
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 874 of the New York State General Municipal Law will be held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on the 20th day of December, 2019 at 10:00 a.m. local time, at Town of Brookhaven Division of Economic Development, 1 Independence Hill, 2nd Floor, Farmingville, New York 11738, in connection with the amendment and re-adoption by the Agency of the Agency’s Uniform Tax Exemption Policy, a copy of which is available at the Agency’s office, 1 Independence Hill, 2nd Floor, Farmingville, New York 11738, and on the Agency’s web site www.brookhavenida.org.

Dated: December 9, 2019

TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT
AGENCY

By: Lisa MG Mulligan
Chief Executive Officer

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
UNIFORM TAX EXEMPTION POLICY (UTEP)

SECTION 1. PURPOSE AND AUTHORITY. Pursuant to Section 874(4)(a) of Title One of Article 18-A of the New York State General Municipal Law (the “Act”), Town of Brookhaven Industrial Development Agency (the “Agency”) is required to establish a uniform tax-exemption policy applicable to the provision of any financial assistance of more than one hundred thousand dollars to any project. This uniform tax-exemption policy was adopted pursuant to a resolution enacted by the members of the Agency on June 20, 2012, as amended on October 15, 2014, September 20, 2017, and December __, 2019.

SECTION 2. DEFINITIONS. All words and terms used herein and defined in the Act shall have the meanings assigned to them in the Act, unless otherwise defined herein or unless the context or use indicates another meaning or intent. The following words and terms used herein shall have the respective meanings set forth below, unless the context or use indicates another meaning or intent:

(A) “Administrative Fee” shall mean a charge imposed by the Agency to an Applicant or project occupant for the administration of a project.

(B) “Affected Tax Jurisdiction” means, with respect to a particular project, Suffolk County, the Town, any Village or applicable School District, in which such project is located which will fail to receive real property tax payments or other tax payments which would otherwise be due with respect to such project due to a Tax Exemption obtained by reason of the involvement of the Agency in such project.

(C) “Agency Fee” shall mean the normal charges imposed by the Agency on an Applicant or a project occupant to compensate the Agency for the Agency’s participation in a project pursuant to the Agency’s adopted Fee Schedule. The term “Agency Fee” shall include not only the Agency’s normal application fee and the Agency’s normal Administrative Fee, but also may include (1) reimbursement of the Agency’s expenses, (2) rent imposed by the Agency for use of the property of the Agency and (3) other similar charges, penalties and interest imposed by the Agency.

(D) “Applicant” shall mean an applicant for financial assistance.

(E) “Applicant Project” shall mean a project which is undertaken by the Agency for the benefit of an Applicant which either (1) has been or will be financed by the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect thereto or (2) the lessee in a straight lease transaction which the Agency has determined to undertake pursuant to the Lease Policy.

(F) “IDA” shall mean the Town of Brookhaven Industrial Development Agency AKA TOBIDA

(G) “Lease Policy” shall mean the lease policy approved by resolution of the members of the Agency, pursuant to which the Agency set forth the circumstances under which the Agency will consider undertaking a straight-lease transaction.

(H) “Municipality” shall mean the Town and each village located within the Town.

(I) “Non-Applicant Project” means a project which is undertaken by the Agency for the benefit of the Agency and shall not include an Applicant Project.

(J) “PILOT” or “Payment in Lieu of Tax” shall mean any payment made to the Agency or an Affected Tax Jurisdiction in lieu of the real property taxes or other taxes which would have been levied by or on behalf of an Affected Tax Jurisdiction with respect to a project but for Tax Exemption obtained by reason of the involvement of the Agency in such project, but such term shall not include Agency Fees.

(K) “School District” shall mean each school district located within the Town.

(L) “Tax Exemption” shall mean any financial assistance granted to a project which is based upon all or a portion of the taxes which would otherwise be levied and assessed against a project but for the involvement of the Agency in such project.

(M) “Town” shall mean the Town of Brookhaven.

(N) “Village” means any incorporated Village located within the Town.

SECTION 3. GENERAL PROVISIONS.

(A) Policy. The policy of the Agency is to grant Tax Exemptions as hereinafter set forth to (1) any Applicant Project and (2) any Non-Applicant Project approved by the IDA in accordance with the provisions of the Act. In reviewing applications for financial assistance, the Agency shall take into consideration, review and comply with all requirements and provisions of the Act.

