**FORM APPLICATION FOR FINANCIAL ASSISTANCE**
**TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY**
**1 Independence Hill, 2nd Floor, Farmingville, New York 11738**

DATE: December 20, 2018

APPLICATION OF: H.O. Penn Machinery Company, Inc.
Name of Owner and/or User of Proposed Project

ADDRESS: 122 Noxon Road
Poughkeepsie, NY 12603

Type of Application:
☐ Tax-Exempt Bond ☐ Taxable Bond
■ Straight Lease ☐ Refunding Bond

Please respond to all items either by filling in blanks, by attachment (by marking space "see attachment number 1", etc.) or by N.A., where not applicable. Application must be filed in two copies. A non-refundable application fee is required at the time of submission of this application to the Agency. The non-refundable application fee is $2,000 for applications under $5 million and $4,000 for applications of $5 million or more.

Transaction Counsel to the Agency may require a retainer which will be applied to fees incurred and actual out-of-pocket disbursements made during the inducement and negotiation processes, and will be reflected on their final statement at closing.

Information provided herein will not be made public by the Agency prior to the passage of an official Inducement Resolution, but may be subject to disclosure under the New York State Freedom of Information Law.

Prior to submitting a completed final application, please arrange to meet with the Agency's staff to review your draft application. Incomplete applications will not be considered. The Board reserves the right to require that the applicant pay for the preparation of a Cost Benefit Analysis, and the right to approve the company completing the analysis.

PLEASE NOTE: It is the policy of the Brookhaven IDA to encourage the use of local labor and the payment of the area standard wage during construction on the project.

# INDEX


**PART I** **OWNER AND USER DATA**

**PART II** **OPERATION AT CURRENT LOCATION**

**PART III** **PROJECT DATA**

**PART IV** **PROJECT COSTS AND FINANCING**

**PART V** **PROJECT BENEFITS**

**PART VI** **EMPLOYMENT DATA**

**PART VII** **REPRESENTATIONS, CERTIFICATIONS AND INDEMNIFICATION**

**PART VIII** **SUBMISSION OF MATERIALS**

| | |
|---|---|
| EXHIBIT A | Proposed PILOT Schedule |
| SCHEDULE A | Agency's Fee Schedule |
| SCHEDULE B | Construction Wage Policy |
| SCHEDULE C | Recapture and Termination Policy |

## Part I: Owner & User Data

1. Owner Data:

A. Owner (Applicant for assistance): H.O. Penn Company, Inc.

Address: 122 Noxon Road
Poughkeepsie, NY 12603

Federal Employer ID #: 13-1158790 Website: www.hopenn.com

NAICS Code: 423810

Owner Officer Certifying Application: John Callahan

Title of Officer: Vice President Power Systems

Phone Number: (631) 758-7500 E-mail: jcallahan@hopenn.com

B. Business Type:

Sole Proprietorship ☐ Partnership ☐ Privately Held ■

Public Corporation ☐ Listed on _____

State of Incorporation/Formation: New York

C. Nature of Business:
(e.g., "manufacturer of _____ for ____ industry"; "distributor of _____"; or "real estate holding company")

Distributor of power generation and other equipment manufactured by Caterpillar Inc.

D. Owner Counsel:

Firm Name: Farrell Fritz, P.C.

Address: 400 RXR Plaza
Uniondale, NY 11556

Individual Attorney: Peter L. Curry, Esq.

Phone Number: (516) 227-0772 E-mail: pcurry@farrellfritz.com

E. Principal Stockholders, Members or Partners, if any, of the Owner (5% or more equity):

| Name | Percent Owned |
|---|---|
| Robert Cleveland | 64.99 |
| Jillian Cleveland | 5.01 |
| Alan and Kathryn Sanzenbacher | 30 |

F. Has the Owner, or any subsidiary or affiliate of the Owner, or any stockholder, partner, member, officer, director or other entity with which any of these individuals is or has been associated with:

i. ever filed for bankruptcy, been adjudicated bankrupt or placed in receivership or otherwise been or presently is the subject of any bankruptcy or similar proceeding? (if yes, please explain)

No

ii. been convicted of a felony, or misdemeanor, or criminal offense (other than a motor vehicle violation)? (if yes, please explain)

No

G. If any of the above persons (see "E", above) or a group of them, owns more than 50% interest in the Owner, list all other organizations which are related to the Owner by virtue of such persons having more than a 50% interest in such organizations.

