreed as follows:

1. (a) The Company and the Lessee shall make all payments under the Original PILOT Agreement until payment under Section 1(c) hereof become due and payable

(b) [reserved]

(c) Commencing with the 2013/2014 Tax Year, the Company and the Lessee, jointly and severally shall pay, as payments in lieu of taxes and assessments with respect to the Facility, the amounts set forth on Exhibit A attached hereto and made a part hereof.

(d) The Company and the Lessee, jointly and severally, shall pay, or cause to be paid, the amounts set forth in Section 1(c) above, as applicable, after receipt of PILOT bills from the Issuer or the Taxing Authorities, as the case may be. Failure to receive a PILOT bill shall not relieve the Company and the Lessee of their respective obligations to make all payments provided for hereunder. If, for any reason, the Company and/or the Lessee do not receive an appropriate PILOT bill, the Company and the Lessee shall have the responsibility and obligation to make all reasonable inquiries to the Issuer or the Taxing Authorities and to have such a bill issued, and thereafter to make payment of the same no later than the due dates provided herein. Payments shall be made directly to the Issuer. Payments made after the due date(s) as set forth in the applicable tax bills shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Authorities and as further provided in the General Municipal Law, including Section 874(5) thereof, which provides for a penalty of five percent (5%) of the amount then due and interest, at the rate of one percent (1%) per month on payments more than one month delinquent.

(e) During the term of this Amended and Restated PILOT Agreement, the Company and the Lessee shall continue to pay all special ad valorem levies, special assessments, and service charges levied against the Facility for special improvements or special district improvements.

(f) In the event any structural addition shall be made to the building or buildings included in the Facility subsequent to the “Completion Date” (as such term is defined in the Installment Sale Agreement), or any additional building or improvement shall be constructed on the real property described on Exhibit B hereto (such structural additions, buildings and improvements being referred to hereinafter as “**Additional Facilities**”), the

Company and the Lessee agree to make additional payments in lieu of taxes to the Issuer in amounts equal to the product of the then current ad valorem tax rates which would be levied upon or with respect to the Additional Facilities by the Taxing Authorities as if the Additional Facilities were owned by the Company and not the Issuer times the assessment or assessments established for that tax year by the Town of Brookhaven. All other provisions of this Amended and Restated PILOT Agreement shall apply to this obligation for additional payments.

2. In the event that title to the Facility or any part thereof is transferred from the Issuer to the Company at such time in reference to any taxable status date as to make it impossible to place such Facility or part thereof on the tax rolls of the Town of Brookhaven, Longwood School District, any existing incorporated village or any village which may be incorporated after the date hereof within which the Facility is or may be wholly or partially located, or appropriate special districts, as the case may be, by such taxable status date, the Company and the Lessee, jointly and severally, hereby agree to pay at the first time taxes or assessments are due following the taxable status date at which such Facility or part thereof is placed on the tax rolls, an amount equal to the taxes or assessments which would have been levied on such Facility or part thereof had it been on the tax rolls from the time the Company took title until the date of the tax rolls following the taxable status date as of which such Facility or part thereof is placed on the tax rolls. There shall be deducted from such amount any amounts previously made pursuant to this Amended and Restated PILOT Agreement by the Issuer or the Company and the Lessee to the respective Taxing Authorities relating to any period of time after the date of transfer of title to the Company. The provisions of this paragraph 2 shall survive the termination or expiration of the Installment Sale Agreement. Any rights the Company and the Lessee may have against its designee are separate and apart from the terms of this paragraph 2 and this paragraph 2 shall survive any transfer from the Issuer to the Company.

3. In the event the Facility or any part thereof is declared to be subject to taxation for taxes or assessments by an amendment to the Act, other legislative change, or by a final judgment of a court of competent jurisdiction, the obligations of the Company and the Lessee hereunder shall, to such extent, be null and void.

4. In the event the Company and the Lessee shall enter into a subsequent Payment-in-Lieu-of-Tax Agreement or Agreements with respect to the Taxes on the Facility directly with any or all Taxing Authorities under whose jurisdiction the Facility is located, the obligations of the Company and the Lessee hereunder, which are inconsistent with such future Agreement or Agreements; shall be superseded and shall, to such extent, be null and void.

5. As long as this Amended and Restated PILOT Agreement is in effect, the Issuer, the Company and the Lessee agree that (i) the Company shall be deemed to be the owner of the Facility and of the Additional Facilities for purposes of instituting, and shall have the right to institute, judicial review of an assessment of the real estate with respect to the Facility and of the Additional Facilities pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time, and (ii) the Issuer shall request the Assessor of the Town of Brookhaven, or any other

assessor having jurisdiction to assess the Facility, to take into consideration the value of surrounding properties of like character when assessing the Facility. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Facility and the Additional Facilities is reduced as a result of any such judicial review so that such complaining party would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Authorities, if such complaining party were the owner of the Facility and the Additional Facilities, such complaining party shall not be entitled to receive a refund or refunds of the payments in lieu of taxes paid pursuant to this Amended and Restated PILOT Agreement. In no event shall the Issuer be required to remit to the Lessee, the Company or any Taxing Authority any moneys otherwise due as a result of a reduction in the assessment of the Facility (or any part thereof) due to a certiorari review. The Company and the Lessee hereby agree that they will notify the Issuer if the Company and/or the Lessee shall have requested a reassessment of the Facility or a reduction in the taxes on the Facility or have instituted any tax certiorari proceedings with respect to the Facility. The Company and the Lessee shall deliver copies of all notices, correspondence, claims, actions and/or proceedings brought by or against the Company and/or the Lessee in connection with any reassessment of the Facility, reduction of taxes with respect to the Facility, or any tax certiorari proceedings with respect to the Facility.

6. The Company and the Lessee, in recognition of the benefits provided under the terms of this Amended and Restated PILOT Agreement, including, but not limited to, the formula for In-Lieu-of-Taxes Payments set forth in Exhibit A hereto, and for as long as the Installment Sale Agreement is in effect, expressly waives any rights it may have for any exemption under Section 485-b of the Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Title 1 of Article 18-A of the General Municipal Law) with respect to the Facility. The Company and the Lessee, however, reserve any such rights with respect to all special ad valorem levies, special assessments and service charges levied against the Facility referred to in paragraph 1(e) and the Additional Facilities as referred to in paragraph 1(f) and with respect to the assessment and/or exemption of the Additional Facilities.

7. [Reserved].

8. Except as otherwise provided herein, any notice required to be given by or under this Amended and Restated PILOT Agreement shall be deemed to have been duly given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, return receipt requested, addressed to the respective parties hereto at their respective addresses specified below or such other addresses as either party may specify in writing to the other:

To the Issuer:

Town of Brookhaven Industrial Development Agency  
1 Independence Hill, 3<sup>rd</sup> Floor  
Farmingville, New York 11738  
Attention: Chief Executive Officer

With a copy to:

Annette Eaderesto, Esq.  
Town of Brookhaven  
1 Independence Hill, 3<sup>rd</sup> Floor  
Farmingville, New York 11738

To the Company:

Intercounty Associates II LLC  
10 National Boulevard  
Medford, New York 11763  
Attention: Executive Manager

To the Lessee:

Intercounty Appliance Corp.  
10 National Boulevard  
Medford, New York 11763  
Attention: Chief Executive Officer

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the third business day after mailing.

9. Failure by the Issuer in any instance to insist upon the strict performance of any one or more of the obligations of the Company and/or the Lessee under this Amended and Restated PILOT Agreement, or to exercise any election herein contained, shall in no manner be or be deemed to be a waiver by the Issuer of any of the Company's and/or the Lessee's defaults or breaches hereunder or of any of the rights and remedies of the Issuer by reason of such defaults or breaches, or a waiver or relinquishment of any and all of the Company's and/or the Lessee's obligations hereunder. No waiver, amendment, release or modification of this Amended and Restated PILOT Agreement shall be established by conduct, custom or course of dealing. Further, no payment by the Company and/or the Lessee or receipt by the Issuer of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Issuer may accept any checks or payments as made without prejudice to the right to recover the balance or pursue any other remedy in this Amended and Restated PILOT Agreement or otherwise provided at law or equity.

10. This Amended and Restated PILOT Agreement shall become effective at the commencement of the 2013/14 tax year (that is, December 1, 2013). All taxes, assessments, special assessments, service charges, special ad valorem levies, or similar tax equivalents due or to become due based upon prior taxable status dates shall be paid by the Company and the Lessee when due. Upon termination of the Installment Sale Agreement and reconveyance of title to the Facility to the Company, this Amended and Restated PILOT Agreement shall terminate.

11. Whenever the Company and/or the Lessee fail to comply with any provision of this Amended and Restated PILOT Agreement, the Issuer may, but shall not be obligated to, take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company and the Lessee under this Amended and Restated PILOT Agreement. The Issuer agrees to notify the Company and the Lessee in writing of any failure by the Company and/or the Lessee to comply with any provision of this Amended and Restated PILOT Agreement within thirty (30) business days after the Issuer becomes aware of such failure and shall provide the Company and/or the Lessee with the opportunity to cure such failure within thirty (30) days after receipt by the Company and/or the Lessee of such notice.

