

Date: February 10, 2021

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held electronically via conference call, on the 10th day of February, 2021, the following members of the Agency were:

Present: Frederick C. Braun III, Chairman
Felix J. Grucci, Jr., Vice Chair
Martin Callahan, Treasurer
Ann-Marie Scheidt, Secretary
Gary Pollakusky, Asst. Secretary
Frank C. Trotta, Asst. Treasurer

Recused: Ann-Marie Scheidt, Secretary

Excused:

Also Present: Lisa M. G. Mulligan, Chief Executive Officer
Lori LaPonte, Chief Financial Officer
James M. Tullo, Deputy Director
Jocelyn Linse, Executive Assistant
Terri Alkon, Administrative Assistant
Amy Illardo, Administrative Assistant
Annette Eaderesto, Esq., Counsel to the Agency
William F. Weir, Esq., Transaction Counsel
Howard R. Gross, Esq., Transaction Counsel

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to amending the Authorizing Resolution for an industrial development facility more particularly described below (Port Jefferson Crossing, LLC 2020 Facility) and approving the execution and delivery of related documents.

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

Voting Aye

Voting Nay

Braun
Grucci
Callahan
Pollakusky
Trotta

AMENDED AUTHORIZING RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY AND APPROVING THE APPOINTMENT OF PORT JEFFERSON CROSSING, LLC, A NEW YORK LIMITED LIABILITY COMPANY, ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF PORT JEFFERSON CROSSING, LLC AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING AS AGENT(S) OF THE AGENCY FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING AND EQUIPPING AN INDUSTRIAL DEVELOPMENT FACILITY AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS AND MAKING CERTAIN FINDINGS AND DETERMINATIONS

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

WHEREAS, by Inducement/Authorizing Resolution, dated September 16, 2020, as amended on December 9, 2020 (collectively, the “**Original Authorizing Resolution**”), the Agency authorized Port Jefferson Crossing, LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals and/or equity investors of Port Jefferson Crossing, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with the acquisition of an approximately 0.68 acre parcel of land located at 1609-1615 Main Street, Village of Port Jefferson, New York 11777 (SCTM# 0206-21.00-06.00-007.000, 009.002, 009.003 & 015.000) (the “**Land**”), the demolition of two (2) existing vacant buildings totaling approximately 5,158 square feet located thereon, the construction of a three-story, approximately 70,000 square foot building thereon (excluding the approximately 3,100 square foot portion located on the ground floor of the building to be used for commercial and/or retail space (the “**Excluded Premises**”)) (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property, including, but not limited to appliances, elevators and HVAC (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be leased by the Company to the Agency and subleased by the Agency back to the Company and will be used by the Company as a mixed-use affordable housing apartment complex containing approximately thirty-seven (37) one-bedroom units and eight (8) two-bedroom units, a below grade forty-nine (49) space parking garage for residents, a gym, community room, management office, residential lobby and laundry facilities (the “**Project**”); and

WHEREAS, the Agency will sublease and lease the Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of February 1, 2021, or such other date as

may be agreed upon by the Agency and counsel to the Agency (the “**Lease Agreement**”), by and between the Agency and the Company; and

WHEREAS, as security for a loan or loans, the Agency and the Company will execute and deliver to the County of Suffolk, New York (the “**County**”), a mortgage or mortgages, and such other loan documents satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably required by the County, to be dated a date to be determined, in connection with the financing, any refinancing or permanent financing of the costs of the acquisition, construction and equipping of the Facility (collectively, the “**County Loan Documents**”); and

WHEREAS, in connection with the financing of the Project pursuant to the County Loan Documents, the County has requested that any amendments to the Transaction Documents (as such term is defined in the Lease Agreement), be subject to the consent of the County, provided such consent will not be unreasonably withheld, conditioned or delayed (the “**County Consent Provision**”); and

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

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

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the financing or refinancing of the Facility and the leasing and subleasing of the Facility.

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

Section 1. In consequence of the foregoing, the Agency hereby approves the inclusion of the County Consent Provision in the Transaction Documents.

Section 2. The Agency hereby amends the Original Authorizing Resolution, as amended by this Amended Authorizing Resolution to consent to the inclusion of the County Consent Provision in the Transaction Documents.

Section 3. The Agency hereby ratifies and confirms all terms contemplated by the Original Authorizing Resolution, as amended by this Amended Authorizing Resolution, including the Agency Documents.

Section 4. This resolution shall take effect immediately.

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

I, the undersigned Chief Executive Officer of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), including the resolutions contained therein, held on the 10th day of February, 2021, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY that, because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo’s Executive Order 220.1 issued on March 12, 2020, suspending the Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, the Agency’s Board Meeting on February 10, 2021 (the “Board Meeting”), was held electronically via webinar instead of a public meeting open for the public to attend in person. Members of the public were advised, via the Agency’s website, to access the webinar, and were further advised that the Minutes of the Board Meeting would be transcribed and posted on the Agency’s website, and that all members of said Agency had due notice of said meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 10th day of February, 2021.

By: 
Chief/Executive Officer

Date: December 9, 2020

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held electronically via Zoom webinar, on the 9th day of December, 2020, the following members of the Agency were:

Present: Frederick C. Braun III, Chairman
Felix J. Grucci, Jr., Vice Chair
Martin Callahan, Treasurer
Scott Middleton, Asst. Treasurer
Ann-Marie Scheidt, Secretary
Gary Pollakusky, Asst. Secretary

Recused: Ann-Marie Scheidt, Secretary

Excused: Frank C. Trotta, Member

Also Present: Lisa MG Mulligan, Chief Executive Officer
Lori LaPonte, Chief Financial Officer
James M. Tullo, Deputy Director
Jocelyn Linse, Executive Assistant
Terri Alkon, Administrative Assistant
Amy Illardo, Administrative Assistant
Annette Eaderesto, Esq., Counsel to the Agency
William F. Weir, Esq., Transaction Counsel
Howard R. Gross, Esq., Transaction Counsel

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to amending the Authorizing Resolution for an industrial development facility more particularly described below (Port Jefferson Crossing, LLC 2020 Facility) and approving the execution and delivery of related documents.

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

Voting Aye

Braun
Grucci
Callahan
Middleton
Pollakusky

Voting Nay

AMENDED AUTHORIZING RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY AND APPROVING THE APPOINTMENT OF PORT JEFFERSON CROSSING, LLC, A NEW YORK LIMITED LIABILITY COMPANY, ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF PORT JEFFERSON CROSSING, LLC AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING AS AGENT(S) OF THE AGENCY FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING AND EQUIPPING AN INDUSTRIAL DEVELOPMENT FACILITY AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS AND MAKING CERTAIN FINDINGS AND DETERMINATIONS

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

WHEREAS, by Inducement/Authorizing Resolution, dated September 16, 2020 (the “**Original Authorizing Resolution**”), the Agency authorized Port Jefferson Crossing, LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals and/or equity investors of Port Jefferson Crossing, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with the acquisition of an approximately 0.68 acre parcel of land located at 1609-1615 Main Street, Village of Port Jefferson, New York 11777 (SCTM# 0206-21.00-06.00-007.000, 009.002, 009.003 & 015.000) (the “**Land**”), the demolition of two (2) existing vacant buildings totaling approximately 5,158 square feet located thereon, the construction of a three-story, approximately 70,000 square foot building thereon (excluding the approximately 3,100 square foot portion located on the ground floor of the building to be used for commercial and/or retail space (the “**Excluded Premises**”)) (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property, including, but not limited to appliances, elevators and HVAC (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be leased by the Company to the Agency and subleased by the Agency back to the Company and will used by the Company as a mixed-use affordable housing apartment complex containing approximately thirty-seven (37) one-bedroom units and eight (8) two-bedroom units, a below grade forty-nine (49) space parking garage for residents, a gym, community room, management office, residential lobby and laundry facilities (the “**Project**”); and

WHEREAS, subsequent to the Original Authorizing Resolution, the Company notified the Agency of its intent to amend its application for assistance, dated May 15, 2020 (the “**Application**”), to request an increase in exemptions from mortgage recording taxes for

one or more mortgages to cover the costs of the demolition of the existing structure located on the Land, and the acquisition, construction and equipping the Facility; and

WHEREAS, a supplemental public hearing (the “**Supplemental Hearing**”) was held on December 8, 2020, and notice of the Supplemental Hearing was given and such notice, together with the minutes of the Supplemental Hearing are in substantially in the form annexed hereto as Exhibits A and B respectively; and

WHEREAS, the Agency contemplates that it will provide increased financial assistance to the Company in the form of exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$20,155,651 but not to exceed \$22,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$151,168 but not to exceed \$165,000, in connection with the financing of the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility; and

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

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

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the financing or refinancing of the Facility and the leasing and subleasing of the Facility.

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

Section 1. In consequence of the foregoing, the Agency hereby authorizes and approves the following increased economic benefits to be granted to the Company in connection with the demolition of the existing structure located on the Land, and the acquisition, construction and equipping of the Facility in the form of exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$20,155,651 but not to exceed \$22,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$151,168 but not to exceed \$165,000, in connection with the financing of the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility.

Section 2. Any expenses incurred by the Agency with respect to the Supplemental Hearing regarding the increased economic benefits to be granted to the Company in connection with the demolition of the existing structure located on the Land, and the acquisition, construction and equipping of the Facility in the form of exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$20,155,651 but not to exceed \$22,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$151,168 but not to exceed \$165,000, shall be paid by the Company. The Company shall agree 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 increased economic benefits granted to the Company.

Section 3. The Agency hereby amends the Original Authorizing Resolution, as amended by this Amended Authorizing Resolution to consent to the increased economic benefits to be granted to the Company in connection with the demolition of the existing structure located on the Land, and the acquisition, construction and equipping of the Facility in the form of exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$20,155,651 but not to exceed \$22,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$151,168 but not to exceed \$165,000, in connection with the financing of the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility.

Section 4. The Agency hereby ratifies and confirms all terms contemplated by the Original Authorizing Resolution, as amended by this Amended Authorizing Resolution, including the Agency Documents.

Section 5. This resolution shall take effect immediately.