Robert W. Cleveland & Co., Inc., Singita Group, LLC, Poughkeepsie Branch, LLC NW Branch, LLC, HV Branch, LLC, 17 Bedford Center Road, LLC, DT Rental Center,LLC

H. Is the Owner related to any other organization by reason of more than a 50% ownership? If so, indicate name of related organization and relationship:

See G

I. List parent corporation, sister corporations and subsidiaries:

H.O. Penn Leasing LLC; Penn Rents, LLC; Noxon Insurance, Inc., H. O. Penn Training & Development, LLC, H.O. Penn IC-DISC, Inc.

J. Has the Owner (or any related corporation or person) been involved in or benefited by any prior industrial development financing in the municipality in which this project is located, whether by this agency or another issuer? (Municipality herein means city, town or village, or if the project is not in an incorporated city, town or village, the unincorporated areas of the county in which it is located.) If so, explain in full:

The Applicant received financing from the Agency regarding a project initially undertaken over 30 years ago. The Applicant remains in that facility.

K. List major bank references of the Owner:

_____

_____

2. User Data

***(for co-applicants for assistance or where a landlord/tenant relationship will exist between the owner and the user)***

A. User (together with the Owner, the "Applicant"): In the event that the building is purchased, the Applicant may form a real estate holding company

Address: _____

_____

Federal Employer ID #: _____ Website: _____

NAICS Code: _____

User Officer Certifying Application: _____

Title of Officer: _____

Phone Number: _____ E-mail: _____

B. Business Type:

Sole Proprietorship ☐ Partnership ☐ Privately Held ☐

Public Corporation ☐ Listed on _____

State of Incorporation/Formation: _____

C. Nature of Business:
(e.g., "manufacturer of _____ for ____ industry"; "distributor of _____"; or "real estate holding company")

_____

D. Are the User and the Owner Related Entities? Yes ☐ No ☐

i. If yes, the remainder of the questions in this Part I, Section 2 (with the exception of "F" below) need not be answered if answered for the Owner.

ii. If no, please complete all questions below.

E. User's Counsel:

Firm Name: _____

Address: _____

_____

Individual Attorney: _____

Phone Number: _____ E-mail: _____

F. Principal Stockholders or Partners, if any (5% or more equity):

| Name | Percent Owned |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

G. Has the User, or any subsidiary or affiliate of the User, or any stockholder, partner, officer, director or other entity with which any of these individuals is or has been associated with:

i. ever filed for bankruptcy, been adjudicated bankrupt or placed in receivership or otherwise been or presently is the subject of any bankruptcy or similar proceeding? (if yes, please explain)

_____

_____

ii. been convicted of a felony or criminal offense (other than a motor vehicle violation)? (if yes, please explain)

_____

_____

H. If any of the above persons (see "E", above) or a group of them, owns more than 50% interest in the User, list all other organizations which are related to the User by virtue of such persons having more than a 50% interest in such organizations.

I. Is the User related to any other organization by reason of more than a 50% ownership? If so, indicate name of related organization and relationship:

J. List parent corporation, sister corporations and subsidiaries:

K. Has the User (or any related corporation or person) been involved in or benefited by any prior industrial development financing in the municipality in which this project is located, whether by this agency or another issuer? (Municipality herein means city, town or village, or if the project is not in an incorporated city, town or village, the unincorporated areas of the county in which it is located.) If so, explain in full:

L. List major bank references of the User:

## Part II – Operation at Current Location

***(if the Owner and the User are unrelated entities, answer separately for each)***

1. Current Location Address: 15 Middle Avenue, Holtsville, NY
2. Owned or Leased: Leased
3. Describe your present location (acreage, square footage, number buildings, number of floors, etc.):
   One building; approximately 38,000 square feet; two floors

4. Type of operation (manufacturing, wholesale, distribution, retail, etc.) and products and/or services:

Distribution of power generation and other equipment manufactured by Caterpillar Inc.