12. This Amended and Restated PILOT Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

13. The Company and the Lessee agree to hold the Issuer harmless from and against any liability arising from any default by the Company and/or the Lessee in performing its obligations hereunder or any expense incurred under this Amended and Restated PILOT Agreement, including any expenses of the Issuer, including without limitation reasonable attorneys' fees.

14. This Amended and Restated PILOT Agreement may be modified only by written instrument duly executed by the parties hereto.

15. This Amended and Restated PILOT Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, heirs, distributees and assigns.

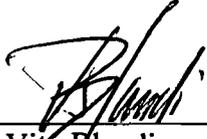
16. If any provision of this Amended and Restated PILOT Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such provision so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Amended and Restated PILOT Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

17. Effective with the Commencement of the 2013/2014 Tax Year, the original PILOT Agreement shall be amended, restated and replaced by this Amended and Restated PILOT Agreement.

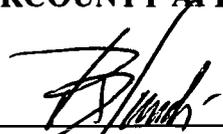
(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated PILOT Agreement as of the date first written above.

**INTERCOUNTY ASSOCIATES II LLC**

By:   
Name: Vito Blandi  
Title: Executive Manager

**INTERCOUNTY APPLIANCE CORP.**

By:   
Name: Vito Blandi  
Title: Executive Manager

**TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY**

By:   
Name: Lisa MG Mulligan  
Title: Chief Executive Officer

EXHIBIT A

Amended and Restated Schedule of Payments In-Lieu-of-Taxes Payment: The Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof within which the Facility is wholly or partially located), Longwood School District and Appropriate Special Districts.

<b>Tax Year</b>	<b>PILOT Payments</b>
<b>2013/2014</b>	<b>\$ 255,830</b>
<b>2014/2015</b>	<b>\$ 295,612</b>
<b>2015/2016</b>	<b>\$ 336,882</b>
<b>2016/2017</b>	<b>\$ 379,686</b>
<b>2017/2018</b>	<b>\$ 424,066</b>
<b>2018/2019</b>	<b>\$ 432,548</b>
<b>2019/2020</b>	<b>\$ 441,199</b>
<b>2020/2021</b>	<b>\$ 450,023</b>
<b>2021/2022</b>	<b>\$ 459,023</b>
<b>2022/2023</b>	<b>\$ 468,204</b>
<b>2023/2024</b>	<b>\$ 477,568</b>
<b>2024/2025</b>	<b>\$ 590,073</b>

EXHIBIT B

Legal Description of Real Property

AMENDED AS OF 11/18/04:

ALL that certain plot, piece or parcel of land, situate, lying and being at Medford, in the Town of Brookhaven, County of Suffolk and the State of New York, bounded and described as follows:

BEGINNING at a point on the westerly line of Patchogue-Yaphank Road (C.R. 101) said point being the intersection of the westerly line of Patchogue-Yaphank Road (C.R. 101) with the northerly line of Southaven Avenue, as widened;

RUNNING THENCE the following eleven (11) courses:

- 1 South 84 degrees 29 minutes 41 seconds West, a distance of 731.02 feet along the northerly line of Southaven Avenue to a point;
- 2 North 06 degrees 02 minutes 16 seconds West, a distance of 1,600.47 feet to a point on the southerly line of National Boulevard;
- 3 North 83 degrees 57 minutes 44 seconds East, a distance of 423.86 feet along the southerly line of National Boulevard to a point;
- 4 Along an arc bearing to the left, in a generally southwesterly direction, whose radius is 30.00 feet, a length of 47.12 feet to a point of tangency;
- 5 South 06 degrees 02 minutes 16 seconds East, a distance of 512.02 feet to a point;
- 6 North 83 degrees 57 minutes 44 seconds East, a distance of 627.80 feet to a point;
- 7 South 06 degrees 02 minutes 16 seconds East, 118.98 feet;
- 8 South 65 degrees 31 minutes 06 seconds East, a distance of 239.02 feet to a point on the westerly line of Patchogue-Yaphank Road (C.R. 101);
- 9 Along the westerly line of Patchogue-Yaphank Road (C.R. 101) South 24 degrees 28 minutes 54 seconds West, a distance of 481.04 feet to a point;
- 10 Continuing along the westerly line of Patchogue-Yaphank Road (C.R. 101) South 24 degrees 27 minutes 08 seconds West, a distance of 446.96 feet to a point;
- 11 Continuing along the westerly line of Patchogue-Yaphank Road (C.R. 101) South 39 degrees 09 minutes 10 seconds West, a distance of 35.95 to the POINT OF BEGINNING.

INTERCOUNTY ASSOCIATES II LLC

and

INTERCOUNTY APPLIANCE CORP.

To

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(TOWN OF BROOKHAVEN, NEW YORK)

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RECAPTURE AGREEMENT

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Dated as of September 1, 2013

\$4,500,000

Town of Brookhaven Industrial Development Agency  
Taxable Variable Rate Demand Industrial Development Revenue Bonds, Series 2013  
(Intercounty Associates II LLC/Intercounty Appliance Corp. 2013 Facility)

Property Address: 10 National Boulevard, Medford, New York

District: 0200  
Section: 812.00  
Block: 03.00  
Lot: 005.012 and 005.013

Record and return to:  
Nixon Peabody LLP  
1300 Clinton Square  
Rochester, New York 14604  
Attention: Jessica Cocco, Esq.

## RECAPTURE AGREEMENT

THIS RECAPTURE AGREEMENT, made and entered into as of September 1, 2013 (this "**Recapture Agreement**"), is from INTERCOUNTY ASSOCIATES II LLC, formerly known as Intercounty Yaphank LLC, a New York limited liability company, having its principal office at 10 National Boulevard, Medford, New York 11763 (the "**Company**") and INTERCOUNTY APPLIANCE CORP., a business corporation duly organized and existing under the laws of the State of New York, having an office at 10 National Boulevard, Medford, New York 11763 (the "**Lessee**"), to the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the "**Issuer**").

### WITNESSETH:

Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York.

The aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State of New York (the "**State**").

The aforesaid act further authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, reconstruct, renovate, refurbish, equip, lease, 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 now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living.

Pursuant to and in accordance with the provisions of the aforesaid act and Chapter 358 of the Laws of 1970 of the State, as amended (collectively, the "**Act**"), the Issuer was created and is empowered to undertake the providing, financing and leasing of the Facility defined below.

WHEREAS, the Issuer has previously provided its assistance to the Company and the Lessee by issuing its \$9,000,000 Taxable Variable Rate Demand Industrial Development Revenue Bonds, Series 2005 (Intercounty Associates II LLC/Intercounty Appliance Corp. Facility) (the "**Series 2005 Bonds**"), which Series 2005 Bonds were used to finance certain costs of an industrial development facility consisting of the acquisition of an approximately 29.77 acre parcel of land located at 10 National Boulevard, Medford, New York, and the construction and equipping thereon of an approximately 250,000 square foot building (the "**Original Facility**"); and

WHEREAS, the Series 2005 Bonds were issued pursuant to an Indenture of Trust, dated as of January 1, 2005 (the “**Original Indenture**”), by and between the Issuer and The Bank of New York Mellon, as Trustee (the “**Trustee**”); and

WHEREAS, the Issuer acquired title to the Facility and is selling the Facility to the Company pursuant to the terms and conditions set forth in a certain Installment Sale Agreement, dated as of January 1, 2005 (the “**Original Installment Sale Agreement**”), by and between the Issuer and the Company; and

WHEREAS, the Company agreed to lease the Original Facility to the Lessee pursuant to a Lease Agreement, dated January 26, 2005 (the “**Original Lease Agreement**”), by and between the Company and the Lessee; and

WHEREAS, the Issuer assigned its rights and remedies under the Original Installment Sale Agreement to the Trustee and Capital One, National Association, successor in interest to North Fork Bank (the “**LOC Bank**”) pursuant to a certain Pledge and Assignment with Acknowledgment by the Company, dated as of January 1, 2005 (the “**Original Pledge and Assignment**”), among the Issuer, the Trustee and the LOC Bank, which such Original Pledge and Assignment was to be recorded in the Suffolk County Clerk’s office; and

WHEREAS, the Series 2005 Bonds were secured pursuant to an irrevocable, direct-pay letter of credit (the “**Original Letter of Credit**”) issued by the LOC Bank, pursuant to a Letter of Credit Reimbursement Agreement, dated as of January 26, 2005 (the “**Original Reimbursement Agreement**”), among the Company, the Lessee and the LOC Bank; and

WHEREAS, in order to further secure the Series 2005 Bonds, (i) the Company entered into a Guaranty Agreement, dated as of January 1, 2005 (the “**Original Guaranty**”), from the Company and the Lessee to the Trustee and the Issuer, guaranteeing, among other things, the payment of the principal of, Redemption Price of, Purchase Price of, and interest on the Series 2005 Bonds, and (ii) the Issuer and the Company granted a mortgage lien on and a security interest in the Facility to the LOC Bank pursuant to a Mortgage and Security Agreement, dated January 26, 2005 (the “**2005 Mortgage**”), by and among the Company, the Issuer and the LOC Bank, which 2005 Mortgage was to be recorded in the Suffolk County Clerk’s office securing the principal amount of \$9,000,000; and