(B) Exceptions. The Agency reserves the right to deviate from such policy in special circumstances. In determining whether special circumstances exist to justify such a deviation, the Agency may consider the magnitude of the deviation sought and the factors which might make the project unusual, which factors might include but not be limited to the following factors: (1) The magnitude and/or importance of any permanent private sector job creation and/or retention related to the proposed project in question; (2) whether the Affected Tax Jurisdictions will be reimbursed by the project occupant if such project does not fulfill the purposes for which Tax Exemption was granted; (3) the impact of such project on existing and proposed businesses and/or economic development projects; (4) the amount of private sector investment generated or likely to be generated by such project; (5) the estimated value of the Tax Exemptions requested; (6) the extent to which such project will provide needed services and/or revenues to the Affected

Tax Jurisdictions; (7) the effect of the proposed project upon the environment, the extent to which the project will utilize, to the fullest extent practicable and economically feasible, resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures; and (8) if the project is designated blighted as per the Blight 2 Light code. In addition, the Agency may consider the other factors outlined in Section 874(4)(a) of the Act.

(C) Application. No request for a Tax Exemption relating to an Applicant Project shall be considered by the Agency unless an application and environmental assessment form are filed with the Agency on the forms prescribed by the Agency pursuant to the Act and the policies of the Agency. Such application shall contain the information requested by the Agency, including a description of the proposed project, the proposed financial assistance being sought with respect to the project, the estimated date of completion of the project, whether such financial assistance is consistent with this UTEP and all other information required by the Act and corresponding rules and regulations. The IDA reserves the right to reject any application that the Board, in its sole discretion, determines (1) does not comply with the Town's Zoning Plan, Land Use plans or Economic Development policy, or (2) the project or the requested Tax Exemptions are not in the best interest of the residents and/or tax payers of the Town or does not otherwise comply with the Act. As required under the Act, prior to any project receiving benefits from the IDA, the project applicant must establish that the project would not proceed but for the benefits granted by the IDA. The fact that the Agency has accepted an Application does not mean or imply that the Agency will grant final approval of an Applicant's project or the requested Tax Exemptions.

(D) Notice to Affected Tax Jurisdictions. No request for approval of an Applicant Project by the Agency which involves the issuance of bonds, notes or other evidences of indebtedness with respect thereto or any other application for Tax Exemptions or other financial assistance which may aggregate more than \$100,000 or which involves a proposed deviation from the provisions of this Uniform Tax Exemption Policy, shall be given final approval by the Agency unless and until (1) the Agency has sent written notice of said request to each Affected Tax Jurisdiction and (2) has given each Affected Tax Jurisdiction a reasonable opportunity, both in writing and in person, to be heard by the Agency with respect to the proposed request. With respect to Non-Applicant Projects, the Agency shall comply with the provisions of Section 859-a of the Act, to the extent applicable. In addition, the Agency shall comply with all other notice provisions contained in the Act relative thereto.

SECTION 4. SALES AND USE TAX EXEMPTION.

(A) General. State law provides that purchases of tangible personal property by the Agency or by an agent of the Agency, and purchases of tangible personal property by a contractor for incorporation into or improving, maintaining, servicing or repairing real property of the Agency, are exempt from sales and use taxes imposed pursuant to Article 28 of the Tax Law. The Agency has a policy of abating sales and use taxes applicable (1) only to the initial acquisition, construction and/or equipping of an Applicant Project and (2) to any Non-Applicant Project. The Agency has no requirement for imposing a payment in lieu of tax arising from the exemption of an Applicant Project from sales and/or use taxes applicable to the initial acquisition, construction and/or equipping of such project, except (1) as described in subsection

(D) below or (2) in the circumstance where (a) an Applicant Project is offered sales and use tax exemption on the condition that a certain event (such as the issuance of bonds by the Agency with respect to the project) occur by a certain date and (b) such event does not occur, in which case the Agency may require that the Applicant make payments in lieu of sales and use taxes equal to the amount of tax which otherwise may have been due to the New York State Department of Taxation and Finance.