5. Are other facilities or related companies of the Applicant located within the State?

Yes ■ No ☐

A. If yes, list the Address: 122 Noxon Road, Poughkeepsie, NY;

6. If yes to above ("5"), will the completion of the project result in the removal of such facility or facilities from one area of the state to another OR in the abandonment of such facility or facilities located within the State? Yes ■ No ☐

A. If no, explain how current facilities will be utilized: The Applicant understands that the owner will renovate the building and attempt to lease same to another user.

B. If yes, please indicate whether the project is reasonably necessary for the Applicant to maintain its competitive position in its industry or remain in the State and explain in full:

The existing leased premises has structural and other issues, and is inefficient for the Power Systems Division of the Applicant located there.

The new premises can be configured for the current and future needs of the Division, including its leadership team, sales, maintenance and other operations.

7. Has the Applicant actively considered sites in another state? Yes ■ No ☐

A. If yes, please list states considered and explain: The Applicant has operations in Connecticut and other areas of New York.

The Power Systems Division operates nationally, and the Applicant has considered all of its regionwide and national options regarding its location.

8. Is the requested financial assistance reasonably necessary to prevent the Applicant from moving out of New York State? Yes ■ No ☐

A. Please explain: The Applicant needs to modernize its operations to meet its expanded role of distributing power equipment throughout the Northeast region and the remainder of the United States. If it cannot accomplish this on Long Island, it must consider expanding its Connecticut operation or another more central location.

9. Number of full-time employees at current location and average salary (indicate hourly or yearly salary):

26 Full-Time. 8 Hourly - Average Salary - $60,288

18 Salary - Average Salary $113,899

## Part III – Project Data

1. Project Type:

   A. What type of transaction are you seeking?: (Check one)

   Straight Lease ■ Taxable Bonds ☐ Tax-Exempt Bonds ☐

   Equipment Lease Only ☐

   B. Type of benefit(s) the Applicant is seeking: (Check all that apply)

   Sales Tax Exemption ■ Mortgage Recording Tax Exemption ■

   PILOT Agreement: ■

2. Location of project:

   A. Street Address: 20 Platinum Court, Medford, New York

   B. Tax Map: District 0200 Section 775 Block 5 Lot(s) 2.001

   C. Municipal Jurisdiction:

   i. Town: Brookhaven
   ii. Village: _____
   iii. School District: Longwood

   D. Acreage: 1.54 Acres

3. Project Components (check all appropriate categories):

A. Construction of a new building ☐ Yes ■ No
   i. Square footage: _____

B. Renovations of an existing building ■ Yes ☐ No
   i. Square footage: 20,000 sq. ft.

C. Demolition of an existing building ☐ Yes ■ No
   i. Square footage: _____

D. Land to be cleared or disturbed ☐ Yes ■ No
   i. Square footage/acreage: _____

E. Construction of addition to an existing building ☐ Yes ■ No
   i. Square footage of addition: _____
   ii. Total square footage upon completion: _____

F. Acquisition of an existing building ■ Yes ☐ No

i. Square footage of existing building: 20,000 square feet

G. Installation of machinery and/or equipment ■ Yes ☐ No

i. List principal items or categories of equipment to be acquired: _____

4. Current Use at Proposed Location:

A. Does the Applicant currently hold fee title to the proposed location?

i. If no, please list the present owner of the site: Silverite Holdings

B. Present use of the proposed location: Warehouse and storage

C. Is the proposed location currently subject to an IDA transaction (whether through this Agency or another?) ☐ Yes ■ No

i. If yes, explain: _____

D. Is there a purchase contract for the site? (if yes, explain): ☐ Yes ■ No

E. Is there an existing or proposed lease for the site? (if yes, explain): ☐ Yes ■ No

5. Proposed Use:

A. Describe the specific operations of the Applicant or other users to be conducted at the project site:

Distribution of power generation and other equipment manufactured by Caterpillar Inc.