WHEREAS, in connection with the acquisition, construction and equipping of the Original Facility, the Issuer, the Trustee, the LOC Bank, the Company and the Lessee entered into a Payment-in-Lieu-of-Tax Agreement, dated as of January 1, 2005 (the “**Original PILOT Agreement**”), whereby the Company and the Lessee agreed to make certain payments-in-lieu-of real property taxes on the Original Facility (as defined therein); and

WHEREAS, the Issuer previously consented to a request from the Company that the Issuer join with the Company in executing and delivering to Intercounty Appliance Corp. (the “**2011 Lender**”), a certain Mortgage and Security Agreement, dated March 6, 2011 (the “**2011 Mortgage**”), which 2011 Mortgage was intended to be recorded in the office of the Clerk of Suffolk County, securing a principal amount of \$5,258,802.98 and in connection therewith, the Issuer and the Company executed and delivered to the 2011 Lender, an

Assignment of Leases and Rents, dated March 6, 2011 (the “**2011 Assignment of Leases and Rents**”), from the Company and the Issuer to the 2011 Lender, which such 2011 Assignment of Leases and Rents was intended to be recorded in said Clerk’s office immediately after the recording of the 2011 Mortgage (the 2011 Mortgage and the 2011 Assignment of Leases and Rents are collectively, the “**2011 Loan Documents**”); and

WHEREAS, the Company and the Lessee have now requested the Issuer issue pursuant to Section 2.10 of the Original Indenture a series of Additional Industrial Development Revenue Bonds, Series 2013 (Intercounty Associates II LLC/Intercounty Appliance Corp. 2013 Facility) (the “**Additional Bonds**”); and

WHEREAS, the proceeds of the Additional Bonds will be used for the acquisition, construction, renovation and equipping of an approximately 75,000 square foot addition to an existing approximately 250,000 square foot building located at the Original Facility all for use by the Lessee as warehouse and office space for the distribution of appliances (collectively, the “**2013 Facility**”; and, together with the Original Facility, the “**Facility**”); and

WHEREAS, in connection with the issuance of the Additional Bonds, the Original Indenture will be amended pursuant to a First Supplemental Indenture of Trust, dated as of September 1, 2013 (the “**First Supplemental Indenture**”; and, together with the Original Indenture, the “**Indenture**”), by and between the Issuer and the Trustee, which First Supplemental Indenture will provide for certain terms and conditions of the Additional Bonds; and

WHEREAS, in connection with the acquisition, construction, renovation and equipping of the 2013 Facility, the Original Installment Sale Agreement will be amended pursuant to a First Amendment to Installment Sale Agreement, dated as of September 1, 2013 (the “**First Amendment to Installment Sale Agreement**”; and, together with the Original Installment Sale Agreement, the “**Installment Sale Agreement**”), by and between the Issuer and the Company, which First Amendment to Installment Sale Agreement will allow for the Issuer to continue to sell the Facility to the Company; and

WHEREAS, for purposes of this Recapture Agreement, the Facility shall consist of the Land, the Improvements and the Equipment, defined in and more particularly described in the Installment Sale Agreement and sold by the Issuer to the Company pursuant to the Installment Sale Agreement, together with all additions to and replacements and substitutions of the Facility; and

WHEREAS, the payment of the principal of and interest on the Additional Bonds will be credit enhanced by an irrevocable, direct-pay letter of credit (the “**Letter of Credit**”), issued by the LOC Bank to the Trustee for the account of the Company, pursuant to the terms and conditions of the Letter of Credit Reimbursement Agreement, dated as of September 26, 2013 (the “**Reimbursement Agreement**”), among the LOC Bank, the Lessee and the Company; and

WHEREAS, the Issuer and the Company have agreed to secure the Additional Bonds and the Company's obligations under the Installment Sale Agreement (i) by the Issuer assigning certain of its rights under the Installment Sale Agreement to the Trustee and the LOC Bank pursuant to a Pledge and Assignment, dated as of September 1, 2013 (the "**Pledge and Assignment**"), and (ii) by the Issuer and the Company granting a mortgage lien on and security interest in the Facility to the LOC Bank pursuant to a certain Mortgage and Security Agreement, dated September 26, 2013 (the "**2013 Mortgage**"), from the Issuer and the Company to the LOC Bank; and

WHEREAS, pursuant to a Guaranty Agreement, dated as of September 1, 2013 (the "**Guaranty**"), from the Company and the Lessee to the Issuer, the Trustee and the LOC Bank, the Company and the Lessee have unconditionally guaranteed to the Trustee the payment when due of the principal of, Redemption Price of and interest on the Additional Bonds; and

WHEREAS, the Issuer requires, as a condition and as an inducement for it to issue, execute and deliver the Additional Bonds and to enter into and perform the transactions contemplated by the Indenture, the Installment Sale Agreement, the Mortgage and the Pledge and Assignment, that the Company and the Lessee enter into, execute, deliver and perform this Recapture Agreement to provide assurances with respect to the recapture of benefits granted under the PILOT Agreement, the Installment Sale Agreement and the other Issuer agreements on the terms herein set forth

The Issuer has conferred on the Company and the Lessee in connection with the leasing of the Facility real property tax abatements (pursuant to the PILOT Agreement).

## AGREEMENT

### 1. Recapture of Issuer Benefits.

(a) It is understood and agreed by the parties hereto that the Issuer is entering into the PILOT Agreement and the Installment Sale Agreement in order to provide financial assistance to the Company and the Lessee for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

- (i) If there shall occur a Recapture Event (as defined below) after the Closing Date, but on or before the end of three (3) years thereafter, the Company shall pay to the Issuer (except as otherwise specified below) as a return of public benefits conferred by the Issuer, one hundred percent (100%) of the Recaptured Benefits (as defined below);
- (ii) If there shall occur a Recapture Event after the end of three (3) years but on or before the end of five (5) years thereafter, the Company shall pay to the Issuer (except as otherwise specified below) as a return of public benefits conferred by the Issuer, seventy-five percent (75%) of the Recaptured Benefits;

- (iii) If there shall occur a Recapture Event after the end of five (5) years but on or before the end of seven (7) years thereafter, the Company shall pay to the Issuer(except as otherwise specified below) as a return of public benefits conferred by the Issuer, fifty percent (50%) of the Recaptured Benefits;
- (iv) If there shall occur a Recapture Event after the end of seven (7) years but on or before the end of eight (8) years thereafter, the Company shall pay to the Issuer(except as otherwise specified below) as a return of public benefits conferred by the Issuer, twenty-five percent (25%) of the Recaptured Benefits; and
- (v) If there shall occur a Recapture Event after the end of eight (8) years, the Company shall not be obligated to pay to the Issuer any of the Recaptured Benefits; and

(b) The term "Recaptured Benefits" shall mean all direct monetary benefits, tax exemptions and other financial assistance, if any, derived from the Issuer's participation in the transaction contemplated by the PILOT Agreement and the Lease Agreement including, but not limited to, the amount equal to 100% of any exemption from the real property tax abatements granted under the PILOT Agreement which amounts from time to time shall be payable directly to the Issuer or to any party or parties at the direction of the Issuer.

(c) The term "Recapture Event" shall mean any of the following events:

(1) A default by the Company under the PILOT Agreement which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or

(2) The occurrence and continuation of an Event of Default under the Installment Sale Agreement which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or

(3) The Facility shall cease to be a "project" within the meaning of the Act, as in effect on the Closing Date; or

(4) The sale of the Facility (excluding any sale provided for in Section 9.3 of the Lease Agreement) or closure of the Facility, except as due to casualty, condemnation or force majeure as provided below; or

(5) Failure of the Company or the Lessee to create or cause to be maintained 68 of FTE jobs initially at the Facility and 72 FTE jobs by December 31, 2016, as FTE is defined in Section 8.13 of the Equipment Lease Agreement in any calendar year, which failure is not reflective of the business conditions of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions. Notwithstanding anything to the contrary provided herein, it is further provided

that the failure of the Company to create or maintain the combined number of FTEs at the Facility will result in a Recapture Event; or

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a force majeure event (as more particularly described in the Installment Sale Agreement), (ii) a taking or condemnation by governmental authority of all or part of the Facility, or (iii) the inability at law of the Company or the Lessee after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a “Loss Event”) to rebuild, repair, restore or replace the Facility if the Company or the Lessee elects to rebuild, repair, restore or replace the Facility, which inability or failure exists despite the good faith efforts on the part of the Company or any of its affiliates so long as the Company or any of its affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof

(d) The Company and the Lessee covenant and agree to furnish the Agency with written notification (i) within thirty (30) days of the end of each Tax Year the number of FTEs located at the Facility for the preceding calendar year, and (ii) within thirty (30) days of actual notice of any facts or circumstances which would materially likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company and the Lessee within thirty (30) days of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(e) In the event any payment owing by the Company or the Lessee under this Section shall not be paid within thirty (30) days of a written demand therefor by the Issuer, such payment shall bear interest from the date of such demand at a rate equal to ten percent (10%) per annum until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Issuer (except as otherwise specified above).