EXHIBIT A

NOTICE OF SUPPLEMENTAL PUBLIC HEARING

NOTICE IS HEREBY GIVEN that due to the Novel Coronavirus (COVID-19) Emergency State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as amended to date, permitting local governments to hold public hearings by telephone and video conference and/or similar device, the Supplemental Public Hearing scheduled for December 8, 2020, at 10:00 a.m., local time, being held by the Town of Brookhaven Industrial Development Agency (the "**Agency**"), in accordance with the provisions of Article 18-A of the New York General Municipal Law will be held electronically via conference call instead of a public hearing open for the public to attend. Members of the public may listen to the Public Hearing, and comment on the Project (defined below) and the benefits to be granted by the Agency to the Company (defined below) during the Public Hearing, by calling (712) 770-5505 and entering access code 884-124. Comments may also be submitted to the Agency in writing or electronically. Minutes of the Public Hearing will be transcribed and posted on the Agency's website, all in connection with the following matters:

Port Jefferson Crossing, LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals and/or equity investors of Port Jefferson Crossing, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "**Company**"), has applied to the Agency for assistance in connection with the acquisition of an approximately 0.68 acre parcel of land located at 1609-1615 Main Street, Village of Port Jefferson, New York 11777 (SCTM# 0206-21.00-06.00-007.000, 009.002, 009.003 & 015.000) (the "**Land**"), the demolition of two (2) existing vacant buildings totaling approximately 5,158 square feet located thereon, the construction of a three-story, approximately 70,000 square foot building thereon (excluding the approximately 3,100 square foot portion located on the ground floor of the building to be used for commercial and/or retail space (the "**Excluded Premises**")) (the "**Improvements**"), and the acquisition and installation therein of certain equipment and personal property, including, but not limited to appliances, elevators and HVAC (the "**Equipment**"); and together with the Land and the Improvements, the "**Facility**"), which Facility will be leased by the Company to the Agency and subleased by the Agency back to the Company and will be used by the Company as a mixed-use affordable housing apartment complex containing approximately thirty-seven (37) one-bedroom units and eight (8) two-bedroom units, a below grade forty-nine (49) space parking garage for residents, a gym, community room, management office, residential lobby and laundry facilities (the "**Project**"). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment from the Company and the Agency will sublease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility, exemptions from sales and use taxes in connection with the demolition, construction and equipping of the Facility and exemption of

real property taxes consistent with the uniform tax exemption policies (“UTE^P”) of the Agency.

The Agency previously held a public hearing on September 15, 2020.

A representative of the Agency will, at the above-stated time and place, hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the Facility. Prior to the hearing, all persons will have the opportunity to review on the Agency’s website (<https://brookhavenida.org/>), the application for financial assistance filed by the Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Dated: November 28, 2020

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT B

MINUTES OF SUPPLEMENTAL PUBLIC HEARING HELD ON
December 8, 2020 AT 10:00 A. M.

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(PORT JEFFERSON CROSSING, LLC 2020 FACILITY)

1. Lisa MG Mulligan, Chief Executive Officer of the Town of Brookhaven Industrial Development Agency (the “**Agency**”), called the hearing to order.
2. The Chief Executive Officer then appointed herself, to record the minutes of the hearing.
3. The Chief Executive Officer then described the proposed location and nature of the Facility to be financed as follows:

Port Jefferson Crossing, LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals and/or equity investors of Port Jefferson Crossing, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with the acquisition of an approximately 0.68 acre parcel of land located at 1609-1615 Main Street, Village of Port Jefferson, New York 11777 (SCTM# 0206-21.00-06.00-007.000, 009.002, 009.003 & 015.000) (the “**Land**”), the demolition of two (2) existing vacant buildings totaling approximately 5,158 square feet located thereon, the construction of a three-story, approximately 70,000 square foot building thereon (excluding the approximately 3,100 square foot portion located on the ground floor of the building to be used for commercial and/or retail space (the “**Excluded Premises**”)) (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property, including, but not limited to appliances, elevators and HVAC (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be leased by the Company to the Agency and subleased by the Agency back to the Company and will used by the Company as a mixed-use affordable housing apartment complex containing approximately thirty-seven (37) one-bedroom units and eight (8) two-bedroom units, a below grade forty-nine (49) space parking garage for residents, a gym, community room, management office, residential lobby and laundry facilities (the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment from the Company and the Agency will sublease the Facility to the Company. The Agency

contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility, exemptions from sales and use taxes in connection with the demolition, construction and equipping of the Facility and exemption of real property taxes consistent with the uniform tax exemption policies (“UTEF”) of the Agency.

The Agency previously held a public hearing on September 15, 2020.

4. The Chief Executive Officer then opened up the hearing for comments from the floor for or against the proposed financial assistance and the location and nature of the Facility. The following is a listing of the persons heard and a summary of their views:

Letter of Support from Port Jefferson Village

5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at 10:30 a.m.


Chief Executive Officer



INCORPORATED VILLAGE OF PORT JEFFERSON

Margot Garant
Mayor

Robert J. Juliano
Administrator/Clerk

November 29, 2018

Ms. RuthAnne Visnauskas, Commissioner
New York State Homes and Community Renewal
Hampton Plaza, 6th Floor
38-40 State Street
Albany, NY 23307

Re: Port Jefferson Crossing in Port Jefferson

Dear Commissioner Visnauskas:

I am writing to express my strong support of the application from Community Development Corporation of Long Island and Conifer Realty, LLC, for the development of 45 new multifamily affordable rental homes in the Village of Port Jefferson.

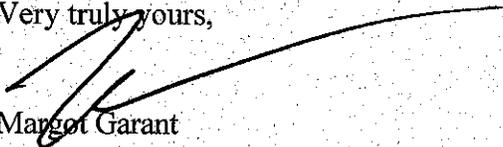
It is well known that housing on Long Island is very expensive to rent or buy, and housing costs have been continually increasing at a rate which is higher than the growth of household income. Census statistics indicate that 57% of Long Island households are paying more than 30% of their income on housing costs (defined as rent burdened), and 32% are paying more than 50% of their income for housing (severely rent burdened). Further, the availability of affordable rentals is very limited, particularly in transit-oriented, walkable, downtown communities. The majority of new construction in these areas, such as Port Jefferson, have been predominately market rate rental units, making it extremely difficult for a majority of the population to remain in the area.

CDCLI and Conifer Realty have a longstanding, successful partnership that entails working closely with residents and community leaders to develop and expand housing opportunities for residents. Together, they have developed over 745 new rental units on Long Island, with an additional 278 in the pipeline. Conifer is a nationally ranked, full-service real estate company that develops, constructs, owns and manages over 15,000 high quality affordable apartments.

The proposed Port Jefferson Crossing apartments are sorely needed, and the CDCLI – Conifer Realty team has the track record to develop the project, and successfully manage the apartments as quality affordable housing for decades to come. The Village believes Conifer is the right partner, at the right time for our revitalization project in Upper Port and we look forward to successful partnership in completing this project in a very timely manner.

Please give full consideration to the application, and approve funding for Port Jefferson Crossing.

Very truly yours,



Margot Garant
Mayor

Date: September 16, 2020

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held electronically via webinar on the 16th day of September, 2020, the following members of the Agency were:

Present: Frederick C. Braun III, Chairman
Felix J. Grucci, Jr., Vice Chair
Martin Callahan, Treasurer
Scott Middleton, Asst. Treasurer
Ann-Marie Scheidt, Secretary
Gary Pollakusky, Asst. Secretary
Frank C. Trotta, Sr., Member

Recused: Ann-Marie Scheidt, Secretary

Excused:

Also Present: Lisa M.G. Mulligan, Chief Executive Officer
Lori LaPonte, Chief Financial Officer
James M. Tullo, Deputy Director
Jocelyn Linse, Executive Assistant
Terri Alkon, Administrative Assistant
Amy Illardo, Administrative Assistant
Annette Eaderesto, Esq., Counsel to the Agency
William F. Weir, Esq., Transaction Counsel
Howard R. Gross, Esq., Transaction Counsel

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of a leasehold interest in a certain industrial development facility more particularly described below (Port Jefferson Crossing, LLC 2020 Facility) and the leasing of the facility to Port Jefferson Crossing, LLC.

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

Voting Aye

Voting Nay

Braun
Grucci
Callahan
Middleton
Pollakusky
Trotta

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY APPROVING
THE ACQUISITION OF A CERTAIN INDUSTRIAL
DEVELOPMENT FACILITY, AND MAKING CERTAIN
FINDINGS AND DETERMINATIONS WITH RESPECT TO
THE FACILITY AND APPROVING THE FORM,
SUBSTANCE AND EXECUTION OF RELATED
DOCUMENTS

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

WHEREAS, Port Jefferson Crossing, LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals and/or equity investors of Port Jefferson Crossing, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with the acquisition of an approximately 0.68 acre parcel of land located at 1609-1615 Main Street, Village of Port Jefferson, New York 11777 (SCTM# 0206-21.00-06.00-007.000, 009.002, 009.003 & 015.000) (the “**Land**”), the demolition of two (2) existing vacant buildings totaling approximately 5,158 square feet located thereon, the construction of a three-story, approximately 70,000 square foot building thereon (excluding the approximately 3,100 square foot portion located on the ground floor of the building to be used for commercial and/or retail space (the “**Excluded Premises**”)) (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property, including, but not limited to appliances, elevators and HVAC (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be leased by the Company to the Agency and subleased by the Agency back to the Company and will be used by the Company as a mixed-use affordable housing apartment complex containing approximately thirty-seven (37) one-bedroom units and eight (8) two-bedroom units, a below grade forty-nine (49) space parking garage for residents, a gym, community room, management office, residential lobby and laundry facilities (the “**Project**”); and

WHEREAS, the Agency will acquire a leasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of August 1, 2020 or such other date as the Chairman or Chief Executive Officer of the Agency and counsel to the Agency shall agree (the “**Company Lease**”), by and between the Company and the Agency; and

WHEREAS, the Agency will acquire title to the Equipment pursuant to a certain Bill of Sale, dated the Closing Date (as defined in the hereinafter defined Lease Agreement) (the “**Bill of Sale**”), from the Company to the Agency; and

WHEREAS, the Agency will sublease and lease the Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of August 1, 2020 or such other date as the Chairman or Chief Executive Officer of the Agency and counsel to the Agency shall agree (the "**Lease Agreement**"), by and between the Agency and the Company; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of: (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$5,200,000 but not to exceed \$6,500,000, corresponding to mortgage recording tax exemptions presently estimated to be \$39,000.00 but not to exceed \$48,750.00, in connection with the financing of the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$2,095,000, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof); provided, however, the Agency shall not provide any financial assistance to the Company in connection with the Excluded Premises; and

WHEREAS, in connection with the abatement of real property taxes as set forth in the PILOT Schedule on Exhibit C hereof, the current pro-rata allocation of PILOT payments to each affected tax jurisdiction in accordance with Section 858(15) of the Act and the estimated difference between the real property taxes on the Facility and the PILOT payments set forth on the PILOT Schedule on Exhibit C hereof are more fully described in the Cost Benefit Analysis ("**CBA**") developed by the Agency in accordance with the provisions of Section 859-a(5)(b) of the Act, a copy of which CBA is attached hereto as Exhibit F; and

WHEREAS, as security for a loan or loans, the Agency and the Company will execute and deliver to a lender or lenders not yet determined (collectively, the "**Lender**"), a mortgage or mortgages, and such other loan documents satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably required by the Lender, to be dated a date to be determined, in connection with the financing, any refinancing or permanent financing of the costs of the acquisition, demolition, construction and equipping of the Facility (collectively, the "**Loan Documents**"); and