B. Proposed product lines and market demands: The Company distributes generators and related equipment to a broad spectrum of owners and renters. The Applicant services not only the Northeast region, but provides emergency generation throughout the mainland and Puerto Rico to address the damage from hurricanes and other natural disasters.

C. If any space is to be leased to third parties, indicate the tenant(s), total square footage of the project to be leased to each tenant, and the proposed use by each tenant:

N/A

D. Need/purpose for project (e.g., why is it necessary, effect on Applicant's business):

The Applicant is currently located in an obsolete and inefficient building. Certain problematic physical issues require that the Applicant move the Power Systems Division to another location. Relocating to the subject premises would allow the Applicant to have the Division remain close to its other Brookhaven operation, utilize outside storage, construct a discrete office area, and otherwise modernize its operations.

E. Will any portion of the project be used for the making of retail sales to customers who personally visit the project location? Yes ☐ No ■

i. If yes, what percentage of the project location will be utilized in connection with the sale of retail goods and/or services to customers who personally visit the project location? _____

6. Project Work:

A. Has construction work on this project begun? If yes, complete the following:

| | | | | |
|---|---|---|---|---|
| i. | Site Clearance: | Yes ☐ | No ■ | % COMPLETE _____ |
| ii. | Foundation: | Yes ☐ | No ■ | % COMPLETE _____ |
| iii. | Footings: | Yes ☐ | No ■ | % COMPLETE _____ |
| iv. | Steel: | Yes ☐ | No ■ | % COMPLETE _____ |
| v. | Masonry: | Yes ☐ | No ☐ | % COMPLETE _____ |
| vi. | Other: | _____ | | |

B. What is the current zoning?: L1 with outside storage permitted

C. Will the project meet zoning requirements at the proposed location?

Yes ■ No ☐

D. If a change of zoning is required, please provide the details/status of the change of zone request: _____

E. Have site plans been submitted to the appropriate planning department? Yes ☐ No ■

7. Project Completion Schedule:

   A. What is the proposed commencement date for the acquisition and the construction/renovation/equipping of the project?

      i. Acquisition: 1/31/19

      ii. Construction/Renovation/Equipping: 1/31/19

   B. Provide an accurate estimate of the time schedule to complete the project and when the first use of the project is expected to occur: 5/1/19

## Part IV – Project Costs and Financing

1. Project Costs:

   A. Give an accurate estimate of cost necessary for the acquisition, construction, renovation, improvement and/or equipping of the project location:

| Description | Amount |
|---|---|
| Land and/or building acquisition | $ $3,000,000 (If Purchase) |
| Building(s) demolition/construction | $ |
| Building renovation | $ 220,000 |
| Site Work | $ |
| Machinery and Equipment | $ 450,000 |
| Legal Fees | $ |
| Architectural/Engineering Fees | $ |
| Financial Charges | $ |
| Other (Specify) | $ $2,200,000 (if Lease) |
| Total | $ $3,670,000(Purchase)/$2,870,000 (Lease) |

Please note, IDA fees are based on the total project costs listed above. At the completion of your project, you are required to provide both a certificate of completion along with a cost affidavit certifying the final project costs. The IDA fees may be adjusted as a result of the certified cost affidavit. Money will not be refunded if the final project cost is less than the amount listed above.

2. Method of Financing:

| | Amount | Term |
|---|---|---|
| A. Tax-exempt bond financing: | $ _____ | _____ years |
| B. Taxable bond financing: | $ _____ | _____ years |
| C. Conventional Mortgage: | $ _____ | _____ years |
| D. SBA (504) or other governmental financing: | $ _____ | _____ years |
| E. Public Sources (include sum of all State and federal grants and tax credits): | $ _____ | |
| F. Other loans: | $ _____ | _____ years |
| G. Owner/User equity contribution: | $ $3,670,000/$2,870,000 | _____ years |
| Total Project Costs | $ $3,670,000/$2,870,000 | |

i. What percentage of the project costs will be financed from public sector sources?

$0

3. Project Financing:

A. Have any of the above costs been paid or incurred (including contracts of sale or purchase orders) as of the date of this application? Yes ☐ No ■

i. If yes, provide detail on a separate sheet.