(f) The Issuer shall be entitled to deduct all expenses of the Issuer, including without limitation, legal fees, incurred with the recovery of all amounts due under this Recapture Agreement, from amounts received by the Issuer pursuant to this Recapture Agreement.

## 2. Obligations Unconditional.

(a) The obligations of the Company and the Lessee under this Recapture Agreement shall be absolute and unconditional and shall remain in full force and effect until the PILOT Agreement and the Installment Sale Agreement have expired or been terminated, and such obligations shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event, whether or not with notice to or the consent of the Company.

(b) It is hereby expressly agreed that the Company’s and the Lessee’s obligations under this Recapture Agreement are not limited in any manner, and the Company and the

Lessee shall be liable for the payment of all recapture amounts with respect to the entire Facility.

3. Condition to Reconveyance of Facility. The parties hereto agree that the Issuer shall have no obligations to re-convey its interest in the Facility to the Company or the Lessee pursuant to the Installment Sale Agreement until all payments to the Issuer, under the PILOT Agreement and hereunder have been paid in full.

4. Recordation of Recapture Agreement. The parties hereto agree that this Recapture Agreement shall be recorded as a lien against the Facility and as a covenant and restriction running with the Land until this Recapture Agreement and such lien have been discharged by the Issuer. The parties hereto further agree that this Recapture Agreement and the lien referred to above shall be subordinate to any Mortgage now or hereinafter entered into by the Issuer and/or the Company and/or the Lessee against the Facility and the Issuer agrees to consent to any subordination agreement by any lender, at the sole cost and expense of the Company and/or the Lessee, which consent by the Issuer shall not be unreasonably withheld or delayed, but may be conditioned upon reasonable terms then in effect by the Issuer.

5. Terms Defined. All of the capitalized terms used in this Recapture Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Installment Sale Agreement as Schedule A.

6. Directly or Indirectly. Where any provision in this Recapture Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

7. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Issuer and shall survive the delivery of this Recapture Agreement to the Issuer regardless of any investigation made by the Issuer.

8. Binding Effect. This Recapture Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties.

9. Notices. All notices, certificates and other communications under this Recapture Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, return receipt requested, postage prepaid, or by overnight courier, addressed as follows or to such other address as any party may specify in writing to the other:

To the Issuer:

Town of Brookhaven Industrial Development Agency  
1 Independence Hill, 3rd Floor  
Farmingville, New York 11738  
Attention: Chief Executive Officer

With a copy to:

Town of Brookhaven  
Department of Law  
1 Independence Hill, 3rd Floor  
Farmingville, New York 11738  
Attention: Annette Eaderesto, Esq.

To the Company:

Intercounty Associates II LLC  
10 National Boulevard  
Medford, New York 11763  
Attention: Vito Blandi, Executive Manager

To the Lessee:

Intercounty Appliance Corp.  
10 National Boulevard  
Medford, New York 11763  
Attention: Vito Blandi, Chief Executive Officer

10. Entire Understanding; Counterparts. This Recapture Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. Amendments. No amendment, change, modification, alteration or termination of this Recapture Agreement shall be made except in writing upon the written consent of the Company and the Issuer.

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

13. Governing Law. This Recapture Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard or reference to its conflict of laws principles.

14. Section Headings. The headings of the several Sections in this Recapture 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 Recapture Agreement.

15. Recordation of Recapture Agreement. The Issuer covenants that it will record or cause this Recapture Agreement to be duly recorded in all offices where recordation thereof is necessary.

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Recapture Agreement to be duly executed and delivered as of the day and year first above written.

**INTERCOUNTY ASSOCIATES II LLC**

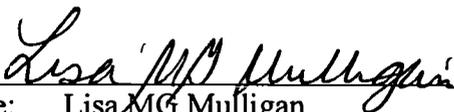
By:   
Name: \_\_\_\_\_ Vito Blandi  
Title: Executive Manager

**INTERCOUNTY APPLIANCE CORP.**

By:   
Name: \_\_\_\_\_ Vito Blandi  
Title: Chief Executive Officer

ACCEPTED:

**TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Name: Lisa MG Mulligan  
Title: Chief Executive Officer

Recapture Agreement  
Signature Page 1 of 2



Exhibit A  
Legal Description

ALL that certain plot, piece or parcel of land, situate, lying and being at Medford, in the Town of Brookhaven, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the Westerly line of Patchogue-Yaphank Road (C.R. 101) said point being the intersection of the Westerly line of Patchogue-Yaphank Road (C.R. 101) with the Northerly line of Southaven Avenue, as widened;

RUNNING THENCE the following eleven (11) courses:

1. South 84 degrees 29 minutes 41 seconds West, a distance of 731.02 feet along the Northerly line of Southaven Avenue to a point;
2. North 06 degrees 02 minutes 16 seconds West, a distance of 1,600.47 feet to a point on the Southerly line of National Boulevard;
3. North 83 degrees 57 minutes 44 seconds East, a distance of 423.86 feet along the Southerly line of National Boulevard to a point;
4. along an arc bearing to the left, in a general Southwesterly direction, whose radius is 30.00 feet, a length of 47.12 feet to a point of tangency;
5. South 06 degrees 02 minutes 16 seconds East, a distance of 512.02 feet to a point;
6. North 83 degrees 57 minutes 44 seconds East, a distance of 627.80 feet to a point;
7. South 06 degrees 02 minutes 16 seconds East, 118.98 feet;
8. South 65 degrees 31 minutes 06 seconds East, a distance of 239.02 feet to a point on the Westerly line of Patchogue-Yaphank Road (C.R. 101);
9. along the Westerly line of Patchogue-Yaphank Road (C.R. 101) South 24 degrees 28 minutes 54 seconds West, a distance of 481.04 feet to a point;
10. continuing along the Westerly line of Patchogue-Yaphank Road (C.R. 101) South 24 degrees 27 minutes 08 seconds West, a distance of 446.96 feet to a point;
11. continuing along the Westerly line of Patchogue-Yaphank Road (C.R. 101) South 39 degrees 09 minutes 10 seconds West, a distance of 35.95 feet to the point of BEGINNING.

INTERCOUNTY ASSOCIATES II LLC,  
formerly known as Intercounty Yaphank LLC, as Company

and

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, as Issuer

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FIRST AMENDMENT TO INSTALLMENT SALE AGREEMENT

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Originally dated as of January 1, 2005

First Amendment dated as of September 1, 2013

\$4,500,000

Town of Brookhaven Industrial Development Agency  
Taxable Variable Rate Demand Industrial Development Revenue Bonds, Series 2013  
(Intercounty Associates II LLC/Intercounty Appliance Corp. 2013 Facility)

THIS FIRST AMENDMENT TO INSTALLMENT SALE AGREEMENT, dated as of September 1, 2013 (this "**First Amendment to Installment Sale Agreement**"), is by and between INTERCOUNTY ASSOCIATES II LLC, formerly known as Intercounty Yaphank LLC, a New York limited liability company, having its principal office at 10 National Boulevard, Medford, New York 11763 (the "**Company**") and the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 3rd Floor, Farmingville New York 11738 (the "**Issuer**").

## RECITALS

WHEREAS, the Agency was created by Chapter 358 of the Laws of 1970 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended (collectively, the "**Act**"); and

WHEREAS, the Issuer has previously provided its assistance to the Company and Intercounty Appliance Corp., a New York business corporation (the "**Lessee**"), by issuing its \$9,000,000 Taxable Variable Rate Demand Industrial Development Revenue Bonds, Series 2005 (Intercounty Associates II LLC/Intercounty Appliance Corp. Facility) (the "**Series 2005 Bonds**"), which Series 2005 Bonds were used to finance certain costs of an industrial development facility consisting of the acquisition of an approximately 29.77 acre parcel of land located at 10 National Boulevard, Medford, New York, and the construction and equipping thereon of an approximately 250,000 square foot building (the "**Original Facility**"); and

WHEREAS, the Series 2005 Bonds were issued pursuant to the Act, a resolution of the Issuer adopted on September 20, 2004, and an Indenture of Trust, dated as of January 1, 2005 (the "**Original Indenture**"), by and between the Issuer and The Bank of New York Mellon, formerly known as The Bank of New York, as trustee for the benefit of the owners of the Series 2005 Bonds (the "**Trustee**"); and

WHEREAS, the Issuer sold the Original Facility to the Company pursuant to an Installment Sale Agreement, dated as of January 1, 2005 (the "**Original Installment Sale Agreement**"), by and between the Issuer and the Company, and a memorandum of such Original Installment Sale Agreement dated January 26, 2005 and recorded on February 14, 2005 in Liber 12371 Page 326 in the Suffolk County Clerk's office; and

WHEREAS, the Company leased the Original Facility to the Lessee pursuant to a Lease Agreement, dated January 26, 2005 (the "**Lease Agreement**"), by and between the Company and the Lessee, and a memorandum of such Lease Agreement was to be recorded in the Suffolk County Clerk's office; and