(B) Period of Examination. Except as set forth in subsection (A) above, the period of time for which a sales and use tax exemption shall be effective (the “Tax Exemption Period”) shall be determined as follows:

- (1) General. The sales and use tax exemption for an Applicant Project shall be for the Tax Exemption Period commencing no earlier than (i) the date of issuance by the Agency of bonds, notes or other evidences of indebtedness with respect to such project, or (ii) the execution and delivery by the Agency of a lease and project agreement or other document evidencing the sales and use tax exemption relating to such project, and ending on the date of completion of the project or specific date agreed upon by Agency and project. The Tax Exemption Period for a Non-Applicant Project shall extend for such period of time as the Agency shall determine.
- (2) Normal Termination. The Tax Exemption Period for an Applicant Project will normally end upon the earlier of (i) completion of the acquisition, construction, renovation and/or equipping of such project, (ii) the specific date set by the Agency or (iii) the date upon which the Applicant has received the benefit of one hundred percent (100%) of the approved sales and use tax exemption regardless of whether the acquisition, construction, renovation and/or equipping of such project has been completed. The Agency and the Applicant shall agree on the estimated date of completion of the project, and the sales and use tax exemption shall cease on the agreed upon date, as stated in the lease and project agreement or other document evidencing the sales and use tax exemption, unless terminated earlier in accordance with the terms of the lease agreement or other document evidencing the exemption.
- (3) Later Termination/Increase in Amount. The Chief Executive Officer is authorized on behalf of the Agency to approve (i) requests from Applicants regarding the extension of the completion date of its project and the extension of the Tax Exemption Period, and (ii) requests from Applicants regarding an increase of sales and use tax exemptions in an amount not to exceed \$100,000, in connection with the purchase or lease of equipment, building materials, services or other personal property, without the need of approval of the board of directors of the Agency.

- (4) Items Exempted. The sales and use tax exemption granted by the Agency with respect to an Applicant Project shall extend only to items acquired and installed during the Tax Exemption Period. The sales and use tax exemption shall only apply to the purchase or lease of such items as more particularly described in the lease and project agreement or other such document evidencing the sales and use tax exemption. Such lease and project agreement or other document shall also explicitly describe the items which are not eligible for sales and use tax exemption.
- (5) Percent of Exemption. Unless otherwise determined by resolution of the Agency, the sales and use tax exemption shall be equal to one hundred percent (100%) of the sales and/or use taxes that would have been levied if the project were not exempt by reason of the Agency's involvement in the project. If an exemption of less than one hundred percent (100%) is determined by the Agency to be applicable to a particular Applicant Project, then the Applicant shall be required to pay a PILOT to the Agency equal to the applicable percentage of sales and/or use tax liability not being abated. The Agency shall remit such PILOT, within thirty (30) days of receipt thereof by the Agency, to the Affected Tax Jurisdictions in accordance with Section 874(3) of the Act.

(C) Lease and Project Agreement. The final act of granting a sales and/or use tax exemption by the Agency shall be confirmed by the execution by an authorized officer of the Agency of a lease and project agreement or other document entered into by the Agency and the Applicant evidencing such exemption.

(D) Required Filings, Reports and Records. The New York State Department of Taxation and Finance requires that proper forms and supporting materials be filed with a vendor to establish a purchaser's entitlement to a sales and use tax exemption. Additionally, Section 874(8) of the Act requires project occupants and agents of the Agency to annually file with the New York State Department of Taxation and Finance a statement of the value of all sales and use tax exemptions claimed under the Act by the project occupant and/or all agents, subcontractors and consultants thereof. The Applicant's obligation to comply with such requirements shall be more fully described in the lease and project agreement or other such document evidencing the exemption.

SECTION 5. MORTGAGE RECORDING TAX EXEMPTION.

(A) General. The Act provides that mortgages granted by and recorded by the Agency or caused to be recorded by the Agency are partially exempt from mortgage recording taxes imposed pursuant to Article 11 of the Tax Law. The Agency has a policy of partially abating mortgage recording taxes in accordance with the Act for the initial financing or any subsequent financing for each project with respect to which the Agency grants a mortgage to secure the indebtedness issued by the Agency. In instances where the initial financing commitment provides for a construction financing of the project to be replaced by a permanent financing of the project immediately upon or shortly after the completion of the project, the

Agency's policy is to abate the mortgage recording tax on a case-by-case basis on both the construction financing and the permanent financing pursuant to the Act.