B. Are costs of working capital, moving expenses, work in progress, or stock in trade included in the proposed uses of bond proceeds? Give details:

N/A

C. Will any of the funds borrowed through the Agency be used to repay or refinance an existing mortgage or outstanding loan? Give details:

N/A

D. Has the Applicant made any arrangements for the marketing or the purchase of the bond or bonds? If so, indicate with whom:

N/A

## Part V – Project Benefits

1. Mortgage Recording Tax Benefit:

   A. Mortgage Amount for exemption (include sum total of construction/permanent/bridge financing):

   $2,800,000

   B. Estimated Mortgage Recording Tax Exemption (product of Mortgage Amount and .75%):

   $21,000

2. Sales and Use Tax Benefit:

   A. Gross amount of costs for goods and services that are subject to State and local Sales and Use Tax (such amount to benefit from the Agency's exemption):

   $560,000

   B. Estimated State and local Sales and Use Tax exemption (product of 8.625% and figure above):

   $48,580

   C. If your project has a landlord/tenant (owner/user) arrangement, please provide a breakdown of the number in "B" above:

      i. Owner: $_____

      ii. User: $45,580

3. Real Property Tax Benefit:

   A. Identify and describe if the project will utilize a real property tax exemption benefit other than the Agency's PILOT benefit: No

   B. Agency PILOT Benefit:

      i. Term of PILOT requested: 12 years

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

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

## Part VI – Employment Data

1. List the Applicant's and each users present employment, and estimates of (i) employment at the proposed project location at the end of year one and year two following project completion and (ii) the number of residents of the Labor Market Area* ("LMA") that would fill the full-time and part-time jobs at the end of year second year following completion:

| | Current Number of Employees | Projected Number of New Employees First Year | Projected Number of New Employees Second Year | Residents of LMA |
|---|---|---|---|---|
| Full-Time | 26 | 0 | 0 | 100% |
| Part-Time** | | | | |

**Note: Projected numbers are for specific years and not cumulative.**

* The Labor Market Area includes the County/City/Town/Village in which the project is located as well Nassau and Suffolk Counties.
** Agency staff converts Part-Time jobs into FTEs for state reporting purposes by dividing the number of Part-Time jobs by two (2).

2. Salary and Fringe Benefits:

| Category of Jobs to be Retained and Created | Average Salary or Range of Salary (indicate hourly or yearly) | Average Fringe Benefits or Range of Fringe Benefits |
|---|---|---|
| Salary Wage Earners | $113,899 | $27,500 |
| Commission Wage Earners | $104,000 | $25,550 |
| Hourly Wage Earners | $60,288 | $24,171 |
| 1099 and Contract Workers | 0 | 0 |

Note: The Agency reserves the right to visit the facility to confirm that job creation numbers are being met.

## Part VII – Representations, Certifications and Indemnification

1. Is the Applicant in any litigation which would have a material adverse effect on the Applicant's financial condition? (if yes, furnish details on a separate sheet)

   Yes ☐ No ■

2. HAS THE APPLICANT OR ANY OF THE MANAGEMENT OF THE APPLICANT, THE ANTICIPATED USERS OR ANY OF THEIR AFFILIATES, OR ANY OTHER CONCERN WITH WHICH SUCH MANAGEMENT HAS BEEN CONNECTED, BEEN CITED FOR A VIOLATION OF FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS WITH RESPECT TO LABOR PRACTICES, HAZARDOUS WASTES, ENVIRONMENTAL POLLUTION OR OTHER OPERATING PRACTICES? (IF YES, FURNISH DETAILS ON A SEPARATE SHEET)

   Yes ☐ No ■

3. Is there a likelihood that the Applicant would proceed with this project without the Agency's assistance? (If no, please explain why; if yes, please explain why the Agency should grant the benefits requested)

   Yes ☐ No ■

   As stated previously, the Applicant has the ability to relocate the power generation operation elsewhere, and it is extremely difficult to operate on Long Island, either as owner or tenant, without receiving assistance on taxes and other operating expenses.