WHEREAS, the Issuer assigned its rights and remedies under the Original Installment Sale Agreement to the Trustee and Capital One, National Association, successor in interest to North Fork Bank (the "**LOC Bank**"), pursuant to a certain Pledge and Assignment with Acknowledgment by the Company, dated as of January 1, 2005 (the "**Original Pledge and**

**Assignment**”), among the Issuer, the Trustee and the LOC Bank, which such Pledge and Assignment was to be recorded in the Suffolk County Clerk’s office; and

WHEREAS, the Series 2005 Bonds were secured pursuant to an irrevocable, direct-pay letter of credit (the “**Original Letter of Credit**”) issued by the LOC Bank, pursuant to a Letter of Credit Reimbursement Agreement, dated as of January 26, 2005 (the “**Original Reimbursement Agreement**”), among the Company, the Lessee and the LOC Bank; and

WHEREAS, in order to further secure the Series 2005 Bonds, (i) the Company entered into a Guaranty Agreement, dated as of January 1, 2005 (the “**Original Guaranty**”), from the Company and the Lessee to the Trustee and the Issuer, guaranteeing, among other things, the payment of the principal of, Redemption Price of, Purchase Price of, and interest on the Series 2005 Bonds, and (ii) the Issuer and the Company granted a mortgage lien on and a security interest in the Facility to the LOC Bank pursuant to a Mortgage and Security Agreement, dated January 26, 2005 (the “**2005 Mortgage**”), by and among the Company, the Issuer and the LOC Bank, which 2005 Mortgage was to be recorded in the Suffolk County Clerk’s office securing the principal amount of \$9,000,000; and

WHEREAS, in connection with the acquisition, construction and equipping of the Original Facility, the Issuer, the Trustee, the LOC Bank, the Company and the Lessee entered into a Payment-in-Lieu-of-Tax Agreement, dated as of January 1, 2005 (the “**Original PILOT Agreement**”), whereby the Company and the Lessee agreed to make certain payments-in-lieu-of real property taxes on the Original Facility (as defined therein); and

WHEREAS, in connection with the acquisition, construction and equipping of the Original Facility, the Issuer, the Company and the Lessee entered into an Environmental Compliance and Indemnification Agreement, dated as of January 1, 2005 (the “**Original Environmental Compliance and Indemnification Agreement**”), whereby the Company and the Lessee 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 that the Issuer join with the Company in executing and delivering to Intercounty Appliance Corp. (the “**2011 Lender**”), a certain Mortgage and Security Agreement, dated March 6, 2011 (the “**2011 Mortgage**”), which 2011 Mortgage was intended to be recorded in the office of the Clerk of Suffolk County, securing a principal amount of \$5,258,802.98 and in connection therewith, the Issuer and the Company executed and delivered to the 2011 Lender, an Assignment of Leases and Rents, dated March 6, 2011 (the “**2011 Assignment of Leases and Rents**”), from the Company and the Issuer to the 2011 Lender, which such 2011 Assignment of Leases and Rents was intended to be recorded in said Clerk’s office immediately after the recording of the 2011 Mortgage (the 2011 Mortgage and the 2011 Assignment of Leases and Rents are collectively, the “**2011 Loan Documents**”); and

WHEREAS, the Company and the Lessee have now requested the Issuer consent and approve pursuant to Section 2.10 of the Original Indenture the issuance of a series of Additional Industrial Development Revenue Bonds, Series 2013 (Intercounty Associates II LLC/Intercounty Appliance Corp. 2013 Facility) (the “**Additional Bonds**”); and

WHEREAS, the proceeds of the Additional Bonds will be used for the acquisition, construction, renovation and equipping of an approximately 75,000 square foot addition to an existing approximately 250,000 square foot building located at the Original Facility all for use by the Lessee as warehouse and office space for the distribution of appliances (collectively, the “**2013 Facility**”; and, together with the Original Facility, the “**Facility**”); and

WHEREAS, in connection therewith, the Company has requested that the Issuer amend the Original Installment Sale Agreement to include the 2013 Facility; and

WHEREAS, the Issuer and the Company hereto agree to amend the description of the Facility conveyed in the Original Installment Sale Agreement to include the 2013 Facility pursuant to this First Amendment to Installment Sale Agreement; and

WHEREAS, the Issuer and the Company deem it necessary and proper to enter into this First Amendment to Installment Sale Agreement in order to include the 2013 Facility in the Facility description.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to amend the Original Installment Sale Agreement as follows:

1. The Issuer and the Company hereby incorporate the 2013 Facility into the Original Installment Sale Agreement as a part of the Facility.

2. Pursuant to Section 2.10 of the Original Indenture, the Issuer and the Organization hereby amend the Installment Payments payable under the Original Installment Sale Agreement so to increase and compute the same so as to amortize in full the principal of and interest on the Additional Bonds and any other costs in connection therewith.

3. Section 4.4 of the Original Installment Sale Agreement is hereby amended and restated in its entirety to read as follows:

“Section 4.4 Certificates of Completion. To establish the Completion Date, the Company shall deliver to the Issuer, the LOC Bank and the Trustee a certificate signed by an Authorized Representative of the Company (i) stating that acquisition, furnishing, constructing, equipping and improvement of the Facility has been completed; (ii) stating that except for amounts retained in the Project Fund for the payment of incurred but unpaid items of the Costs of the Facility, the payment of all labor, services, materials and supplies used in such acquisition, construction and equipping has been made or provided for; and (iii) such certificates as may be reasonably satisfactory to the Issuer, the Trustee and the LOC Bank, including without limitation, a temporary or final certificate of occupancy, if applicable. The Company completed the acquisition, construction, furnishing, equipping and improvement of the Original Facility on or before December 1, 2006. The Company agrees to complete the acquisition, construction, renovation and equipping of the 2013 Facility on or before September 30, 2014.”

3. The Original Installment Sale Agreement as herein amended shall remain in full force and effect.

(Remainder of Page Intentionally left Blank – Signature Page Follows)



**TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY**

By: *Lisa MG Mulligan*  
Name: Lisa MG Mulligan  
Title: Chief Executive Officer

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

On the 18 day of September in the year 2013, before me, the undersigned, personally appeared **Lisa MG Mulligan**, 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 with instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

*Christine J Schroder*  
Notary Public



First Amendment to Installment Sale Agreement

Exhibit A  
Legal Description

ALL that certain plot, piece or parcel of land, situate, lying and being at Medford, in the Town of Brookhaven, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the Westerly line of Patchogue-Yaphank Road (C.R. 101) said point being the intersection of the Westerly line of Patchogue-Yaphank Road (C.R. 101) with the Northerly line of Southaven Avenue, as widened;

RUNNING THENCE the following eleven (11) courses:

1. South 84 degrees 29 minutes 41 seconds West, a distance of 731.02 feet along the Northerly line of Southaven Avenue to a point;
2. North 06 degrees 02 minutes 16 seconds West, a distance of 1,600.47 feet to a point on the Southerly line of National Boulevard;
3. North 83 degrees 57 minutes 44 seconds East, a distance of 423.86 feet along the Southerly line of National Boulevard to a point;
4. along an arc bearing to the left, in a general Southwesterly direction, whose radius is 30.00 feet, a length of 47.12 feet to a point of tangency;
5. South 06 degrees 02 minutes 16 seconds East, a distance of 512.02 feet to a point;
6. North 83 degrees 57 minutes 44 seconds East, a distance of 627.80 feet to a point;
7. South 06 degrees 02 minutes 16 seconds East, 118.98 feet;
8. South 65 degrees 31 minutes 06 seconds East, a distance of 239.02 feet to a point on the Westerly line of Patchogue-Yaphank Road (C.R. 101);
9. along the Westerly line of Patchogue-Yaphank Road (C.R. 101) South 24 degrees 28 minutes 54 seconds West, a distance of 481.04 feet to a point;
10. continuing along the Westerly line of Patchogue-Yaphank Road (C.R. 101) South 24 degrees 27 minutes 08 seconds West, a distance of 446.96 feet to a point;
11. continuing along the Westerly line of Patchogue-Yaphank Road (C.R. 101) South 39 degrees 09 minutes 10 seconds West, a distance of 35.95 feet to the point of BEGINNING.

# NIXON PEABODY<sub>LLP</sub>

1300 Clinton Square  
Rochester, New York 14604

Elizabeth A. Wood, Paralegal  
Direct: (585) 263-1391  
E-mail: ewood@nixonpeabody.com

October 1, 2013

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

James Ryan  
Sole Assessor  
Town of Brookhaven  
1 Independence Hill  
Farmingville, New York 11738

RE: Town of Brookhaven Industrial Development Agency  
(Intercounty Associates II LLC/Intercounty Appliance Corp. 2013 Facility)

Dear Mr. Ryan:

Enclosed please find a completed Form RP-412-a Application for Real Property Tax Exemption together with a copy of the Amended and Restated Payment-in-Lieu-of-Tax Agreement, all with respect to the above-referenced transaction, which originally closed on January 26, 2005, was amended and restated on September 26, 2013.