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

WHEREAS, a public hearing (the "**Hearing**") was held on September 15, 2020, so that all persons with views in favor of or opposed to either the financial assistance contemplated by the Agency or the location or nature of the Facility, could be heard; and

WHEREAS, notice of the Hearing was given on September 5, 2020 and such notice (together with proof of publication), was substantially in the form annexed hereto as Exhibit A; and

WHEREAS, the report of the Hearing is substantially in the form annexed hereto as Exhibit B; and

WHEREAS, the Agency required the Company to provide to the Agency a feasibility report, prepared by Newmark Knight Frank, dated December 9, 2019 (the “**Feasibility Study**”), together with such letters or reports from interested parties and governmental agencies or officials (the “**Letters of Support**”; and together with the Feasibility Study, the “**Requisite Materials**”) to enable the Agency to make findings and determinations that the Facility qualifies as a “project” under the Act and that the Facility satisfies all other requirements of the Act, and such Requisite Materials are listed below and attached as Exhibit D hereof:

1. Comprehensive Market Study – Port Jefferson Crossing, dated December 9, 2019, prepared by Newmark Knight Frank;
2. National Development Council Review, dated August 26, 2020;
3. Support Letter from Assemblyman Steven Englebright, dated December 5, 2018;
4. Support Letter from Congressman Lee M. Zeldin (undated);
5. Support Letter from the Long Island Regional Economic Development Council, dated November 29, 2018;
6. Support Letter from Hon. Margot Garant, Mayor of the Incorporated Village of Port Jefferson, dated November 29, 2018;
7. Support Letter from Theresa Ward, Deputy County Executive and Commissioner of Suffolk County, New York, dated December 10, 2018;
8. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
9. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.; and

WHEREAS, the Agency’s Uniform Tax Exemption Policy (“**UTEP**”), which such UTEP is annexed hereto as Exhibit E, provides for the granting of financial assistance by the Agency for residential projects pursuant to Sections 3(A) and 7(D); and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed Facility is either an inducement to the Company to maintain the competitive position of the Company in its industry; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “**SEQR Act**” or “**SEQR**”), the Agency constitutes a “State Agency”; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form and related documents (the “**Questionnaire**”) with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, the Questionnaire has been reviewed by the Agency; and

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

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

Section 1. Based upon the Environmental Assessment Form completed by the Company and reviewed by the Agency and other representations and information furnished by the Company regarding the Facility, the Agency determines that the action relating to the acquisition of the Facility is an “unlisted” action, as that term is defined in the SEQR Act. The Agency also determines that the action will not have a “significant effect” on the environment, and, therefore, an environmental impact statement will not be prepared. This determination constitutes a negative declaration for purposes of SEQR. Notice of this determination shall be filed to the extent required by the applicable regulations under SEQR or as may be deemed advisable by the Chairman or Chief Executive Officer of the Agency or counsel to the Agency.

Section 2. In connection with the demolition of the existing structure located on the Land and the acquisition, construction and equipping of the Facility the Agency hereby makes the following determinations and findings based upon the Agency’s review of the information provided by the Company with respect to the Facility, including, the Company’s Application, the Requisite Materials and other public information:

(a) There is a lack of affordable, safe, clean and modern affordable rental housing in the Town of Brookhaven;

(b) Such lack of affordable rental housing has resulted in individuals leaving the Town of Brookhaven and therefore adversely affecting employers, businesses, retailers, banks, financial institutions, insurance companies, health and legal services providers and other merchants in the Town of Brookhaven and otherwise adversely impacting the economic health and well-being of the residents of the Town of Brookhaven, employers, and the tax base of the Town of Brookhaven;

(c) The Facility, by providing such affordable rental housing will enable persons to remain in the Town of Brookhaven and thereby to support the businesses, retailers, banks, and other financial institutions, insurance companies, health care and legal services providers and other merchants in the Town of Brookhaven which will increase the economic health and well-being of the residents of the Town of Brookhaven, help preserve and increase permanent private sector jobs in furtherance of the Agency’s public purposes as set forth in

the Act, and therefore the Agency finds and determines that the Facility is a commercial project within the meaning of Section 854(4) of the Act;

(d) The Facility will provide services, i.e., affordable rental housing, which but for the Facility, would not otherwise be reasonably accessible to the residents of the Town of Brookhaven.

Section 3. The Agency hereby finds and determines:

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

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

(c) The demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility and the leasing of the Facility to the Company, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Town of Brookhaven, and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

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

(f) It is desirable and in the public interest for the Agency to lease the Facility to the Company; and

(g) The Company Lease will be an effective instrument whereby the Agency leases the Land and the Improvements from the Company; and

(h) The Lease Agreement will be an effective instrument whereby the Agency leases the Facility to the Company, the Agency and the Company set forth the terms and conditions of their agreement regarding payments-in-lieu of taxes, the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will describe the circumstances in which the Agency may recapture some or all of the benefits granted to the Company; and

(i) The Loan Documents to which the Agency is a party will be effective instruments whereby the Agency and the Company agree to secure the Loan made to the Company by the Lender.

Section 4. The Agency has assessed all material information included in connection with the Company's application for financial assistance, including but not limited to, the cost-benefit analysis prepared by the Agency and such information has provided the Agency a reasonable basis for its decision to provide the financial assistance described herein to the Company.

Section 5. In consequence of the foregoing, the Agency hereby determines to: (i) lease the Land and the Improvements from the Company pursuant to the Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) lease and sublease the Facility to the Company pursuant to the Lease Agreement, (iv) execute, deliver and perform the Lease Agreement, (v) grant a mortgage on and security interest in and to the Facility pursuant to the Loan Documents, and (vi) execute, deliver and perform the Loan Documents to which the Agency is a party.

Section 6. The Agency is hereby authorized to acquire the real property and personal property described in Exhibit A and Exhibit B, respectively, to the Lease Agreement, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 7. The Agency hereby authorizes and approves the following economic benefits to be granted to the Company in connection with the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility in the form of: (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$5,200,000 but not to exceed \$6,500,000, corresponding to mortgage recording tax exemptions presently estimated to be \$39,000.00 but not to exceed \$48,750.00, in connection with the financing of the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$2,095,000, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof); provided, however, the Agency shall not provide any financial assistance to the Company in connection with the Excluded Premises. In connection with the abatement of real property taxes as set forth in the PILOT Schedule on Exhibit C hereof, the current pro-rata allocation of PILOT payments to each affected tax jurisdiction in accordance with Section 858(15) of the Act and the estimated difference between the real property taxes on the Facility and the PILOT payments set forth on the PILOT Schedule on Exhibit C hereof are more fully described in the Cost Benefit Analysis ("CBA") developed by the Agency in accordance with the provisions of Section 859-a(5)(b) of the Act, a copy of which CBA is attached hereto as Exhibit F.

Section 8. Subject to the provisions of this resolution, the Company is herewith and hereby appointed the agent of the Agency to acquire, demolish, construct and equip the Facility. The Company is hereby empowered to delegate its status as agent of the Agency to

its agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to demolish the existing structure located on the Land, acquire, construct and equip the Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency solely for purposes of making sales or leases of goods, services and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agent of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. This agency appointment expressly excludes the purchase by the Company of any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The Company shall indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Agency. The aforesaid appointment of the Company as agent of the Agency to demolish the existing structure located on the Land, acquire, construct and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which the Company has received exemptions from sales and use taxes in an amount not to exceed \$2,095,000.00 in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time. The aforesaid appointment of the Company is subject to the completion of the transaction and the execution of the documents contemplated by this resolution.

Section 9. The Company is hereby notified that it will be required to comply with Section 875 of the Act. The Company shall be required to agree to the terms of Section 875 pursuant to the Lease Agreement. The Company is further notified that the tax exemptions and abatements provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this Authorizing Resolution are subject to termination and recapture of benefits pursuant to Sections 859-a and 875 of the Act and the recapture provisions of the Lease Agreement.

Section 10. The form and substance of the Company Lease, the Lease Agreement and the Loan Documents to which the Agency is a party (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 11.

- (a) The Chairman, the Chief Executive Officer of the Agency or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Company Lease, the Lease Agreement and the Loan Documents to which the Agency is a party, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, the Chief Executive Officer of the Agency or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and counsel to the

Agency, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, the Chief Executive Officer of the Agency or any member of the Agency shall constitute conclusive evidence of such approval.

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

Section 12. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 13. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. The Company shall agree to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility.

Section 14. This resolution shall take effect immediately.

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that due to the Novel Coronavirus (COVID-19) Emergency State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as amended to date, permitting local governments to hold public hearings by telephone and video conference and/or similar device, the Public Hearing scheduled for September 15, 2020, at 10:00 a.m., local time, being held by the Town of Brookhaven Industrial Development Agency (the "**Agency**"), in accordance with the provisions of Article 18-A of the New York General Municipal Law will be held electronically via conference call instead of a public hearing open for the public to attend. Members of the public may listen to the Public Hearing, and comment on the Project (defined below) and the benefits to be granted by the Agency to the Company (defined below) during the Public Hearing, by calling (712) 770-5505 and entering access code 884-124. Comments may also be submitted to the Agency in writing or electronically. Minutes of the Public Hearing will be transcribed and posted on the Agency's website, all in connection with the following matters:

Port Jefferson Crossing, LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals and/or equity investors of Port Jefferson Crossing, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "**Company**"), has applied to the Agency for assistance in connection with the acquisition of an approximately 0.68 acre parcel of land located at 1609-1615 Main Street, Village of Port Jefferson, New York 11777 (SCTM# 0206-21.00-06.00-007.000, 009.002, 009.003 & 015.000) (the "**Land**"), the demolition of two (2) existing vacant buildings totaling approximately 5,158 square feet located thereon, the construction of a three-story, approximately 70,000 square foot building thereon (excluding the approximately 3,100 square foot portion located on the ground floor of the building to be used for commercial and/or retail space (the "**Excluded Premises**")) (the "**Improvements**"), and the acquisition and installation therein of certain equipment and personal property, including, but not limited to appliances, elevators and HVAC (the "**Equipment**"; and together with the Land and the Improvements, the "**Facility**"), which Facility will be leased by the Company to the Agency and subleased by the Agency back to the Company and will be used by the Company as a mixed-use affordable housing apartment complex containing approximately thirty-seven (37) one-bedroom units and eight (8) two-bedroom units, a below grade forty-nine (49) space parking garage for residents, a gym, community room, management office, residential lobby and laundry facilities (the "**Project**"). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment from the Company and the Agency will sublease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or

any subsequent refinancing of the Facility, exemptions from sales and use taxes in connection with the demolition, construction and equipping of the Facility and exemption of real property taxes consistent with the uniform tax exemption policies (“**UTEP**”) of the Agency.