4. If the Applicant is unable to obtain financial assistance from the Agency for the project, what would be the impact on the Applicant and on the municipality?

   The Applicant would need to service its customer base from a location outside of Long Island. The Town of Brookhaven would lose a division of a company that has operated in the Town for more than 40 years, and the salaries and other economic benefits that such a company brings to a locality.

5. The Applicant understands and agrees that the provisions of Section 862(1) of the New York General Municipal Law, as provided below, will not be violated if financial assistance is provided for the proposed project:

   > § 862. Restrictions on funds of the agency. (1) No funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

Initial [signature]

6. The Applicant understands and agrees that in accordance with Section 858-b(2) of the General Municipal Law, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the project will be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Workforce Investment Act of 1998 (29 U.S.C. §2801) in which the project is located (collectively, the "Referral Agencies"). The Applicant also agrees, that it will, except as otherwise provided by collective bargaining contracts or agreements to which they are parties, where practicable, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Initial

7. The Applicant confirms and acknowledges that the owner, occupant, or operator receiving financial assistance for the proposed project is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

Initial

8. The Applicant confirms and acknowledges that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any financial assistance and the reimbursement of an amount equal to all or part of any tax exemption claimed by reason of the Agency's involvement the Project.

Initial

9. The Applicant confirms and hereby acknowledges that as of the date of this Application, the Applicant is in substantial compliance with all provisions of Article 18-A of the New York General Municipal Law, including, but not limited to, the provision of Section 859-a and Section 862(1) of the New York General Municipal Law.

Initial

10. In accordance with Section 862(1) of the New York General Municipal Law the Applicant understands and agrees that projects which result in the removal of an industrial or manufacturing plant of the project occupant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the project occupant within the State is ineligible for financial assistance from the Agency, unless otherwise approved by the Agency as reasonably necessary to preserve the competitive position of the project in its respective industry or to discourage the project occupant from removing such other plant or facility to a location outside the State.

Initial

11. The Applicant represents and warrants that to the Applicant's knowledge neither it nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents is, nor will they become a person or entity with who United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (OFAC) of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List or under any statute, executive order including the September 24, 2001, Executive Order Block Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, or other governmental action and is not and will not assign or otherwise transfer this Agreement to, contract with or otherwise engage in any dealings or transactions or be otherwise associated with such persons or entities.

Initial _____

12. The Applicant confirms and hereby acknowledges it has received the Agency's fee schedule attached hereto as Schedule A and agrees to pay such fees, together with any expenses incurred by the Agency, including those of Transaction Counsel, with respect to the Facility. The Applicant agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the project. The IDA fees are based on the total project costs listed in this application. At the completion of the project, you are required to provide both a certificate of completion along with a cost affidavit certifying the final project costs. The IDA fees may be increased as a result of the certified cost affidavit. Monies will not be refunded if the final costs are below the amount listed in the application.

Initial _____

13. The Applicant confirms and hereby acknowledges it has received the Agency's Construction Wage Policy attached hereto as Schedule B and agrees to comply with the same.

Initial _____

14. The Applicant hereby agrees to comply with Section 875 of the General Municipal Law. The Company further agrees that the financial assistance granted to the project by the Agency is subject to recapture pursuant to Section 875 of the Act and the Agency's Recapture and Termination Policy, attached hereto as Schedule C.

Initial _____

15. The Applicant confirms and hereby acknowledges it has received the Agency's PILOT Policy attached hereto as Schedule D and agrees to comply with the same.

Initial _____

## Part VIII – Submission of Materials

1. Financial statements for the last two fiscal years (unless included in the Applicant's annual report).

2. Applicant's annual reports (or 10-K's if publicly held) for the two most recent fiscal years.

3. Quarterly reports (form 10-Q's) and current reports (form 8-K's) since the most recent annual report, if any.

4. In addition, please attach the financial information described in items A, B, and C of any expected guarantor of the proposed bond issue.

5. Completed Long Environmental Assessment Form.

6. Most recent quarterly filling of NYS Department of Labor Form 45, as well as the most recent fourth quarter filing. Please remove the employee Social Security numbers and note the full-time equivalency for part-time employees.