(B) Non-Agency Financings. In a straight-lease transaction where the Agency holds title to or has a leasehold interest in the project, the determination to grant mortgage tax abatement(s) will be made by the Agency on a case-by-case basis in the sole discretion of the Agency. As described in Section (F) below, the Agency may enter into the mortgage even if it has determined not to grant a mortgage recording tax abatement. The policy of the Agency is to consent to the granting of a mortgage and to join in such mortgage, so long as the following conditions are met:

- (1) The documents relating to such proposed mortgage contain the Agency's standard non-recourse and hold harmless language and such other provisions as the Agency may require, as provided to the lender;
- (2) The granting of the mortgage is permitted under any existing documents relating to the project, and any necessary consents relating thereto have been obtained by the project occupant;
- (3) The payment of the Agency Fee relating to same; and
- (4) The granting of such Mortgage Recording Tax Exemption is in the best interest of the Agency and in furthermore of the Agency's public purposes in accordance with the Act.

(C) Refinancing. It is the policy of the Agency to abate mortgage recording taxes on any debt issued by the Agency for the purpose of refinancing prior bonds, notes or debt issued by the Agency, and/or on any modifications, extensions and renewals thereof, so long as the Agency Fees relating to same have been paid and the Applicant is not in default under any agreements with the Agency. Additionally, in the event of a refinancing of a mortgage in connection with a straight-lease transaction to which the Agency granted mortgage recording tax abatement, it is the policy of the Agency to abate mortgage recording taxes with respect to such refinancing in an amount equal to the outstanding balance secured by the current mortgage. The determination to grant any additional mortgage recording tax abatement on any new indebtedness in connection with such refinancing shall be made by the Agency on a case-by-case basis in the sole discretion of the Agency.

(D) Non-Agency Projects. In the event that the Agency does not hold title to or does not have a leasehold interest in a project, it is the policy of the Agency not to join in a mortgage relating to that project and not to abate any mortgage recording taxes relating to that project.

(E) Exemption Affidavit. The act of granting a mortgage recording tax exemption by the Agency is confirmed by the execution by an authorized officer of the Agency of an exemption affidavit relating thereto.

(F) Mortgage Recording Tax Payments. If the Agency is a party to a mortgage that is not to be granted a mortgage recording tax exemption by the Agency (a “non-exempt mortgage”), then the Applicant and/or project occupant or other person recording same shall pay the same mortgage recording taxes with respect to same as would have been payable had the Agency not been a party to said mortgage (the “normal mortgage tax”). Such mortgage recording taxes are payable to the County Clerk of the County, who shall in turn distribute same in accordance with law. If for any reason a non-exempt mortgage is to be recorded and the Agency is aware that such non-exempt mortgage may for any reason be recorded without the payment of the normal mortgage tax, then the Agency shall prior to executing such non-exempt mortgage collect a payment equal to the normal mortgage tax and remit same within thirty (30) days of receipt by the Agency to the Affected Tax Jurisdictions in accordance with Section 874(3) of the Act.

SECTION 6. REAL ESTATE TRANSFER TAXES.

(A) Real Estate Transfer Tax. Article 31 of the Tax Law provides for the imposition of a tax upon certain real estate transfers. Section 1405(b)(2) of the Tax Law provides that transfers into the Agency are exempt from such tax, and the New York State Department of Taxation and Finance has ruled that transfers of property by the Agency back to the same entity which transferred such property to the Agency are exempt from such tax. The policy of the Agency is not to impose a payment in lieu of tax upon any real estate transfers to or from the Agency.

(B) Required Filings. It shall be the responsibility of the Applicant and/or project occupant to ensure that all documentation necessary relative to the real estate transfer taxes and the real estate transfer gains tax are timely filed with the appropriate officials.

SECTION 7. REAL ESTATE TAX EXEMPTION.

(A) General. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, property owned by or under the jurisdiction or supervision or control of the Agency is exempt from general real estate taxes (but not exempt from special assessments and special ad valorem levies). However, it is the policy of the Agency that, notwithstanding the foregoing, every non-governmental project will be required to enter into a payment in lieu of tax agreement (a “PILOT Agreement”), either separately or as part of the project documents. Such PILOT Agreement shall require payment of PILOT payments in accordance with the provisions set forth below.