Also enclosed are copies of the Recapture Agreement and the First Amendment to Installment Sale Agreement, both of which have been presented in the Suffolk County Clerk's office for recording.

Please feel free to contact me if you should have any questions. Thank you.

Very truly yours,

*Elizabeth A. Wood*

Elizabeth A. Wood  
Paralegal

Enclosures

cc: Distribution List (w/encls.)

**Distribution List**

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Hon. Steven Bellone  
Suffolk County Executive  
H. Lee Dennison Building  
100 Veterans Memorial Highway  
P.O. Box 6100  
Hauppauge, New York 11788-0099

Hon. Edward R. Romaine  
Town Supervisor  
Town of Brookhaven  
One Independence Hill  
Farmingville, New York 11738

Dr. Howard Koenig, Acting Superintendent  
South Country Central School District  
189 Dunton Ave.  
East Patchogue, New York 11772

Dr. Michael R. Lonergan, Superintendent  
Longwood Central School District  
35 Yaphank-Middle Island Road  
Middle Island, New York 11953

**FIRST CLASS MAIL**

Lisa MG Mulligan  
Chief Executive Officer  
Town of Brookhaven Industrial  
Development Agency  
One Independence Hill, 3<sup>rd</sup> Floor  
Farmingville, New York 11738

Annette Eaderesto, Esq.  
Town Attorney  
Town of Brookhaven  
One Independence Hill, 3<sup>rd</sup> Floor  
Farmingville, New York 11738



INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

Name Town of Brookhaven Industrial Development Agency
Street 1 Independence Hill, 3rd Floor
City Farmingville
Telephone no. Day ( )
Evening ( )
Contact Lisa MG Mulligan
Title Chief Executive Officer

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name Intercounty Associates II LLC
Name Intercounty Appliance Corporation
Street 10 National Boulevard
City Medford, NY 11763
Telephone no. Day (631) 543-6900
Evening ( )
Contact Vito J. Blandi
Title President

3. DESCRIPTION OF PARCEL

a. Assessment roll description (tax map no./roll year) District 0200 Section 812.00 Block 03.00, Lots 1.7, P/O 1.11, P/O 1.9, P/O 5.5, P/O 5.6
District 0200 Section 842.00 Block 06.00 Lot 01
d. School District Longwood School District
b. Street address 10 National Boulevard
e. County Suffolk
f. Current assessment unavailable
c. City, Town or Village Medford
g. Deed to IDA (date recorded; liber and page)
January 26, 2005, Liber, page

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

a. Brief description (include property use)
an app 75,000 square foot addition to an existing approximately 250,000 square foot building
b. Type of construction unavailable
c. Square footage app 325,000
d. Total cost app. \$
e. Date construction commenced unavailable
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA)
January 21, 2025

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION

(Attach copy of the agreement or extract of the terms relating to the project).

a. Formula for payment see attached "Amended and Restated PILOT Agreement"
b. Projected expiration date of agreement January 21, 2025

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Suffolk</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Town/City <u>Brookhaven</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village <u>Brookhaven</u>		
School District <u>Longwood</u>	<input checked="" type="checkbox"/>	

d. Person or entity responsible for payment

Name Vito J. Blandi  
 Title President  
 Address 10 National Boulevard  
Medford, NY 11763

e. Is the IDA the owner of the property?  Yes/No (circle one)  
If "No" identify owner and explain IDA rights or interest in an attached statement.

Telephone 631-543-6900

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one)  Yes  No

If yes, list the statutory exemption reference and assessment roll year on which granted:  
exemption \_\_\_\_\_ assessment roll year \_\_\_\_\_

7. A copy of this application, including all attachments, has been mailed or delivered on 09/ /13 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

**CERTIFICATION**

I, Lisa MG Mulligan, Chief Executive Officer of  
Town of Brookhaven Industrial Development Agency hereby certify that the information  
Organization

on this application and accompanying papers constitutes a true statement of facts.

Sept. 18, 2013  
Date

  
Signature

**FOR USE BY ASSESSOR**

1. Date application filed \_\_\_\_\_
2. Applicable taxable status date \_\_\_\_\_
- 3a. Agreement (or extract) date \_\_\_\_\_
- 3b. Projected exemption expiration (year) \_\_\_\_\_
4. Assessed valuation of parcel in first year of exemption \$ \_\_\_\_\_
5. Special assessments and special as valorem levies for which the parcel is liable:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Assessor's signature

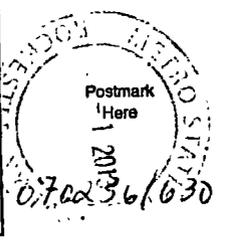
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Certified Fee	3.10
Return Receipt Fee (Endorsement Required)	2.55
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.97



Sent To: **Sole Assessor  
Town of Brookhaven**  
Street, Apt. No., or PO Box No.: **1 Independence Hill**  
City, State, ZIP+4: **Farmingville, New York 11738**

PS Form 3800, August 2006 See Reverse for Instructions

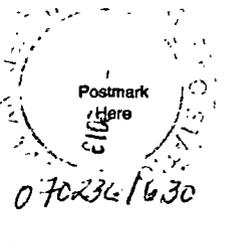
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Sent To: **Hon. Steven Bellone  
Suffolk County Executive**  
Street, Apt. No., or PO Box No.: **H. Lee Dennison Building  
100 Veterans Memorial Highway  
P.O. Box 6100**  
City, State, ZIP+4: **Hauppauge, New York 11788-0099**

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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.97



Sent To: **Hon. Edward R. Komaine  
Town Supervisor**  
Street, Apt. No., or PO Box No.: **Town of Brookhaven  
One Independence Hill**  
City, State, ZIP+4: **Farmingville, New York 11738**

PS Form 3800, August 2006 See Reverse for Instructions

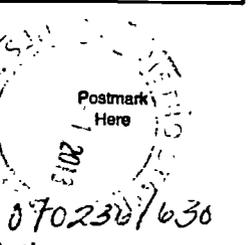
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Certified Fee	3.10
Return Receipt Fee (Endorsement Required)	2.55
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.97



Sent To: **Dr. Howard Koenig, Acting  
Superintendent**  
Street, Apt. No., or PO Box No.: **South Country Central School District  
189 Dunton Ave.**  
City, State, ZIP+4: **East Patchogue, New York 11772**

PS Form 3800, August 2006 See Reverse for Instructions

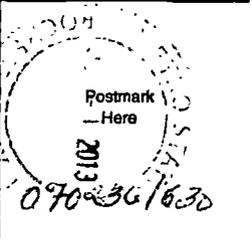
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**OFFICIAL USE**

Postage	\$ 2.32
Certified Fee	3.10
Return Receipt Fee (Endorsement Required)	2.55
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.97



Sent To: **Dr. Michael R. Lonergan, Superintendent**  
Street, Apt. No., or PO Box No.: **Longwood Central School District  
35 Yaphank-Middle Island Road**  
City, State, ZIP+4: **Middle Island, New York 11953**

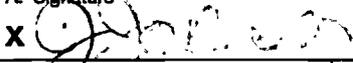
PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> Agent  <input checked="" type="checkbox"/> Addressee  <i>Paul Nowicki</i></p> <p>B. Received by (Printed Name) C. Date of Delivery  <i>Paul Nowicki</i></p>
<p>1. Article Addressed to:</p> <p><b>James Ryan</b>  <b>Sole Assessor</b>  <b>Town of Brookhaven</b>  <b>1 Independence Hill</b>  <b>Farmingville, New York 11738</b></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type  <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number  (Transfer from service label)</p>	<p><b>7010 1670 0000 0999 3057</b></p>
<p>PS Form 3811, July 2013 Domestic Return Receipt</p>	

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<p>1. Article Addressed to:</p> <p><b>Hon. Steven Bellone</b>  <b>Suffolk County Executive</b>  <b>H. Lee Dennison Building</b>  <b>100 Veterans Memorial Highway</b>  <b>P.O. Box 6100</b>  <b>Hauppauge, New York 11788-0099</b></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type  <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number  (Transfer from service label)</p>	<p><b>7010 1670 0000 0999 3071</b></p>
<p>PS Form 3811, July 2013 Domestic Return Receipt</p>	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
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<p>1. Article Addressed to:</p> <p>Hon. Edward R. Romaine Town Supervisor Town of Brookhaven One Independence Hill Farmingville, New York 11738</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
		<p>7010 1670 0000 0999 3088</p>	
PS Form 3811, July 2013		Domestic Return Receipt	

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<p>1. Article Addressed to:</p> <p>Dr. Michael R. Lonergan, Superintendent Longwood Central School District 35 Yaphank-Middle Island Road Middle Island, New York 11953</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
		<p>7010 1670 0000 0999 3095</p>	
PS Form 3811, July 2013		Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span></p> <p>X </p>	
<p>1. Article Addressed to:</p> <p><b>Dr. Howard Koenig, Acting Superintendent South Country Central School District 189 Dunton Ave. East Patchogue, New York 11772</b></p>	<p>B. Received by (Printed Name)</p> <p>J. JOHNSON</p>	<p>C. Date of Delivery</p> <p>10/21/12</p>
<p>2. Article Number (Transfer from service label)</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No</p>	
<p>PS Form 3811, July 2013</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>7010 1670 0000 0999 3064</p>		
<p>Domestic Return Receipt</p>		

10 NATIONAL MEDFORD LLC

and

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

---

SECOND AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT

---

Town of Brookhaven Industrial Development Agency  
(Assignment of Intercounty Associates II LLC/Intercounty Appliance Corp. Facility)

Originally Dated as of January 1, 2005

Amended and Restated as of September 1, 2013

Further Amended and Restated as of December 1, 2018

Town of Brookhaven, Longwood School District

Districts: 0200

Sections: 812.00

Blocks: 03.00

Lots: 005.012 and 005.013

SECOND AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS SECOND AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of December 1, 2018 (this “**Second Amended and Restated PILOT Agreement**”), is by and between 10 NATIONAL MEDFORD 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, having an office at Seven Penn Plaza, Suite 1100, New York, New York 10001 (the “**Company**”) and TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its principal office at 1 Independence Hill, 3rd Floor, Brookhaven, New York 11738 (the “**Issuer**”).