A representative of the Agency will, at the above-stated time and place, hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the Facility. Prior to the hearing, all persons will have the opportunity to review on the Agency’s website (<https://brookhavenida.org/>), the application for financial assistance filed by the Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Dated: September 5, 2020

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT B

FORM OF MINUTES OF PUBLIC HEARING HELD ON
SEPTEMBER 15, 2020

EXHIBIT C

Proposed PILOT Schedule

Schedule of payments-in-lieu-of-taxes: Town of Brookhaven, (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Incorporated Village of Port Jefferson, Brookhaven-Comsewogue Union Free School District, Suffolk County and Appropriate Special Districts

<u>Year</u>	<u>Tax Year</u>	<u>PILOT Payment</u>
1.	2023/2024	\$66,236
2.	2024/2025	\$67,523
3.	2025/2026	\$68,833
4.	2026/2027	\$70,169
5.	2027/2028	\$71,530
6.	2028/2029	\$72,917
7.	2029/2030	\$74,330
8.	2030/2031	\$75,771
9.	2031/2032	\$77,238
10.	2032/2033	\$78,734
11.	2033/2034	\$80,258
12.	2034/2035	\$81,811
13.	2035/2036	\$83,394
14.	2036/2037	\$85,007
15.	2037/2038	\$86,650
16.	2038/2039	\$88,324
17.	2039/2040	\$90,031
18.	2040/2041	\$91,769
19.	2041/2042	\$93,540
20.	2042/2043	\$95,345
21.	2043/2044	\$97,184
22.	2044/2045	\$99,058
23.	2045/2046	\$100,967
24.	2046/2047	\$102,913
25.	2047/2048	\$104,894
26.	2048/2049	\$106,914
27.	2049/2050	\$108,971
28.	2050/2051	\$111,067
29.	2051/2052	\$113,202
30.	2052/2053	\$115,377
31.	and thereafter	100% of full taxes and assessments on the Facility

Company to pay Normal Tax Due on X during Construction Period. PILOT Payments to commence in Tax Year following Company's receipt of Certificate of Occupancy.

EXHIBIT D

Requisite Materials

1. Comprehensive Market Study – Port Jefferson Crossing, dated December 9, 2019, prepared by Newmark Knight Frank;
2. National Development Council Review, dated August 26, 2020;
3. Support Letter from Assemblyman Steven Englebright, dated December 5, 2018;
4. Support Letter from Congressman Lee M. Zeldin (undated);
5. Support Letter from the Long Island Regional Economic Development Council, dated November 29, 2018;
6. Support Letter from Hon. Margot Garant, Mayor of the Incorporated Village of Port Jefferson, dated November 29, 2018;
7. Support Letter from Theresa Ward, Deputy County Executive and Commissioner of Suffolk County, New York, dated December 10, 2018;
8. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
9. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.; and

EXHIBIT D-1

Comprehensive Market Study – Port Jefferson Crossing

EXHIBIT D-2

National Development Council Review

EXHIBIT D-3

Support Letter – Assemblyman Steven Englebright



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

STEVEN ENGLEBRIGHT
4th Assembly District
Suffolk County

CHAIRMAN
Committee on Environmental Conservation

COMMITTEES
Education
Energy
Higher Education
Rules

COMMISSIONS
Science and Technology
Water Resource Needs of Long Island

MEMBER
Bi-State L.I. Sound Marine Resource Committee
N.Y.S. Biodiversity Research Institute
N.Y.S. Heritage Area Advisory Council

December 5, 2018

Ms. RuthAnne Visnauskas, Commissioner
New York State Homes and Community Renewal
Hampton Plaza, 6th Floor
38-40 State Street
Albany, NY 23307

Re: Port Jefferson Crossing, Port Jefferson Village

Dear Commissioner Visnauskas:

I am writing to express my support for the application from Community Development Corporation of Long Island and Conifer Realty, LLC for the development of 45 new multifamily affordable rental homes in the Village of Port Jefferson.

Housing on Long Island is expensive to rent or buy, and housing costs have been increasing at a rate which is outpacing the growth of household income. Census statistics indicate that a majority of Long Island households are paying more than 30% of their income on housing with many paying more than 50% for housing. Further, the availability of affordable rentals is limited, particularly in transit-oriented, walkable, downtown communities. The majority of new construction in places such as Port Jefferson has been predominately market rate rental units, making it extremely difficult for a majority of the population to remain in the area.

CDCLI and Conifer Realty have a longstanding, successful partnership founded on developing and expanding affordable housing opportunities through working closely with residents and community leaders. Together they have developed over 745 new rental units on Long Island with an additional 278 in the pipeline. Conifer is a nationally ranked, full-service real estate company that develops, constructs, owns and manages over 15,000 high quality affordable apartments.

The proposed Port Jefferson Crossing apartments are greatly needed and the CDCLI – Conifer Realty team has the experience and commitment to develop and successfully manage the apartments as quality affordable housing for decades to come.

I am pleased to lend my support to this proposal and request your kind consideration of this application.

Sincerely,

Steve Englebright

EXHIBIT D-4

Support Letter – Congressman Lee M. Zeldin

COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON HOUSING AND INSURANCE,
SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS, SUBCOMMITTEE ON TERRORISM
AND ILLICIT FINANCE

COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON THE MIDDLE EAST AND NORTH
AFRICA, SUBCOMMITTEE ON TERRORISM,
NONPROLIFERATION, AND TRADE



WEBSITE: ZELDIN.HOUSE.GOV
FACEBOOK.COM/REP.LEE.ZELDIN
TWITTER.COM/REP.LEE.ZELDIN

Congressman Lee M. Zeldin

First Congressional District of New York

Ms. RuthAnne Visnauskas, Commissioner
New York State Homes and Community Renewal
Hampton Plaza, 6th Floor
38-40 State Street
Albany, NY 23307

Dear Commissioner Visnauskas:

I am writing to express my strong support of the application from Community Development Corporation of Long Island, for the development in Port Jefferson Village, adjacent to the soon to be redeveloped LIRR station and plaza.

It is well known that housing on Long Island is very expensive to rent or buy, and housing costs have been continually increasing at a rate which is higher than the growth of household income. Census statistics indicate that 57% of Long Island households are paying more than 30% of their income on housing costs (defined as rent burdened), and 32% are paying more than 50% of their income for housing (severely rent burdened). Further, the ability of affordable rentals is very limited, particularly in transit-oriented, walkable, downtown communities. The majority of new construction in these areas, such as Port Jefferson Village, have been predominately market rate rental units, making it extremely difficult for a majority of the population to remain in the area.

CDCLI and Conifer Realty have a longstanding, successful partnership that entails working closely with residents and community leaders to develop and expand housing opportunities for residents. Together, they have developed over 745 new rental units on Long Island, with an additional 278 in the pipeline. Conifer is a nationally ranked, full-service real estate company that develops, constructs, owns, and manages over 15,000 high quality affordable apartments.

The proposed development adjacent to the soon to be redeveloped LIRR station are solely needed, and the CDCLI - Conifer Realty team has the track record to develop the project, and successfully manage the apartments as quality affordable housing for decades to come.

Please give full consideration to the application and approve funding for the development project in Port Jefferson Village.

Respectfully,

Lee M. Zeldin
Member of Congress

WASHINGTON, DC OFFICE:
1517 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
PHONE: (202) 225-3826
FAX: (202) 225-3143

PATCHOGUE OFFICE:
31 OAK STREET, SUITE 20
PATCHOGUE, NY 11772
PHONE: (631) 289-1097
FAX: (631) 289-1268

EAST END OFFICE:
30 WEST MAIN STREET
SUITE 201
RIVERHEAD, NY 11901
PHONE: (631) 209-4235

EXHIBIT D-5

Support Letter – Long Island Regional Development Council



Long Island
Regional Economic
Development Council

November 29, 2018

Ms. RuthAnne Visnauskas, Commissioner
New York State Homes and Community Renewal
Hampton Plaza, 6th Floor
38-40 State Street
Albany, NY 23307

Re: Port Jefferson Crossing In Port Jefferson

Dear Commissioner Visnauskas:

I am writing to express my strong support of the application from Community Development Corporation of Long Island and Conifer Realty, LLC, for the development of 45 new multifamily affordable rental homes in the Village of Port Jefferson.

It is well known that housing on Long Island is very expensive to rent or buy, and housing costs have been continually increasing at a rate which is higher than the growth of household income. Census statistics indicate that 57% of Long Island households are paying more than 30% of their income on housing costs (defined as rent burdened), and 32% are paying more than 50% of their income for housing (severely rent burdened). Further, the availability of affordable rentals is very limited, particularly in transit-oriented, walkable, downtown communities. The majority of new construction in these areas, such as Port Jefferson, have been predominately market rate rental units, making it extremely difficult for a majority of the population to remain in the area.

CDCLI and Conifer Realty have a longstanding, successful partnership that entails working closely with residents and community leaders to develop and expand housing opportunities for residents. Together, they have developed over 745 new rental units on Long Island, with an additional 278 in the pipeline. Conifer is a nationally ranked, full-service real estate company that develops, constructs, owns and manages over 15,000 high quality affordable apartments.

The proposed Port Jefferson Crossing apartments are sorely needed, and the CDCLI – Conifer Realty team has the track record to develop the project, and successfully manage the apartments as quality affordable housing for decades to come.

Please give full consideration to the application, and approve funding for Port Jefferson Crossing.

Very truly yours,

Kevin Law
Co-Chair

Stuart Rabinowitz
Co-Chair

EXHIBIT D-6

Support Letter – Mayor Margot Garant



INCORPORATED VILLAGE OF PORT JEFFERSON

Margot Garant
Mayor

Robert J. Juliano
Administrator/Clerk

November 29, 2018

Ms. Ruth Arne Visnauskas, Commissioner
New York State Homes and Community Renewal
Hampton Plaza, 6th Floor
38-40 State Street
Albany, NY 23307

Re: **Port Jefferson Crossing in Port Jefferson**

Dear Commissioner Visnauskas:

I am writing to express my strong support of the application from Community Development Corporation of Long Island and Conifer Realty, LLC, for the development of 45 new multifamily affordable rental homes in the Village of Port Jefferson.

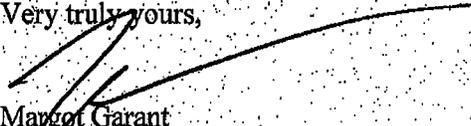
It is well known that housing on Long Island is very expensive to rent or buy, and housing costs have been continually increasing at a rate which is higher than the growth of household income. Census statistics indicate that 57% of Long Island households are paying more than 30% of their income on housing costs (defined as rent burdened), and 32% are paying more than 50% of their income for housing (severely rent burdened). Further, the availability of affordable rentals is very limited, particularly in transit-oriented, walkable, downtown communities. The majority of new construction in these areas, such as Port Jefferson, have been predominately market rate rental units, making it extremely difficult for a majority of the population to remain in the area.