(B) PILOT Requirement. Unless the Applicant and/or project occupant and the Agency shall have entered into a PILOT Agreement acceptable to the Agency, the project documents shall provide that the Agency will not file a New York State Department of Taxation and Finance, Division of Equalization and Assessment Form RP-412-a (an “Exemption Form”) with respect to the project, and the project documents shall provide that the Applicant and/or the project occupant shall be required to make PILOT payments in such amounts as would result from taxes being levied on the project by the Affected Tax Jurisdictions if the project were not owned by or under the jurisdiction or supervision or control of the Agency. The project

documents shall provide that, if the Agency and the Applicant and/or project occupant have entered into a PILOT Agreement, the terms of the PILOT Agreement shall control the amount of PILOT payments until the expiration or sooner termination of such PILOT Agreement. Except as otherwise provided by resolution of the Agency, all real estate PILOT payments are to be paid to the Town of Brookhaven Industrial Development Agency for distribution to the Affected Tax Jurisdictions. Upon expiration of the initial period as aforesaid, the assessment of the project shall revert to a normal assessment (i.e., the project will be assessed as if the project were owned by the Applicant and not by the Agency). Also, any addition to the project shall be assessed normally as aforesaid, unless such addition shall be approved by the Agency as a separate project following notice and a public hearing as described in Section 859-a of the Act. Other than fixing the final assessment for the initial period as aforesaid, the policy of the Agency is to not provide the Applicant and/or project occupant with any abatement, other than abatements allowed under the Real Property Tax Law.

(C) Required Filings. As indicated in subsection (B) above, pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, no real estate tax exemption with respect to a particular project shall be effective until an Exemption Form is filed with the assessor of each Affected Tax Jurisdiction. Once an Exemption Form with respect to a particular project is filed with a particular Affected Tax Jurisdiction, the real property tax exemption for such project does not take effect until (1) a tax status date for such Affected Tax Jurisdiction occurs subsequent to such filing, (2) an assessment roll for such Taxing Jurisdiction is finalized subsequent to such tax status date, (3) such assessment roll becomes the basis for the preparation of a tax roll for such Affected Tax Jurisdiction, and (4) the tax year to which such tax roll relates commences.

(D) PILOT Agreement. Unless otherwise determined by resolution of the Agency, all PILOT Agreements shall satisfy the following general conditions:

The IDA's standard PILOT agreement will contain fixed PILOT payments for each tax year throughout the term of the PILOT agreements as determined by the IDA.

(1) Real Property Tax Abatement. TOBIDA provides real property tax abatements in the form of reduction of existing taxes and/or freezing existing taxes and/or abating the increased taxes as the result of the project. The standard real property tax abatement provided by TOBIDA is based on the total increased assessment for a project over a ten (10) year period, however, the Agency in its sole discretion may grant a fifteen (15) year PILOT agreement or grant a five (5) year extension of a ten (10) year PILOT agreement without such fifteen (15) year term be considered a deviation. As required by the Act, unless otherwise agreed to by the affected taxing jurisdictions, all PILOT payments must be disbursed to the Affected Taxing Jurisdictions in proportion to the amount of real property taxes and other taxes that would have been received by such Affected Taxing Jurisdiction had the project not been tax exemption due to the status of the Act. Each project abatement is based on a cost benefit

analysis to determine if the project is eligible for the standard exemption. In cases where a project does not meet Agency guidelines for the standard exemption, a reduced abatement in terms of percent and/or duration may be extended to the applicant, the amount of such reduced abatement to be dependent on the facts and circumstances of each particular case. The guidelines to determine eligibility for the standard exemption are as follows:

- (a) Industrial, manufacturing, research and development, warehousing, retail, rental residential and corporate office facilities are all eligible for the standard exemption. Speculative office projects may be eligible for the standard exemption if they are projected to provide economic benefits in terms of jobs and/or in stimulating the local economy. Electrical power generating facilities, electrical storage facilities, co-generation facilities, and other energy projects are eligible for PILOTs for a term of up to twenty-five (25) years following the completion of the construction, acquisition, and equipping of the project with fixed PILOT payments subject to periodic escalation.
- (b) The extent to which the project will directly create or retain permanent private sector jobs as well as “temporary” jobs during the construction period. In addition, the level of secondary “multiplier” jobs that will be created or retained as a result of the project. Current policy is to rely on an in-depth cost benefit analysis of the project.
- (c) Generally, new jobs created or existing jobs retained by the project should have projected average annual salaries in line with the median per capita income levels on Long Island at the time of application. Projects with low employment may receive reduced benefits. Further, labor intensive industries are viewed favorably. The likelihood that a desirable project will locate in another municipality/region/state, resulting in subsequent real economic losses for retention projects, and the possible failure to realize future economic benefits for attraction projects.
- (d) The total amount of capital investment and/or public benefit at the project will be a factor considered by the Board.
- (e) The extent to which a project will further local planning efforts by upgrading blighted areas, create jobs in areas of high unemployment, assist institutions of higher education, provide the opportunity for advanced high-tech growth or diversify the Town’s economic base.

- (f) The effect of the proposed project on the environment and the extent to which the project will utilize, to the fullest extent practicable and economically feasible, resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures.
- (g) Housing projects may be granted a 13 to 15-year PILOT. The PILOT will generally equal land-only taxes for three to five years. The remaining ten years will mirror a “double 485-b” exemption. Except for true affordable housing projects, housing projects will only be considered in association with one of the following: a Community Development Block Grant area, an Opportunity Zone, a revitalization area, a Transit Oriented Development, a Highly Distressed Area, an established downtown, or if such housing is part of a Town or Village planned development zone, or incentive zoning program.
- (h) For true affordable housing projects, which are defined as utilizing either four percent (4%) Low Income Housing Tax credits AND tax-exempt bonds OR nine percent (9%) Low Income Housing Tax credits, a “10% Shelter Rent PILOT” will be developed. The “10% Shelter Rent PILOT” is a 15-year PILOT set at 10% of revenue minus utilities. In the event, however, the project is financed by tax exempt bonds or 9% Low Income Housing Tax Credits and the project is subject to a recorded Tax Regulatory Agreement which restricts the amount of rent payable by the residents, the PILOT may run concurrent with the term of the bond financing or the term of the Tax Regulatory Agreement or such period as may be required by a state or federal housing agency or authority that is also providing financing or benefits to such project or such lesser period as the Agency shall determine. The revenue and utility information will need to be provided by the applicant project on an annual basis. In lieu of a shelter rent PILOT, the Agency in its sole discretion may utilize a PILOT Agreement with fixed PILOT payments.
- (i) Approval of all housing projects will be at the discretion of the IDA Board of Directors. For housing projects undertaken, the IDA may engage the services of a consultant to assist the Agency to determine appropriate PILOT levels based upon such relevant factors, including, but not limited to, the total project costs, projected rental income, unit size, number and configuration.
- (j) All housing projects will be required to include a minimum of 10% affordable units and 10% workforce units to be maintained as such for the life of the IDA agreements. Each of the “affordable” units

shall rent for an amount at or below 80% of the median income for the Nassau-Suffolk primary metropolitan statistical area as defined by the Federal Department of Housing and Urban Development. Each of the “workforce” units shall rent for an amount at or below 120% of the median income for the Nassau-Suffolk primary metropolitan statistical area as defined by the Federal Department of Housing and Urban Development. The project shall enter into a contract with a local not-for-profit housing advocacy group acceptable to the Agency to administer the affordability of the housing units. This information must be provided to the IDA on an annual basis.

- (2) Reduction for Failure to Achieve Goals: If the Agency’s approval of a particular project is predicated upon achievement by the project of certain minimum goals (such as creating and maintaining certain minimum employment levels), the PILOT Agreement may provide for the benefits provided thereby to the project to be reduced or eliminated if, in the sole judgment of the Agency, the project has failed to fulfill such minimum goals. Except as otherwise provided by resolution of the Agency, all real estate PILOT payments are to be paid to the Town of Brookhaven Industrial Development Agency for distribution to the Affected Tax Jurisdictions. Upon expiration of the initial period as aforesaid, the assessment of the project shall revert to a normal assessment (i.e., the project will be assessed as if the project were owned by the Applicant and not by the Agency). Also, any addition to the project shall be assessed normally as aforesaid, unless such addition shall be approved by the Agency as a separate project following notice and a public hearing as described in Section 859-a of the Act. Other than fixing the final assessment for the initial period as aforesaid, the policy of the Agency is to not provide the Applicant and/or project occupant with any abatement, other than abatements allowed under the Real Property Tax Law.
- (3) Special District Taxes: As indicated above, the Agency is not exempt from special assessments and special ad valorem levies and accordingly, these amounts are not subject to abatement by reason of ownership of or the involvement in the project by the Agency. The PILOT Agreement shall make this clear and shall require that all such amounts be directly paid by the Applicant and/or project occupant. However, Applicants and project occupants should be aware that the courts have ruled that an Agency-sponsored project is also eligible to apply for an exemption from special district taxes pursuant to Section 485-b of the Real Property Tax Law. If an applicant or project occupant desires to obtain an exemption from special district taxes pursuant to said Section 485-b, it is the responsibility of the Applicant and/or project occupant to apply for same at its sole cost and expense.