W I T N E S S E T H:

WHEREAS, the Issuer was created by Chapter 358 of the Laws of 1970 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended (collectively, the “**Act**”); and

WHEREAS, the Issuer has previously provided its assistance to Intercounty Associates II LLC (the “**Original Company**”) and Intercounty Appliance Corp., a New York business corporation (the “**Lessee**”), by issuing its (i) \$9,000,000 Taxable Variable Rate Demand Industrial Development Revenue Bonds, Series 2005 (Intercounty Associates II LLC/Intercounty Appliance Corp. Facility) (the “**Series 2005 Bonds**”), which Series 2005 Bonds were used to finance certain costs of an industrial development facility consisting of the acquisition of an approximately 29.77 acre parcel of land located at 10 National Boulevard, Medford, New York, and the construction and equipping thereon of an approximately 250,000 square foot building (collectively, the “**Original Facility**”), and (ii) its additional \$4,500,000 Taxable Variable Rate Demand Industrial Development Revenue Bonds, Series 2013 (Intercounty Associates II LLC/Intercounty Appliance Corp. 2013 Facility) (the “**Series 2013 Bonds**”; and together with the Series 2005 Bonds, the “**Bonds**”), for the acquisition, construction, renovation and equipping of an approximately 75,000 square foot addition to an existing approximately 250,000 square foot building located at the Original Facility all for use by the Lessee as warehouse and office space for the distribution of appliances (collectively, the “**2013 Facility**”; and together with the Original Facility, the “**Facility**”); and

WHEREAS, the Issuer sold the Facility to the Original Company pursuant to an Installment Sale Agreement, dated as of January 1, 2005, as amended by a certain First Amendment to Installment Sale Agreement (collectively, the “**Original Installment Sale Agreement**”), by and between the Issuer and the Original Company, and memoranda of such Original Installment Sale Agreement were to be recorded in the Suffolk County Clerk’s office; and

WHEREAS, in connection therewith, the Issuer, The Bank of New York Mellon, as Trustee, Capital One, National Association, the Original Company and the Lessee entered into a Payment-in-Lieu-of-Tax Agreement, dated as of January 1, 2005, as amended by a

certain Amended and Restated Payment-in-Lieu-of-Tax Agreement, dated as of September 1, 2013 (collectively, the “**Original PILOT Agreement**”), whereby the Company and the Lessee agreed to make certain payments-in-lieu-of real property taxes on the Original Facility (as defined therein); and

WHEREAS, as of the December 13, 2018, the Bonds are deemed paid in full and will be redeemed in accordance with the terms of the Indenture of Trust, dated as of January 1, 2005, as amended and supplemented pursuant to a First Supplemental Indenture of Trust, dated as of September 1, 2013;

WHEREAS, the Company has requested the Issuer’s consent to the assignment by the Original Company of all of its rights, title, interest and obligations under the Original Installment Sale Agreement, the Original PILOT Agreement and other documents in connection therewith, the release of the Original Company from any further liability with respect to the Facility, and the release of the Lessee from certain documents in connection with the Facility, subject to certain requirements of the Issuer, pursuant to a certain Assignment, Assumption and Amendment Agreement, dated December 13, 2018 (the “**Assignment, Assumption and Amendment Agreement**”), by and among the Issuer, the Original Company, the Company and the Lessee;

WHEREAS, the Original Installment Sale Agreement was assigned and amended pursuant to the Assignment, Assumption and Amendment Agreement (the Original Installment Sale Agreement, as so amended shall be hereinafter referred to as the “**Installment Sale Agreement**”);

WHEREAS, the Original PILOT Agreement was assigned pursuant to the Assignment, Assumption and Amendment Agreement, and the Company has requested that the Issuer provide continued abatements of real property taxes to the Company pursuant to this Second Amended and Restated PILOT Agreement;

WHEREAS, pursuant to Section 874(1) of the Act, the Issuer is exempt from the payment of taxes and assessments imposed upon real property owned by it, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof within which the Facility is or may be wholly or partially located) which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Issuer and the Company deem it necessary and proper to enter into an agreement making provision for payments in lieu of taxes and such assessments by the Company to the Town of Brookhaven, any existing incorporated village or any village which may be incorporated after the date hereof within which the Facility is or may be wholly or partially located, Suffolk County, Longwood School District and appropriate special districts (hereinafter the “**Taxing Authorities**”) in which any part of the Facility is or is to be located.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the covenants herein contained, it is mutually agreed as follows:

1. (a) The Company shall make all payments under the Original PILOT Agreement until payment under Section 1(c) hereof become due and payable

(b) Reserved.

(c) Commencing with the 2019/2020 Tax Year, the Company shall pay, as payments in lieu of taxes and assessments with respect to the Facility, the amounts set forth on Exhibit A attached hereto and made a part hereof.

(d) The Company shall pay, or cause to be paid, the amounts set forth in Section 1(c) above, as applicable, after receipt of PILOT bills from the Issuer or the Taxing Authorities, as the case may be. Failure to receive a PILOT bill shall not relieve the Company of its obligations to make all payments provided for hereunder. If, for any reason, the Company does not receive an appropriate PILOT bill, the Company shall have the responsibility and obligation to make all reasonable inquiries to the Issuer or the Taxing Authorities and to have such a bill issued, and thereafter to make payment of the same no later than the due dates provided herein. Payments shall be made directly to the Issuer. Payments made after the due date(s) as set forth in the applicable tax bills shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Authorities and as further provided in the General Municipal Law, including Section 874(5) thereof, which provides for a penalty of five percent (5%) of the amount then due and interest, at the rate of one percent (1%) per month on payments more than one (1) month delinquent.

(e) During the term of this Second Amended and Restated PILOT Agreement, the Company shall continue to pay all special ad valorem levies, special assessments, and service charges levied against the Facility for special improvements or special district improvements.

(f) In the event any structural addition shall be made to the building or buildings included in the Facility subsequent to the "Completion Date" (as such term is defined in the Installment Sale Agreement), or any additional building or improvement shall be constructed on the real property described on Exhibit B hereto (such structural additions, buildings and improvements being referred to hereinafter as "**Additional Facilities**"), the Company agrees to make additional payments in lieu of taxes to the Issuer in amounts equal to the product of the then current ad valorem tax rates which would be levied upon or with respect to the Additional Facilities by the Taxing Authorities as if the Additional Facilities were owned by the Company and not the Issuer times the assessment or assessments established for that tax year by the Town of Brookhaven. All other provisions of this Second Amended and Restated PILOT Agreement shall apply to this obligation for additional payments.

2. In the event that title to the Facility or any part thereof is transferred from the Issuer to the Company at such time in reference to any taxable status date as to make it impossible to place such Facility or part thereof on the tax rolls of the Town of Brookhaven, Longwood School District, any existing incorporated village or any village which may be incorporated after the date hereof within which the Facility is or may be wholly or partially

located, or appropriate special districts, as the case may be, by such taxable status date, the Company hereby agrees to pay at the first time taxes or assessments are due following the taxable status date at which such Facility or part thereof is placed on the tax rolls, an amount equal to the taxes or assessments which would have been levied on such Facility or part thereof had it been on the tax rolls from the time the Company took title until the date of the tax rolls following the taxable status date as of which such Facility or part thereof is placed on the tax rolls. There shall be deducted from such amount any amounts previously made pursuant to this Second Amended and Restated PILOT Agreement by the Issuer or the Company to the respective Taxing Authorities relating to any period of time after the date of transfer of title to the Company. The provisions of this paragraph 2 shall survive the termination or expiration of the Installment Sale Agreement. Any rights the Company may have against its designee are separate and apart from the terms of this paragraph 2 and this paragraph 2 shall survive any transfer from the Issuer to the Company.