CDCLI and Conifer Realty have a longstanding, successful partnership that entails working closely with residents and community leaders to develop and expand housing opportunities for residents. Together, they have developed over 745 new rental units on Long Island, with an additional 278 in the pipeline. Conifer is a nationally ranked, full-service real estate company that develops, constructs, owns and manages over 15,000 high quality affordable apartments.

The proposed Port Jefferson Crossing apartments are sorely needed, and the CDCEI – Conifer Realty team has the track record to develop the project, and successfully manage the apartments as quality affordable housing for decades to come. The Village believes Conifer is the right partner, at the right time for our revitalization project in Upper Port and we look forward to successful partnership in completing this project in a very timely manner.

Please give full consideration to the application, and approve funding for Port Jefferson Crossing.

Very truly yours,



Margot Garant
Mayor

EXHIBIT D-7

Support Letter – Office of Suffolk County Executive

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

Steven Bellone
SUFFOLK COUNTY EXECUTIVE

Theresa Ward
Deputy County Executive and Commissioner

Department of
Economic Development and Planning

December 10, 2018

Allen Handelman
Conifer Realty, LLC
1000 University Avenue, Suite 500
Rochester, New York 14604

Re: Port Jefferson Housing Development, Port Jefferson

Dear Mr. Handelman:

It is my pleasure to provide this letter of support for the application from Conifer Realty, LLC, for the development of 45 new multifamily affordable rental homes in the Village of Port Jefferson.

Long Island is more expensive than other regional suburbs to raise a family due to high housing costs and property taxes. The US Census Bureau has reported 57% of Long Island Residents are rent burdened, paying 30% or more of their household income towards housing and 32% of Long Island Residents are severely rent burdened paying 50% or more of their income towards housing.

The proposed Port Jefferson Housing Development apartments are needed. The County's support comes with the understanding that the proposed development will be reviewed and approved for design quality by the Department of Economic Development and Planning to ensure high design standards are achieved by Conifer Realty, LLC.

Accordingly, the Suffolk County Department of Economic Development and Planning will be proceeding with the funding process, pursuant to Capital Program 6411 and/or 8704, including seeking approval from the Suffolk County Legislature for Port Jefferson Housing Development in an amount not to exceed \$500,000 in connection with land acquisition costs and/or infrastructure improvements related to the project, provided that no other funds from another County source is contributed.

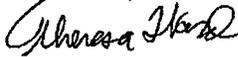
Please be advised that this does not represent a commitment of funding, in any amount, and any funding is expressly subject to and conditioned upon inter alia (1) approval of the Suffolk County Legislature, (2) evidence of a funding commitment from the State of New York in an

Allen Handelman
December 10, 2018 Page 2

amount equal to or exceeding \$500,000, (3) fully executed Development Agreement between the County and the required parties, and (4) conditioned upon a final review of the development's financial documentation and any changes that may have been made post application.

We look forward to working with Conifer Realty, LLC and the Village of Port Jefferson on this important project for the benefit of Suffolk County.

Very truly yours,

A handwritten signature in cursive script that reads "Theresa Ward".

Theresa Ward
Deputy County Executive and Commissioner
Department of Economic Development and Planning

EXHIBIT D-8

New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential
Developments for IDA Benefits

New York Law Journal

Real Estate Trends

WWW.NYLJ.COM

VOLUME 257—NO. 54

An ALM Publication

WEDNESDAY, MARCH 22, 2017

ZONING AND LAND USE PLANNING

Eligibility of Residential Developments for IDA Benefits

By
Anthony S.
Guardino



It has been nearly 50 years since the New York State Legislature enacted legislation authorizing industrial development agencies (IDAs) for the purpose of promoting economic development. Now, towns, cities, and counties throughout the state have created their own IDAs under General Municipal Law (GML) Article 18-A (the IDA Act) and use them to encourage—and to financially assist—a wide variety of real estate developments, often to great success.

In many instances, however, an IDA's efforts are met with objections, both in and out of court. Recently, for example, tax benefits afforded by a town's IDA to the Green Acres Mall on Long Island aroused community criticism, and led New York State Comptroller Thomas DiNapoli to announce that he would audit the IDA to determine its compliance with policies and procedures related to its approval of the project.

There also continues to be disputes over the scope of projects that may receive IDA benefits. Last August, the Supreme Court, Seneca County, rejected a challenge to a decision by the Seneca County IDA to provide tax benefits for a casino being built in the county. *Nearpass v. Seneca County Industrial Development Agency*, 53 Misc. 3d 737 (Sup.Ct. Seneca Co. 2016). The petitioners argued that the casino was not a project defined in the IDA Act and, therefore, that it was ineligible for IDA benefits. They pointed out, among other things, that when the IDA Act first was enacted, casinos were prohibited in New York, and after casinos were allowed by amendment to the New York Constitution, the IDA Act was not amended to include casinos as a project entitled to IDA benefits.

The court was not persuaded and decided, instead, that the casino facility was a commercial project under the IDA Act and, in particular, that it also was a recreation facility within the purview of GML Section 854(9).

Perhaps more surprising than a dispute over the eligibility of a casino to receive IDA benefits was a recent court case that asked whether a residential development could qualify for IDA benefits—an issue of statewide significance. In *Matter of Ryan v. Town of Hempstead Industrial Development Agency*, Index No. 5324/16 (Sup.Ct. Nassau Co. Jan. 27, 2017), the Supreme Court, Nassau County, held that a residential apartment building project fell within the definition of a project for which IDA benefits may be granted.

After first providing background on the IDA Act, this column will discuss the court's decision in *Matter of Ryan* and its implications.

The IDA Act

When the legislation governing the creation, organization, and powers of IDAs in New York State was enacted in 1969, it provided that its general purpose was "to promote the economic welfare of [the state's] inhabitants and to actively promote, attract,

ANTHONY S. GUARDINO is a partner with Farrell Fritz in the firm's Hauppauge office.

encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration." This intent was further evidenced by the original provision of GML Section 858, which provided that:

The purposes of the agency shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the state of New York and to improve their standard of living.

The decision by the Nassau County Supreme Court in *Matter of Ryan* provides confirmation that residential developments are eligible to receive industrial development agency benefits.

In approving the bill, then-Governor Nelson Rockefeller noted that "industrial development agencies provide one means for communities to attract new industry, encourage plant modernization and create new job opportunities." McKinney's 1969 Session Laws, Vol. 2, p. 2572.

The original legislation has been amended a number of times since 1969 to broaden the scope of permissible IDA activities. For example, the definition of project was expanded to specifically include construction of industrial pollution control facilities (L 1971, ch 978), winter recreation facilities and then recreation facilities generally (L 1974, ch 954; L 1977, ch 630), horse racing facilities (L 1977, ch 267), railroad facilities (L 1980, ch 803) and educational or cultural facilities (L 1982, ch 541).

As noted above, however, it has not been amended to specifically include casinos. And it also does not specifically include residential developments.

In 1985, however, the New York state comptroller's office was asked by the village attorney for the village of Port Chester whether construction of an apartment complex was a commercial purpose within the meaning of GML Section 854(4) and, thereby, whether it was a proper project for industrial development bond financing. In response, the Comptroller issued Opinion No. 85-51, 1985 N.Y. St. Comp. 70 (Aug. 16, 1985) (the "comptroller's opinion").

In the comptroller's opinion, the comptroller's office explained that, at its inception, the IDA Act's primary thrust was to promote the development of commerce and industry as a means of increasing employment opportunities.

The comptroller's opinion then reasoned that for an apartment complex to qualify as an eligible project under Article 18-A, it had to promote employment opportunities and prevent economic deterioration in the area served by the IDA.

The comptroller's opinion added that the comptroller's office was "not in a position to render an opinion" as to whether a project that consisted of the construction of an apartment complex was a commercial activity within the meaning of Article 18-A. Rather, it continued, such a determination "must be made by local officials based upon all the facts relevant to the proposed project."

Any such determination, the comptroller's opinion concluded, had to take into account the stated purposes of the IDA Act: "the promotion of employment opportunities and the prevention of economic deterioration."

When this issue reached the court in *Triple S. Realty v. Village of Port Chester*, Index No. 22355/86 (Sup. Ct. Westchester Co. Aug. 19, 1987), the Westchester County Supreme Court held that residential construction may be eligible for industrial development agency benefits if such construction "would increase employment opportunities and prevent economic deterioration in the area served by the IDA."

The decision by the Nassau County Supreme Court in *Matter of Ryan* provides further confirmation that

residential developments certainly are eligible to receive IDA benefits.

'Matter of Ryan'

The case arose after the Town of Hempstead Industrial Development Agency (TOHIDA) granted financial and tax benefits and assistance to Renaissance Downtowns UrbanAmerica, with respect to the construction of a new 336-unit residential apartment complex in the village of Hempstead on Long Island. That was Phase 1 of a multi-phase revitalization project that was planned to include additional mixed-use buildings and parking facilities.

The financial benefits and assistance granted by the TOHIDA included:

- exemptions from mortgage recording taxes for one or more mortgages;
- securing the principal amount not to exceed \$70 million;
- a sales and use tax exemption up to \$3.45 million in connection with the purchase/lease of building materials, services, or other personal property for the project; and
- abatement of real property taxes for an initial term of 10 years pursuant to a payment in lieu of taxes (PILOT) agreement.

Six petitioners, including a trustee for the village of Hempstead, challenged the TOHIDA's resolution in an Article 78 proceeding, arguing that an IDA could not grant benefits

for a project that was residential, either in whole or in part, in nature.

For their part, the respondents contended that the development of a residential rental building fell within the ambit of the statutory definition of a project entitled to receive an IDA's financial assistance and benefits in that it promoted "employment opportunities" and prevented "economic deterioration" in the area served by the IDA.

The court agreed with the respondents and dismissed the petition.

In its decision, the court noted that the comptroller's opinion had observed that the determination of whether construction of an apartment complex was a commercial activity within the meaning of the IDA Act had to be made by local officials based on facts relevant to the proposed project.

The court then pointed out that the TOHIDA had approved Renaissance's application for assistance with respect to the first phase of the revitalization project based on the TOHIDA's findings, that, among other things:

- the town of Hempstead was in need of attractive multi-family housing to retain workers in the town and attract new business;
- a healthy residential environment located in the town was needed to further economic growth;
- there was a lack of affordable, safe, clean multi-family housing within the town; and

- the facility would provide the nucleus of a healthy residential environment, and would be instrumental and vital in the further growth of the town.

Moreover, the court continued, the TOHIDA also found that the development of the first phase of the facility would "promote and maintain the job opportunities, health, general prosperity and economic welfare" of the town's citizens and "improve their standard of living."

Given that the project promoted employment opportunities and served to combat economic deterioration in the area served by the TOHIDA, the court upheld the TOHIDA's decision as rationally based and not arbitrary or capricious, an abuse of discretion, or an error of law.