- (4) Payee: Unless otherwise determined by resolution of the Agency, all PILOT payments payable to an Affected Tax Jurisdiction shall be billed and collected by the Town of Brookhaven Industrial Development Agency. Pursuant to Section 874(3) of the Act, such PILOT payments shall be remitted to each Affected Tax Jurisdiction within thirty (30) days of receipt.
- (5) Enforcement: An Affected Tax Jurisdiction which has not received a PILOT payment due to it under a PILOT Agreement may exercise its remedies under Section 874(6) of the Act. In addition, such Affected Tax Jurisdiction may petition the Agency to exercise whatever remedies that the Agency may have under the project documents to enforce payment; and if such Affected Tax Jurisdiction indemnifies the Agency and agrees to pay the Agency's costs incurred in connection therewith, the Agency may take action to enforce the PILOT Agreement.

(E) Real Property Appraisals. Since the policy of the Agency stated in subsection (C)(1) is to base the value of a project for payment in lieu of tax purposes on a valuation of such project performed by the respective Assessors, normally a separate real property appraisal is not required. However, the Agency may require the submission of a real property appraisal if (1) the Assessor of any particular Affected Tax Jurisdiction requires one, or (2) if the valuation of the project for payment in lieu of tax purposes is based on a value determined by the Applicant or by someone acting on behalf of the Applicant, rather than by an Assessor of an Affected Tax Jurisdiction or by the Agency. In lieu of an appraisal, the Agency may require that an Applicant submit to the Agency and each Assessor a certified enumeration of all project costs. If the Agency requires the submission of a real property appraisal, such appraisal shall be prepared by an independent MAI certified appraiser acceptable to the Agency.

SECTION 8. PROCEDURES FOR DEVIATION.

(A) General. In the case where the Agency may determine to deviate from the provisions of this Uniform Tax Exemption Policy pursuant to the provisions of Section 3(B) hereof, the Agency may deviate from the provisions hereof, provided that:

- (1) The Agency adopts a resolution (a) setting forth, with respect to the proposed deviation, the amount of the proposed Tax Exemption, the amount and nature of the proposed PILOT, the duration of the proposed Tax Exemption and the details of the proposed PILOT and whether or not a Tax Exemption of any kind shall be granted, (b) indicating the reasons for the proposed deviation, and (c) imposing such terms and conditions thereof as the Agency shall deem just and proper; and
- (2) As provided in Section 3(D) hereof, the Agency shall give prior written notice of the proposed deviation from this Uniform Tax Exemption Policy to each Affected Tax Jurisdiction, setting forth therein a general description of the proposed deviation and the reasons therefore. As

required by the Act, the Agency shall give such notice to each Affected Tax Jurisdiction prior to the consideration by the Agency of the final resolution determining to proceed with such proposed deviation from this Uniform Tax Exemption Policy.

(B) Agency-Owned Projects. Where a project (1) constitutes a Non-Applicant Project, (2) is otherwise owned and operated by the Agency or (3) has been acquired by the Agency for its own account after a failure of a project occupant, such project may at the option of the Agency be exempted by the Agency from all taxes, to the extent provided in Section 874(1) and (2) of the Act.

(C) Unusual Projects. Where a project is unusual in nature and requires special considerations related to its successful operations as demonstrated by appropriate evidence presented to the Agency, the Agency may consider the granting of a deviation from the established exemption policy in accordance with the procedures provided in Section 3(B) and Section 8(A) hereof. The Agency may authorize a minimum payment in lieu of tax or such other arrangement as may be appropriate.