3. In the event the Facility or any part thereof is declared to be subject to taxation for taxes or assessments by an amendment to the Act, other legislative change, or by a final judgment of a court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

4. In the event the Company shall enter into a subsequent payment-in-lieu-of-tax agreement or agreements with respect to the Taxes on the Facility directly with any or all Taxing Authorities under whose jurisdiction the Facility is located, the obligations of the Company hereunder, which are inconsistent with such future agreement or agreements, shall be superseded and shall, to such extent, be null and void.

5. As long as this Second Amended and Restated PILOT Agreement is in effect, the Issuer and the Company agree that (i) the Company shall be deemed to be the owner of the Facility and of the Additional Facilities for purposes of instituting, and shall have the right to institute, judicial review of an assessment of the real estate with respect to the Facility and of the Additional Facilities pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time, and (ii) the Issuer shall request the Assessor of the Town of Brookhaven, or any other assessor having jurisdiction to assess the Facility, to take into consideration the value of surrounding properties of like character when assessing the Facility. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Facility and the Additional Facilities is reduced as a result of any such judicial review so that such complaining party would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Authorities, if such complaining party were the owner of the Facility and the Additional Facilities, such complaining party shall not be entitled to receive a refund or refunds of the payments in lieu of taxes paid pursuant to this Second Amended and Restated PILOT Agreement. In no event shall the Issuer be required to remit to the Company or any Taxing Authority any moneys otherwise due as a result of a reduction in the assessment of the Facility (or any part thereof) due to a certiorari review. The Company hereby agrees that it will notify the Issuer if the Company shall have requested a reassessment of the Facility or a reduction in the taxes on the Facility or have instituted any tax certiorari proceedings with respect to the Facility. The Company shall deliver copies of all notices, correspondence, claims, actions and/or proceedings brought by or against the Company in connection with

any reassessment of the Facility, reduction of taxes with respect to the Facility, or any tax certiorari proceedings with respect to the Facility.

6. The Company, in recognition of the benefits provided under the terms of this Second Amended and Restated PILOT Agreement, including, but not limited to, the schedule for Payments-In-Lieu-of-Taxes set forth in Exhibit A hereto, and for as long as the Installment Sale Agreement is in effect, expressly waives any rights it may have for any exemption under Section 485-b of the Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Title 1 of Article 18-A of the General Municipal Law) with respect to the Facility. The Company however, reserves any such rights with respect to all special ad valorem levies, special assessments and service charges levied against the Facility referred to in paragraph 1(e) and the Additional Facilities as referred to in paragraph 1(f) and with respect to the assessment and/or exemption of the Additional Facilities.

7. Reserved.

8. Except as otherwise provided herein, any notice required to be given by or under this Second Amended and Restated PILOT Agreement shall be deemed to have been duly given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, return receipt requested, addressed to the respective parties hereto at their respective addresses specified below or such other addresses as either party may specify in writing to the other:

To the Issuer:

Town of Brookhaven Industrial Development Agency  
1 Independence Hill, 2<sup>nd</sup> Floor  
Farmingville, New York 11738  
Attention: Chief Executive Officer

With a copy to:

Annette Eaderesto, Esq.  
Town of Brookhaven  
1 Independence Hill, 3<sup>rd</sup> Floor  
Farmingville, New York 11738

To the Company:

10 National Medford LLC  
Seven Penn Plaza, Suite 1100  
New York, New York  
Attention: Brian Palumbo, Esq

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the third business day after mailing.

9. Failure by the Issuer in any instance to insist upon the strict performance of any one or more of the obligations of the Company under this Second Amended and Restated PILOT Agreement, or to exercise any election herein contained, shall in no manner be or be deemed to be a waiver by the Issuer of any of the Company's defaults or breaches hereunder or of any of the rights and remedies of the Issuer by reason of such defaults or breaches, or a waiver or relinquishment of any and all of the Company's obligations hereunder. No waiver, amendment, release or modification of this Second Amended and Restated PILOT Agreement shall be established by conduct, custom or course of dealing. Further, no payment by the Company or receipt by the Issuer of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Issuer may accept any checks or payments as made without prejudice to the right to recover the balance or pursue any other remedy in this Second Amended and Restated PILOT Agreement or otherwise provided at law or equity.

10. This Second Amended and Restated PILOT Agreement shall become effective December 13, 2018. All taxes, assessments, special assessments, service charges, special ad valorem levies, or similar tax equivalents due or to become due based upon prior taxable status dates shall be paid by the Company when due. Upon termination of the Installment Sale Agreement and reconveyance of title to the Facility to the Company, this Second Amended and Restated PILOT Agreement shall terminate.

11. Whenever the Company fails to comply with any provision of this Second Amended and Restated PILOT Agreement, the Issuer may, but shall not be obligated to, take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Second Amended and Restated PILOT Agreement. The Issuer agrees to notify the Company in writing of any failure by the Company to comply with any provision of this Second Amended and Restated PILOT Agreement within thirty (30) business days after the Issuer becomes aware of such failure and shall provide the Company with the opportunity to cure such failure within thirty (30) days after receipt by the Company of such notice.

12. This Second Amended and Restated PILOT Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

13. The Company agrees to hold the Issuer harmless from and against any liability arising from any default by the Company in performing its obligations hereunder or any expense incurred under this Second Amended and Restated PILOT Agreement, including any expenses of the Issuer, including without limitation reasonable attorneys' fees.

14. This Second Amended and Restated PILOT Agreement may be modified only by written instrument duly executed by the parties hereto.

15. This Second Amended and Restated PILOT Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, heirs, distributees and assigns.

16. If any provision of this Second Amended and Restated PILOT Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such provision so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Second Amended and Restated PILOT Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have executed this Second Amended and Restated PILOT Agreement as of the date first written above.

**10 NATIONAL MEDFORD LLC, a  
Delaware limited liability company**

By: Feil Properties, LLC, a Delaware limited liability company, its Managing Member

By: \_\_\_\_\_  
Name: Jeffery J. Feil  
Title: President

**TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: Lisa MG Mulligan  
Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have executed this Second Amended and Restated PILOT Agreement as of the date first written above.

**10 NATIONAL MEDFORD LLC, a  
Delaware limited liability company**

By: Feil Properties, LLC, a Delaware limited liability company, its Managing Member

By: \_\_\_\_\_  
Name: Jeffery J. Feil  
Title: President

**TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY**

By:  \_\_\_\_\_  
Name: Lisa MG Mulligan  
Title: Chief Executive Officer

EXHIBIT A

Second Amended and Restated Schedule of Payments-In-Lieu-of-Taxes: The Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof within which the Facility is wholly or partially located), Longwood School District and Appropriate Special Districts.

<b>Tax Year</b>	<b>PILOT Payments</b>
<b>2019/2020</b>	<b>\$ 441,199</b>
<b>2020/2021</b>	<b>\$ 450,023</b>
<b>2021/2022</b>	<b>\$ 459,023</b>
<b>2022/2023</b>	<b>\$ 468,204</b>
<b>2023/2024</b>	<b>\$ 477,568</b>
<b>2024/2025</b>	<b>\$ 590,073</b>

## EXHIBIT B

### Legal Description of Real Property

ALL that certain plot, piece or parcel of land, situate, lying and being at Medford, in the Town of Brookhaven, County of Suffolk and the State of New York, bounded and described as follows:

BEGINNING at a point on the westerly line of Patchogue-Yaphank Road (C.R. 101) said point being the intersection of the westerly line of Patchogue-Yaphank Road (C.R. 101) with the northerly line of Southaven Avenue, as widened;

RUNNING THENCE the following eleven (11) courses:

1. south 84 degrees 29 minutes 41 seconds west, a distance of 731.02 feet along the northerly line of Southaven Avenue to a point;
2. north 06 degrees 02 minutes 16 seconds west, a distance of 1,600.47 feet to a point on the southerly line of National Boulevard;
3. north 83 degrees 57 minutes 44 seconds east, a distance of 423.86 feet along the southerly line of National Boulevard to a point;
4. along an arc bearing to the left, in a general southwesterly direction, whose radius is 30.00 feet a length of 47.12 feet to a point or tangency;
5. south 06 degrees 02 minutes 16 seconds east, a distance of 512.02 feet to a point;
6. north 83 degrees 57 minutes 44 seconds east, a distance of 627.80 feet to a point;
7. south 06 degrees 02 minutes 16 seconds east, 118.98 feet;
8. south 65 degrees 31 minutes 06 seconds east, a distance of 239.02 feet to a point on the westerly side of Patchogue-Yaphank Road (C.R. 101);
9. along the westerly line of Patchogue-Yaphank Road (C.R. 101) south 24 degrees 28 minutes 54 seconds west, a distance of 481.04 feet to a point;
10. Continuing along the westerly line of Patchogue-Yaphank Road (C.R. 101) south 24 degrees 27 minutes 08 seconds west, a distance of 446.96 feet to a point;
11. Continuing along the westerly line of Patchogue-Yaphank Road (C.R. 101) south 39 degrees 09 minutes 10 seconds west, a distance of 35.95 feet to the point or place of BEGINNING.

Said premises being commonly known as 10 National Boulevard, Medford, NY  
DISTRICT 0200 SECTION 812.00 BLOCK 03.00 LOT 005.012 & 005.013