Conclusion

IDA benefits can play an important role in real estate development. For nearly five decades, they have benefited New Yorkers in numerous situations. As the comptroller's office and the courts have recognized, a project—including a residential project—that demonstrates that it promotes employment opportunities and prevents economic deterioration is eligible to receive IDA benefits.

EXHIBIT D-9

Ryan et al. v. Town of Hempstead Industrial Development Agency et al.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE

-----X TRIAL/IAS PART 13
In the Matter of DONALD L. RYAN, FLAVIA
IANNACONE, JAMES DENON, JOHN M. WILLAMS,
REGINAL LUCAS and ROBERT DeBREW, JR.,

INDEX # 5324/16
Mot. Seq. 1
Mot. Date 9.13.16
Submit Date 11.17.16

Petitioners,

For A Judgment Pursuant to Article 78 of the New York
Civil Practice and Rules,

XXX

-against-

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT
AGENCY, RENAISSANCE DOWNTOWNS
URBANAMERICA, LLC, and RDU A PARCEL 1 LLC,

Respondents.

-----X

The following papers were read on this motion:	Papers Numbered
Notice of Petition, Affidavits, Exhibits, Memorandum Annexed.....	1,2
Verified Answers.....	3,4,5
Opposing Affidavits.....	6,7,8,9,10,11,12
Reply Affidavits.....	13, 14
Sur-Reply Affidavit.....	15
Hearing Record (3 Vols.).....	16

Application by petitioners pursuant to Article 78 to invalidate as *ultra vires* and to void the May 18, 2016 resolution passed by the Town of Hempstead Industrial Development Agency (TOHIDA) is decided as hereinafter provided.

In this Article 78 proceeding, petitioners seek to invalidate the resolution passed by respondent TOHIDA on May 18, 2016, which granted financial and tax benefits and assistance to respondent Renaissance Downtowns UrbanAmerica, LLC (Renaissance) *vis-a-vis* construction of a new 336 unit residential apartment complex on the northwest corner of the intersection of Washington and Front Streets (Phase I of the multi-phase Village of Hempstead downtown revitalization project¹ which was planned to include additional mixed use buildings/parking facilities). The Phase I property was a tax exempt Village property for at least 50 years until December 15, 2015 when it was acquired by respondent Renaissance.

The financial benefits and assistance granted include:

exemptions from mortgage recording taxes for one or more mortgages securing the principal amount not to exceed \$70,000,000;

sales and use tax exemption up to \$3,450,000 in connection with the purchase/lease of building materials, services or other personal property for the project;

abatement of real property taxes for an initial term of ten years pursuant to Payment in Lieu of Taxes Agreement (PILOT).

Based on the theory that the resolution was affected by an error of law, i.e., that residential apartment buildings are not included in the type of project or facility that is eligible for financial assistance under the General Municipal Law Article 18-A (Industrial Development Act [the IDA or the Act]), petitioners seek to invalidate the subject resolution as *ultra vires*/void.

In opposition, respondents first seek dismissal of the petition based on its alleged multiple fatal flaws including petitioners' lack of standing; failure to raise the *ultra vires* issue in the administrative proceeding before respondent TOHIDA; and failure to serve the attorney general in accordance with CPLR 7804(e).

The alleged flaws are not fatal and do not provide a basis for dismissal. Petitioners have standing to maintain an action for equitable or declaratory relief under State Finance Law § 123-b *vis-a-vis* the issue of whether the project herein falls within the definition of a "project" for which IDA benefits may be granted (*see Nearpass v Seneca County Idus. Dev. Agency*, 52 Misc 3d 533 [Sup Ct, Seneca County 2016 Falvey, J.]; *Dudley v. Kerwick*, 52 NY2d 542 [1981]; *cf.*

¹The development as outlined in the Appraisal Report (Exhibit "2" to the Petition) was approved in a unanimous 5-0, bi-partisan vote by the Village of Hempstead Board. It includes the construction of , among other things: residential units, structured parking, retail space, medical office building, mixed used artist loft with grade and basement level supermarket, surface parking office space, senior independent living apartment building, hotel and restaurant space.

Kadish v. Roosevelt Raceway Assoc., 183 AD2d 874, 875 [2d Dept 1992] [no standing under State Finance Law § 123-b (1) to challenge financing and acquisition of property by TOHIDA through bond issuance because statute specifically excludes bond issuance by a public benefit corporation). Further, the *ultra vires* issue was, in fact, raised in the administrative proceeding before respondent TOHIDA (Record: Vol, 3 Tab 25, pp 113-114), and the Nassau County Regional Office of the New York State Attorney General rejected service of the petition on the ground that the office did not represent respondent TOHIDA.

In further support of its dismissal, movants argue that the petition fails to state a viable cause of action as it is based on the false premise that an Industrial Development Agency may not grant benefits for a commercial project that is residential, either in whole or in part, in nature.

For the reasons which follow, the petition must be dismissed.

Pursuant to General Municipal Law § 858, an Industrial Development Agency

“shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities . . . and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living.”

An Industrial Development Agency is thus a “governmental agenc[y] or instrumentalit[y] created for the purpose of preventing unemployment and economic deterioration (General Municipal Law § 852) and to “provide one means for communities to attract new industry, encourage plant modernization and create new job opportunities” (Governor’s Mem., 1969 McKinney’s Session Laws of N.Y. at 2572).

According to respondents, the development of a residential rental building falls within the ambit of the statutory definition of a project,² entitled to financial assistance and benefits, as set forth in § 854(4) of the General Municipal Law in that it “promotes employment opportunities and prevents economic deterioration in the area served by the industrial development agency” (Opns. St. Comp. No. 85-51 [N.Y.S. Cptr., 1985 WL 25843]).

In the opinion of the State Comptroller, the determination of whether construction of an apartment complex is a commercial activity within the meaning of the statute must be made by

²As set forth in § 854(4) the term “project” is broadly defined to include, in relevant part, “any land, any building or other improvement, and all real and personal properties located within the state of New York and within or outside or partially within and partially outside the municipality for whose benefit the agency was created. . . .”

local officials based upon facts relevant to the proposed project (*Id.* ["Local officials must determine, based upon all the relevant facts, whether construction of an apartment complex will promote employment opportunities and prevent economic deterioration. . . ."]). Respondents argue that TOHIDA acted within the scope of its authority in resolving to provide IDA assistance to the project since it would promote job creation and growth in a distressed area of the Village of Hempstead and serve as the first physical manifestation of the Village's Downtown Revitalization plan and a catalyst for future phases.

Here, the record establishes that a duly noticed public hearing was held regarding respondent Renaissance's application for TOHIDA assistance with respect to the first phase of the \$2.5 billion Hempstead Revitalization project for which site plan approval was already in place and a building permit issued. The resolution was granted based on respondent TOHIDA's findings, that, among other things:

- (a) The Town of Hempstead is in need of attractive multi-family housing to retain workers in the Town and attract new business;
- (b) a healthy residential environment located in the Town of Hempstead is needed in order to further economic growth;
- (c) there is a lack of affordable, safe, clean multi-family housing within the Town of Hempstead;
- (d) the facility will provide the nucleus of a healthy residential environment, and will be instrumental and vital in the further growth of the Town of Hempstead.

Respondent TOHIDA also found that:

the acquisition, construction and equipping of the Phase I Facility will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Hempstead and the State of New York and improve their standard of living and thereby serve the public purposes of the Act;

the project conformed with local zoning laws and planning regulations of the Town of Hempstead; and

the project will not have a significant effect on the environment as determined in accordance with Article 8 of the Environmental Conservation Law and regulations promulgated thereunder.

The allegations proffered in opposition to the resolution, regarding traffic congestion; additional garbage/sewage; additional burden of increased student population in an already overcrowded/underfunded school district; burden of increased financial costs of municipal services to support increased population, are speculative and lack merit in the face of reasoned evaluation of the project by respondent TOHIDA as set forth in the record. As stated in the affidavit of Wayne J. Hall, Sr., Mayor of the Incorporated Village of Hempstead and Chairman of the Village Community Development Agency:

“the IDA benefits awarded to Renaissance for this particular Phase I of the development are critically important to the revitalization of the Village of Hempstead’s downtown area, and are essential to the twin goals of preventing any further physical and economic deterioration of the area, as well as promoting employment opportunities to the Village.”

As stated in the Socio-Economic Impact of the Village of Hempstead’s Revitalization Plan report, dated March 31, 2016, (Exhibit “A” to the Affidavit of Donald Monti in Opposition to Petition):

“Upon completion, the overall revitalization of the Village of Hempstead will have generated an estimated \$4 billion in economic activity, comprised of economic activity during and after the construction period.

Nearly \$3 billion of primary and secondary economic activity will be generated from construction of the development encompassing 5 million square feet, comprising 2.8 million square feet of 3,500 residential units and 2.2 million square feet of mixed use, retail, hospitality, office and other commercial uses.

This will result in new socio-economic improvements to the Village of Hempstead that will provide much needed housing for Long Island’s young professionals and active adults, and create during the construction period as many as 22,000 temporary construction and secondary jobs generating nearly \$1.4 billion in wages.

When completed, the revitalization will create approximately 6,000 permanent and 4,500 secondary jobs generating \$498 million in wages of which 1,500 of the permanent jobs generating \$125 million in wages projected to be held by Village of Hempstead residents. Thus, in total, the construction activity and resulting permanent jobs and their related secondary economic impacts are expected to generate nearly \$4 billion in primary and secondary economic impact, and over the 20 year PILOT period \$142 million in new county, town, school and village property taxes, and \$43.5 million in new county sales taxes.”

In reviewing the actions of an administrative agency, courts must assess whether the determination was the result of an error of law or was arbitrary, capricious, or an abuse of discretion such that the actions at issue were taken without sound basis in reason and without regard to the facts (*Matter of County of Monroe v Kaladjian*, 83 NY2d 185, 189 [1994], citing *Matter of Pell v Bd. of Educ.*, 34 NY2d 222, 231 [1974]; *Akpan v Koch*, 75 NY2d 561, 570-71 [1990]; *Matter of Calvi v Zoning Bd. of Appeals of the City of Yonkers*, 238 AD2d 417, 418 [2d Dept 1997]). The agency's determination need only be supported by a rational basis (*Matter of County of Monroe v Kaladjian, supra*; *Matter of Jennings v Comm. N.Y. Dept. of Social Svcs.*, 71 AD3d 98, 108 [2d Dept 2010]). If the determination is rationally based, a reviewing court may not substitute its judgment for that of the agency even if the court might have decided the matter differently (*Matter of Savetsky v Zoning Bd. of Appeals of Southampton*, 5 AD3d 779, 780 [2d Dept 2004]; *Matter of Calvi v Zoning Bd. of Appeals of the City of Yonkers, supra*). It is not for the reviewing court to weigh the evidence or reject the choice made by the agency where the evidence conflicts and room for choice exists (*Matter of Calvi v Zoning Bd. of Appeals of the City of Yonkers, supra*, citing *Toys "R" Us v Silva*, 89 NY2d 411, 424 [1996]; *Akpan v Koch, supra*).