*(Remainder of Page Intentionally Left Blank)*

## Part IX – Certification

John Callahan (name of representative of company submitting application) deposes and says that he or she is the Vice President (title) of H.O. Penn Machinery Company, Inc., the corporation (company name) named in the attached application; that he or she has read the foregoing application and knows the contents thereof; and that the same is true to his or her knowledge.

Deponent further says that s/he is duly authorized to make this certification on behalf of the entity named in the attached Application (the "Applicant") and to bind the Applicant. The grounds of deponent's belief relative to all matters in said Application which are not stated upon his/her personal knowledge are investigations which deponent has caused to be made concerning the subject matter this Application, as well as in formation acquired by deponent in the course of his/her duties in connection with said Applicant and from the books and papers of the Applicant.

As representative of the Applicant, deponent acknowledges and agrees that Applicant shall be and is responsible for all costs incurred by the Town of Brookhaven Industrial Development Agency (hereinafter referred to as the "Agency") in connection with this Application, the attendant negotiations and all matters relating to the provision of financial assistance to which this Application relates, whether or not ever carried to successful conclusion. If, for any reason whatsoever, the Applicant fails to conclude or consummate necessary negotiations or fails to act within a reasonable or specified period of time to take reasonable, proper, or requested action or withdraws, abandons, cancels or neglects the application or if the Applicant is unable to find buyers willing to purchase the total bond issue required, then upon presentation of invoice, Applicant shall pay to the Agency, its agents or assigns, all actual costs incurred with respect to the application, up to that date and time, including fees to bond or transaction counsel for the Agency and fees of general counsel for the Agency. Upon successful conclusion and sale of the transaction contemplated herein, the Applicant shall pay to the Agency an administrative fee set by the Agency in accordance with its fee schedule in effect on the date of the foregoing application, and all other appropriate fees, which amounts are payable at closing.

Representative of Applicant

Sworn to me before this 20th
Day of December, 20 18
Valerie Burke
(seal)

Valerie Burke
Notary Public, State of New York
Commission # 01BU6066486
Qualified in Suffolk County
My Commission Expires 11/13/21

# EXHIBIT A

## Proposed PILOT Schedule

Upon acceptance of the Application and completion of the Cost Benefit Analysis, the Agency will attach the proposed PILOT Schedule, together with the estimates of net exemptions based on estimated tax rates and assessment values to this Exhibit.

## SCHEDULE A

## Town of Brookhaven Industrial Development Schedule of Fees

| | |
|---|---|
| Application - | $2,000 for projects with total costs under $5 million<br>$4,000 for projects with total costs $5 million and over |
| Closing/Expansion Sale/Transfer - | ¾ of one percent up to $10 million total project cost and an additional 1/8 of a percent on any project costs in excess of $10 million. Projects will incur a minimum charge of $7,500 plus all publication and legal fees. |
| Annual Administrative - | $1,000 administrative fee payable with PILOT. |
| Termination – | Between $750 and $2,000 |
| Refinance – | 1/10$^{th}$ of one percent of transaction price (project cost) or $2,500, whichever is greater. |
| Late PILOT Payment – | 5% penalty, 1% interest monthly, plus $1,000 administrative fee. |
| Processing Fee - | $250 per hour with a minimum fee of $250 |

Notes: All fees are subject to adjustment by IDA Board members and/or staff on a case-by-case basis.

Failure to abide by the terms and conditions of the PILOT and lease agreement including, but not limited to, rental of space will result in a reduction in abatement with the potential for termination.

Updated: June 15, 2016

## SCHEDULE B

## CONSTRUCTION WAGE POLICY

### EFFECTIVE January 1, 2005

The purpose of the Brookhaven IDA is to provide benefits that reduce costs and financial barriers to the creation and to the expansion of business and enhance the number of jobs in the Town.

The Agency has consistently sought to ensure that skilled and fair paying construction jobs be encouraged in projects funded by the issuance of IDA tax exempt bonds in large projects.