The record at bar establishes that in adopting the challenged resolution following a public hearing, review of Renaissance's application, and the environmental effects, respondent TOHIDA did not act in excess of its jurisdiction or beyond the scope of its authority; i.e., *ultra vires*. Nor was TOHIDA's decision after review of all of the circumstances to adopt the resolution finding that the Phase I facility constituted a "project" under the IDA affected by an error of law as would warrant relief under Article 78.

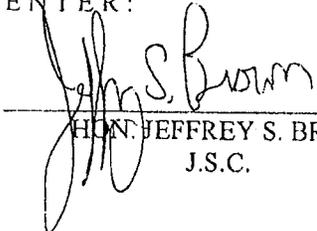
Where, as here, the project at issue promotes employment opportunities and serves to combat economic deterioration in an area served by an industrial development agency, a finding that the project falls within the ambit of the IDA is rationally based; neither arbitrary or capricious or an abuse of discretion, nor an error of law.

Accordingly, the petition is **denied** and the proceeding is hereby **dismissed**.

This constitutes the decision and order of this court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
January 25, 2017

ENTER:



HON. JEFFREY S. BROWN
J.S.C.

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EXHIBIT E

Town of Brookhaven Industrial Development Agency Uniform Tax Exemption Policy

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 to any project. This uniform tax-exemption policy (“**UTEP**”) 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, May 13, 2019 and June 17, 2020.

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) “**Act**” shall have the meaning assigned thereto in Section 1 of this UTEP.

(C) “**Affected Tax Jurisdiction**” means, with respect to a particular project, the 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.

(D) “**Affordable Housing Project**” shall have the meaning assigned thereto in Section 7(D)(f) of this UTEP.

(E) “**Agency**” shall have the meaning assigned thereto in Section 1 of this UTEP.

(F) “**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, but not limited to, 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.

(G) “**Applicant**” shall mean an individual or entity who files an application with the Agency to receive financial assistance with respect to a project.

(H) “**Applicant Project**” shall mean a project which is undertaken by the Agency, which complies with the Act and the policies of 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) a straight lease transaction which the Agency has determined to undertake pursuant to the Lease Policy and the Act.

(I) “**Assessor**” shall mean (i) the Assessor of the Town, and (ii) if a project is located in a Village, the Assessor of the Village.

(J) “**Assisted Living Facility**” shall have the meaning assigned thereto in Section 7(D)(g) of this UTEP.

(K) “**County**” shall mean Suffolk County, New York.

(L) “**Exemption Form**” shall have the meaning assigned thereto in Section 7(B) of this UTEP.

(M) “**FTEs**” shall have the meaning assigned thereto in this Section 9(E) of this UTEP.

(N) “**Lease and Project Agreement**” shall mean a Lease and Project Agreement” entered into between and the Agency and an Applicant with respect to a project.

(O) “**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.

(P) “**Loss Event**” shall have the meaning assigned thereto in Section 9(F) of this UTEP.

(Q) “**Market Rate Housing Project**” shall have the meaning assigned thereto in Section 7(D)(i) of this UTEP.

(R) “**Municipality**” shall mean the County, the Town and each village located within the Town.

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

(T) “**Normal Mortgage Tax**” shall have the meaning assigned thereto in Section 5(f) hereof.

(U) “**PILOT Payment**” 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 the Tax Exemption obtained by reason of the involvement of the Agency in such project, but such term shall not include Agency Fees.

(V) “**PILOT Agreement**” shall have the meaning assigned thereto in Section 7(A) of this UTEP.

(W) “**Real Property Tax Abatements**” shall have the meaning assigned thereto in Section 7(D)(i) of this UTEP.

(X) “**Real Property Tax Abatement Savings**” shall have the meaning assigned thereto in Section 9(B)(iii) of this UTEP.

(Y) “**Recapture Event**” shall have the meaning assigned thereto in Section 9(C) of this UTEP.

(Z) “**Recaptured Benefits**” shall have the meaning assigned thereto in Section 9(B) of this UTEP.

(AA) “**Recapture Policy**” shall have the meaning assigned thereto in Section 3(E) this UTEP.

(BB) “**Renewable Energy Systems**” shall have the meaning assigned thereto in Section 66-p of the New York Public Service Law.

(CC) “**Sales Tax Exemption Period**” shall have the meaning assigned thereto in Section 4(B) of this UTEP.

(DD) “**Sales Tax Savings**” shall have the meaning assigned thereto in Section 9(B)(ii) of this UTEP.

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

(FF) “**Senior Living Facility**” shall have the meaning assigned thereto in Section 7(D)(h) of this UTEP.

(GG) “**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.

(HH) “**Town**” shall mean the Town of Brookhaven, New York.

(II) “**UTEP**” shall have the meaning assigned thereto in Section 1 of this UTEP.

(JJ) “**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, in each case approved by the Agency in accordance with the provisions of the Act and the policies of the Agency. 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 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 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 Town's 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 Agency reserves the right to reject any application that the Board, in its sole discretion, determines (1) does not comply with the Town's Code, 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 or tax payers of the Town or does not otherwise comply with the Act or any other applicable federal, state or local laws, rules or regulations. As required under the Act, prior to any project receiving benefits from the Agency, the project applicant must establish that the project would not proceed but for the benefits granted by the Agency. The fact that the Agency has accepted an Application or adopted a preliminary inducement resolution with respect to a project, does not mean or imply that the Agency will grant final approval of an Applicant's project or the requested Tax Exemptions.

(D) Public Hearings and 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

entering into a Lease and Project Agreement or PILOT Agreement, or the granting of other financial assistance to Project Applicant 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 the Agency: (1) has published a public notice and conducted a public hearing with respect to the location and nature of the project, the issuance of bonds or notes, if applicable, and the Tax Exemptions and other financial assistance to be granted by the Agency to the Project Applicant in accordance with the provisions of Section 859-a of the Act, (2) has sent written notice of said request to each Affected Tax Jurisdiction describing generally the location and nature of the project, the issuance of bonds or notes, if applicable, and the Tax Exemptions and other financial assistance to be granted by the Agency to the Project Applicant and if the request involves a deviation from this UTEP, describing such deviation and the need for such deviation, and (3) has given each Affected Tax Jurisdiction and members of the public a reasonable opportunity, either in writing or in person, to be heard by the Agency with respect to the location and nature of the project and proposed Tax Exemption to be granted to the Applicant in accordance with the Act. 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 and public hearing requirements contained in the Act relative thereto.

(E) Recapture of Benefits. In accordance with the Act, the Agency has adopted a recapture policy and requirements (the “**Recapture Policy**”) which is contained in every Lease and Project Agreement and other applicable project documents with respect to Tax Exemptions and other financial assistance granted to the Project Applicant. The Agency’s Recapture Policy is described generally in Section 9 of this UTEP.

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. In accordance with the Act, the Agency has a policy of abating sales and use taxes applicable (1) only to the initial acquisition, construction, renovation and/or equipping of an Applicant Project and (2) to any Non-Applicant Project. The grant of sales and use tax exemptions by the Agency are subject to the Agency’s Recapture Policy.

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

- (1) General. The sales and use tax exemption for an Applicant Project shall be for the Sales 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 set by the Agency. The Sales Tax Exemption Period for a Non-Applicant Project shall extend for such period of time as the Agency shall determine.

- (2) Normal Termination. The Sales 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) Extension of Sales Tax Exemption Period/Increase in Amount. The Chief Executive Officer of the Agency 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 Sales 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 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 Sales 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 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 Payment to the Agency equal to the applicable percentage of sales and use tax liability not being abated. The Agency shall remit such PILOT Payment, within thirty (30)

days of receipt thereof by the Agency, to the Affected Tax Jurisdictions and New York State in accordance with Section 874(3) of the Act.

(C) Lease and Project Agreement. The final act of granting a sales and 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 or joined by the Agency 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 refinancing 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) for mortgages entered into by the Agency to secure loans or indebtedness incurred by an Applicant to finance the costs of an Applicant Project as provided for in the Lease and Project Agreement, 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 furtherance 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 or loans or indebtedness incurred by an Applicant to finance the costs of an Applicant Project as provided for in the Lease and Project Agreement, 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 a 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 mortgage recording tax 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 (i) a Lease and Project Agreement that contains provisions for PILOT Payments or (ii) a standalone payment in lieu of tax agreement acceptable to the Agency (in either case, a “**PILOT Agreement**”). Such PILOT Agreement shall require 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, 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 the Assessor and each Affected Tax Jurisdiction 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 as 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 (i) a Lease and Project Agreement that contains provisions for PILOT Payments or (ii) a standalone PILOT Agreement acceptable to the Agency, the project documents shall provide that the Agency will file an Exemption Form with the Assessor and each Affected Tax Jurisdiction. 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 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:

- (1) Real Property Tax Abatement. The Agency provides real property tax abatements (“**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. Except as may described in this UTEP, the Agency’s standard PILOT Agreement will contain fixed PILOT Payments for each tax year throughout the term of the PILOT Agreement as determined by the Agency in its sole discretion. The standard real property tax abatement provided by the Agency 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 by the Agency 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 exempt due to the Act. Each abatement of real property taxes pursuant to a PILOT Agreement 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, commercial, warehousing, distribution facilities, retail (subject to retail restrictions in the Act), 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, involve significant capital investments in the Town, repurpose existing vacant or nearly vacant buildings, or will stimulate the local economy. The extent to which the project will directly create or retain permanent private sector jobs as well as “temporary” jobs during the construction period are factors that will be considered by the Agency in determining if a project is eligible for a PILOT Agreement. In addition, the level of secondary “multiplier” jobs that will be created or retained as a result of the project will be considered by the Agency. Current policy is to rely on a cost benefit analysis of the project.

- (b) 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 numbers 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 in the Town, the retention of current jobs at an existing project, and the possible failure to realize future economic benefits for attraction projects are factors that may be considered by the Agency in granting a PILOT Agreement.
- (c) The total amount of capital investment and/or public benefit at the project is a factor that may be considered by the Agency in granting a PILOT Agreement.
- (d) 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.
- (e) 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.
- (f) For purposes of this UTEP, “**Affordable Housing Projects**” are defined as housing projects (i) utilizing either four percent (4%) Low Income Housing Tax credits AND tax-exempt bonds OR nine percent (9%) Low Income Housing Tax credits, (ii) housing projects that receive funding through the HOME, CDBG or any HUD programs which restricts the income levels of the residents of the housing project by the terms of the funding agreements or a

Regulatory Agreement is recorded against the property restricting the income levels of the residents of the housing project and the rent that may be payable by the residents, (iii) Affordable Housing Projects that receive funding from a federal, State, County, Village or Town agency, entity, program or authority which restricts the income levels of the residents of the housing project by the terms of the funding agreements or records a Regulatory Agreement against the property restricting the income levels of the residents of the Affordable Housing Project or the rent that may be payable by the residents, or (iv) any housing project for which the Agency receives a legal opinion acceptable to the Agency that such housing project qualifies as an Affordable Housing Project under federal or State law. Affordable Housing Projects may be granted a PILOT Agreement for a term of up to 15 years with fixed PILOT Payments to be determined by the Agency in its sole discretion. Alternatively, in the sole discretion of the Agency, a “10% Shelter Rent PILOT” may be used for the PILOT Agreement. The “10% Shelter Rent PILOT” may be for a 10-year term or a 15-year term, at the sole discretion of the Agency, with PILOT Payments set at an annual amount equal to 10% of the total revenues of the Affordable Housing Project minus utilities of the Affordable Housing Project. In order to determine the 10% Shelter Rent PILOT, the revenue and utility information of the Affordable Housing Project will need to be provided by the project Applicant to the Agency in conjunction with the Affordable Housing Project at the time of the Application and thereafter on an annual basis. In the event the Affordable Housing Project is financed by tax exempt bonds or 9% Low Income Housing Tax Credits or the project is subject to a recorded Regulatory Agreement recorded by a Municipality or a governmental entity restricting the income levels of the residents of the housing project and the amount of rent payable by the residents, the PILOT Agreement may, in the sole discretion of the Agency, run concurrently with the term of the bond financing or the term of the 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.

- (g) For purposes of this UTEP, “**Assisted Living Facilities**” are defined as facilities licensed or regulated by the State as assisted or enhanced living facilities and may include memory care units or units to care for persons with cognitive or physical disabilities who cannot safely live or care for themselves independently. Assisted Living Facilities may be granted a PILOT Agreement for a term of to 10 to 15 years with fixed PILOT Payments to be determined by the Agency in its sole discretion. However, in the event the Assisted Living Facility

is financed by tax exempt bonds, the PILOT Agreement may run concurrently with the term of the bond financing.

- (h) For purposes of this UTEP, “**Senior Living Facilities**” are defined as independent living facilities which are restricted for residents 55 years of age or older per the Town Code. Senior Living Facilities may be granted a PILOT Agreement for a term of to 10 to 15 years with fixed PILOT Payments to be determined by the Agency in its sole discretion. However, in the event the Senior Living Facility is financed by tax exempt bonds, the PILOT Agreement may run concurrently with the term of the bond financing.

- (i) For Purposes of this UTEP, “**Market Rate Housing Projects**” are defined as all housing projects other than Affordable Housing Projects, Senior Living Facilities or Assisted Living Facilities. Market Rate Housing Projects may be granted a PILOT Agreement for a term of up to 7 years, starting at the current taxes on the land and any existing buildings, structures and improvements on the land and increasing to full taxation at the end of the PILOT Term with PILOT Payments to be determined by the Agency, in its sole discretion. However, Market Rate Housing Projects that are to be wholly located in or substantially located in one of the areas described below, may be eligible to be granted in the Agency’s sole and absolute discretion an enhanced PILOT Agreement for a 13 to 15-year term. The enhanced PILOT Agreement will generally equal land-only taxes for three to five years. The remaining ten years will generally mirror a “double 485-b” exemption. In order to be eligible to receive an enhanced PILOT Agreement, Market Rate Housing Projects must be located in one of the following areas: a Community Development Block Grant area, an Opportunity Zone, a revitalization area, a Transit Oriented Development, a Highly Distressed Area (as defined in the Act), an established downtown, a blighted area or parcel of land as per the Town’s Code, or if such Market Rate Housing Project is part of a Town or Village planned development zone or an incentive zoning program. All Market Rate Housing Projects, regardless of whether it receives an enhanced PILOT Agreement, must comply with the requirements of Section 7(D)(j) below.

- (j) All Market Rate 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 Lease and Project Agreement. Each of the “affordable” units shall rent at a reduced rent to tenants with an annual income 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 at a reduced rent to tenants with an annual income 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 affordable units and the workforce units. This information must be provided to the Agency on an annual basis. Compliance with the above requirements for a minimum of 10% affordable units and a minimum of 10% workforce units will not make a Market Rate Housing Project be considered to be an Affordable Housing Project as defined in Section 7(D)(h) above.

- (k) Approval of all housing projects will be at the sole discretion of the Agency’s Board of Members. For housing projects undertaken, the Agency may engage the services of a consultant to assist the Agency to determine appropriate PILOT Payment levels based upon such relevant factors, including, but not limited to, the total project costs, projected rental income, unit size, number and configuration. All project applicants for Market Rate Housing Projects, Senior Housing Living Facilities, Assisted Living Facilities and Affordable Housing Projects must submit a feasibility study to the Agency demonstrating the need for the project, other existing or planned housing projects, the impact on the local taxing jurisdictions, the impact on the local school district and the expected number of children, if any, who are likely to attend the local school district, and demonstrating that the housing project complies with the Act.
- (l) Electrical power generating facilities, electrical storage facilities, co-generation facilities, energy transmission lines or facilities, including electrical transmission lines, poles and underground conduits, undersea electrical cables, convertor stations, electrical interconnect facilities, equipment and substations, natural gas pipelines and pumping stations, Renewable Energy Systems, and other energy projects are eligible for PILOT Agreements for a term of ten (10) years up to twenty-five (25) years following the completion of the construction, acquisition, and equipping of the project with fixed PILOT Payments determined by the Agency in its sole discretion and subject to periodic escalation. In determining the PILOT Agreement, the Agency, may consider the total amount of power generated, stored or transmitted by such project and the assessed value of such project.
- (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.

- (3) Expiration or Termination of PILOT Agreement: 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.
- (4) 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.
- (5) Payment of PILOT Payments: Unless otherwise determined by resolution of the Agency or otherwise provided for in a Lease and Project Agreement or a PILOT Payment invoice from the Agency, all PILOT Payments payable to an Affected Tax Jurisdiction shall be billed and collected directly by the 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.
- (6) Late Payment of PILOT Payments: Any PILOT Payments that are not paid on the date that such payments are due shall be subject to penalties and interest as required by the Act and the Lease and Project Agreement or the PILOT Agreement.
- (7) Recapture: All PILOT Agreements are subject to Recapture upon the recurrence of a Recapture Event.

- (8) 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 this Section 7 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.

SECTION 9. RECAPTURE.

(A) Recapture of Agency Benefits. It is understood and agreed by the Applicant that the Agency will enter into a Lease and Project Agreement or PILOT Agreement to provide financial assistance and grant Tax Exemptions to the Applicant as an inducement to the Applicant to acquire, locate, construct, renovate, equip and operate a project in the Town in order to accomplish the Public Purposes of Agency under the Act. Upon the occurrence of a Recapture Event, the Agency will recapture up to 100% of the Recaptured Benefits in accordance with the Act and the provisions of the Lease and Project Agreement and the PILOT Agreement.

(B) For purposes of this UTEP, “**Recaptured Benefits**” 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 Lease and Project Agreement and the PILOT Agreement including, but not limited to, the amount equal to 100% of:

(i) mortgage recording tax exemption; and

(ii) sales and use tax exemption savings realized by or for the benefit of the Applicant, including any savings realized by any agent of the Applicant pursuant to the Lease Agreement and Project Agreement and each sales tax agent authorization letter issued in connection with the Lease Agreement and Project Agreement (“**Sales Tax Savings**”); and

(iii) Real Property Tax Abatement savings granted pursuant to the Lease Agreement and Project Agreement and the PILOT Agreement (i.e., full Taxes on the Facility less the PILOT Payments) (the “**Real Property Tax Abatement Savings**”).

(C) Recaptured Benefits, upon the occurrence of a Recapture Event in accordance with the provisions of the Lease Agreement and Project Agreement and the declaration of a Recapture Event by notice from the Agency to the Applicant, shall be payable directly to the Agency or to the State of New York if so directed by the Agency within ten (10) days after such notice of a Recapture Event.

(D) For purposes of this UTEP a “**Recapture Event**” shall mean any of the following events:

(i) The occurrence and continuation of an Event of Default under the Lease Agreement and Project Agreement, which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or

(ii) The Facility shall cease to be a “project” within the meaning of the Act, as in effect on the Closing Date, through the act or omission of the Applicant; or

(iii) The sale of the Facility or closure of the Facility and/or departure of the Applicant from the Town, except as due to casualty, condemnation or force majeure; or

(iv) Failure of the Company to create or cause to be maintained the number of FTE jobs at the Facility as provided in the Lease and Project Agreement, which failure, in the sole judgment of the Agency, is not reflective of the business conditions of the Applicant or the subtenants of the Applicant, 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; or

(v) Any significant deviations from the project information contained in the Application which, in the sole judgment of the Agency, would constitute a significant diminution of the Applicant’s activities in, or commitment to, the Town of Brookhaven, Suffolk County, New York; or

(vi) The Applicant receives or claims Sales Tax Savings in connection with the project work in excess of the maximum amount of the sales and use tax exemptions authorized by the Agency or receives or claims Sales Tax Savings prior to the commencement of the Sales Tax Exemption Period or after the Sales Tax Exemption Period; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recaptured Benefits.

(E) If a Recapture Event has occurred due solely to the failure of the Applicant to create or cause to be maintained the number of fulltime equivalent employees (“FTEs”) at the project as provided in the Lease and Project Agreement in any year but the applicant has created or caused to be maintained at least 85% of such required number of FTEs for such year, then in lieu of recovering the Recaptured Benefits provided above, the Agency may, in its sole discretion, adjust the PILOT Payments due under Lease and Project Agreement and the PILOT Agreement on a pro rata basis so that the amounts payable will be adjusted upward retroactively for such year by the same percentage as the percentage of FTEs that are below the required FTE level for such year. Such adjustments to the PILOT Payments may be made each year until such time as the Applicant has complied with the required number of FTEs pursuant to the Lease and Project Agreement.

(F) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a “force majeure” event, (ii) a taking or condemnation by governmental authority of all or part of the Facility, or (iii) the inability or failure of the Applicant after the project shall have been destroyed or damaged in whole or in part (such occurrence a “Loss Event”) to rebuild, repair, restore or replace the project to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in

good faith on the part of the Applicant or any of its affiliates so long as the applicant or any of its affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the project or part thereof.

(G) The Applicant will be required under the Lease and Project Agreement to furnish to the Agency, and to cause any sublessee of the project to furnish, the Agency with written notification within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Applicant of the occurrence of a Recapture Event under the Lease and Project Agreement, which notification shall set forth the terms of such Recapture Event.

(H) In the event any payment of Recaptured Benefits owing by the Applicant under the Lease and Project Agreement shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to ten percent (10%) but in no event at a rate higher than the maximum lawful prevailing rate, until the Applicant shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(I) The Applicant shall be required by the Lease and Project Agreement to pay to the Agency all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all Recaptured Benefits.

EXHIBIT F

Cost Benefit Analysis