The following shall be the policy of the Town of Brookhaven IDA for application for financial assistance in the form of tax-exempt financing for projects with anticipated construction costs in excess of $5,000,000.00 per site received after January 1, 2005. Non-profit corporations and affordable housing projects are exempt from the construction wage policy.

Any applicant required to adhere to this policy shall agree to:

(1) Employ 90% of the workers for the project from within Nassau or Suffolk Counties. In the event that this condition cannot be met, the applicant shall submit to the Agency an explanation as to the reasons for its failure to comply and;

(2) Be governed by the requirements of Section 220d of Article 8 of the Labor Law of the State of New York; and when requested by the Agency, provide to the Agency a plan for an apprenticeship program;

OR

(3) Provide to the Agency a project labor agreement or alternative proposal to pay fair wages to workers at the construction site.

Furthermore, this policy may be waived, in the sole and final discretion of the Agency, in the event that the applicant demonstrates to the Agency special circumstances or economic hardship to justify a waiver to be in the best interests of the Town of Brookhaven.

Adopted: May 23, 2005

## SCHEDULE C

## RECAPTURE AND TERMINATION POLICY

## EFFECTIVE JUNE 8, 2016

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

### I. Termination or Suspension of Financial Assistance

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

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

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

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

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

(ii) sales tax exemption savings realized by or for the benefit of the Applicant, including and savings realized by any agent of the Applicant pursuant to the Project Agreements in connection with the Facility; and

(iii) real property tax abatements granted under the Project Agreements.

## II. Recapture of Financial Assistance

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

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

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

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

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

## III. Modification of Payment In Lieu of Tax Agreement

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

## SCHEDULE D

Agency Payment in Lieu of Taxes (PILOT) Policy

An annual fee of $1,000 will be due to the Agency in addition to the PILOT payment to cover ongoing costs incurred by the Agency on behalf of the project.

1. The Town of Brookhaven Industrial Development Agency (IDA) may grant, or be utilized to obtain a partial or full real property tax abatement for a determined period which can be as long as ten years. To be eligible for this abatement there would be a requirement of new construction, or renovation, and a transfer of title of the real property to the Town of Brookhaven IDA.

2. The Chief Executive Officer (CEO) or their designee shall consult with the Town Assessor to ascertain the amounts due pursuant to each PILOT Agreement. Thereafter, the PILOT payment for each project shall be billed to the current lessees. The lessees can pay the PILOT payment in full by January 31st of each year, or in two equal payments due January 31st and May 31st of each year of the PILOT Agreement. The CEO or their designee shall send all PILOT invoices to the lessees on a timely basis.

3. The Town of Brookhaven IDA shall establish a separate, interest bearing bank account for receipt and deposit of all PILOT payments. The CEO or their designee shall be responsible for depositing and maintaining said funds with input from the Chief Financial Officer (CFO).

4. The CEO or their designee shall remit PILOT payments and penalties if any, to the respective taxing authorities in the proportionate amounts due to said authorities. These remittances shall be made within thirty (30) days of receipt of the payments to the Agency.

5. Payments in lieu of taxes which are delinquent under the agreement shall be subject to a late payment penalty of five percent (5%) of the amount due. For each month, or part thereof, that the payment in lieu of taxes is delinquent beyond the first month, interest shall on the total amount due plus a late payment penalty in the amount of one percent (1%) per month until the payment is made.

6. If a PILOT payment is not received by **January 31st of any year or May 31st** of the second half of the year the lessee shall be in default pursuant to the PILOT Agreement. The Agency may give the lessee notice of said default. If the payment is not received within thirty (30) days of when due, the CEO shall notify the Board, and thereafter take action as directed by the Board.

7. The CEO shall maintain records of the PILOT accounts at the Agency office.

8. Nothing herein shall be interpreted to require the Agency to collect or disburse PILOT payments for any projects which are not Agency projects.

9. Should the Applicant fail to reach employment levels as outlined in their application to the Agency, the Board reserves the right to reduce or suspend the PILOT Agreement, declare a default under the Lease or the Installment Sale Agreement, and/or convey the title back to the Applicant.

10. This policy has been adopted by the IDA Board upon recommendation of the Governance Committee and may only be amended in the same manner.