

Date: September 15, 2021

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held electronically via webinar and in person, on the 15th day of September, 2021, the following members of the Agency were:

Present: Frederick C. Braun III, Chairman
Felix R. Grucci, Jr., Vice-Chair
Martin Callahan, Treasurer
Ann-Marie Scheidt, Secretary
Gary Pollakusky, Assistant Secretary
Lenore Paprocky, Member

Recused:

Excused: Frank C. Trotta, Assistant Treasurer

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 and title to a certain industrial development facility more particularly described below (Port Development LLC 2021 Facility) and the leasing of the facility to Port Development LLC.

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

Voting Aye

Braun
Grucci
Callahan
Scheidt
Pollakusky
Paprocky

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE APPOINTMENT OF PORT DEVELOPMENT LLC, A NEW YORK LIMITED LIABILITY COMPANY, ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF PORT DEVELOPMENT LLC AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING AS AGENT OF THE AGENCY FOR THE PURPOSE OF ACQUIRING, DEMOLISHING, CONSTRUCTING AND EQUIPPING THE FACILITY, APPROVING THE ACQUISITION, DEMOLITION, CONSTRUCTION AND EQUIPPING OF SUCH 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 Development 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 of Port Development LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), has applied to the Agency to enter into a transaction in which the Agency will assist in (a) the acquisition of multiple parcels totaling approximately .87 acres of land located at 1 North Country Road, Port Jefferson, New York (the “**Land**”), (b) the demolition of two (2) existing buildings located thereon (one (1) building approximately 4,400 square feet and one (1) building approximately 1,800 square feet), (c) the construction, equipping and furnishing of a 3-story approximately 48,550 square foot building (excluding an approximately 1,800 square foot portion thereof that will be used for retail and/or office space) containing approximately 36 residential apartments (thirty-two (32) 1-bedroom units and four (4) 2-bedroom units), approximately 1,500 square foot private fitness/game room, lobby, recreation area, storage, utility room, elevator, outdoor and covered patio area, garage and outdoor parking of together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (c) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including shared common areas and other amenities and the furnishing thereof including, but not limited to, furniture, appliances, structures, equipment and personal property in the units (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to the Company to be used by the Company to provide a mixed-use development consisting of residential, office and retail space (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 September 1, 2021,

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 September 1, 2021, 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 \$10,255,000 but not to exceed \$11,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$76,913, but not to exceed \$82,500, in connection with the financing of the acquisition, demolition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of the acquisition, demolition, construction and equipping of the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$279,450, 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); 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 Reasonableness Assessment for Financial Assistance, prepared for the Agency by Camoin Associates (“**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, a public hearing (the “**Hearing**”) was held on September 14, 2021, 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 4, 2021 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 VHB Engineering, Surveying, Landscape Architecture and Geology, P.C. (the “**Feasibility Study**” and 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. Proposed Mixed Use Development Benefit Analysis, dated July, 2021, and prepared by VHB Engineering, Surveying, Landscape Architecture and Geology, P.C;
 2. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
 3. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.; and
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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 (the “**EAF**”) and related documents (collectively, the “**Questionnaire**”) with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, the Agency constitutes an “Involved Agency” (as defined in SEQR); and

WHEREAS, the Village of Port Jefferson Planning Board (the “**Lead Agency**”), reviewed the Facility as Lead Agency following coordinated review, determined that the Facility would not have a significant impact on the environment, and adopted a Negative Declaration for the Facility pursuant to the provisions of SEQR; and

WHEREAS, pursuant to a resolution, dated June 10, 2021, the Lead Agency determined that the Action in connection with the Facility (the “**Action**”), is a Type 1 Action for SEQR purposes; and

WHEREAS, this determination constitutes a negative declaration for purposes of SEQR and is binding on the Agency; and

WHEREAS, the Agency has reviewed the Questionnaire and such other documents as the Agency felt it necessary or appropriate to examine to adequately review the proposed Action; and

WHEREAS, the Agency finds that the negative declaration of the Town Board accurately and adequately examines environmental issues presented by the Action; 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 transaction contemplated by the leasing of the Facility by the Agency 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 EAF completed by the Company and other representations and information furnished regarding the Action, the Lead Agency, following coordinated review, determined that, based upon its review of the EAF, the appropriate criteria for determination of significance, and such other and further information which the Lead Agency felt necessary to review the Action, that the Action would 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 and is binding on the Agency.

Section 2. In connection with the acquisition, demolition, 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 acquisition, demolition, 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 acquisition, demolition, 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 CBA 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 acquisition, demolition, 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 \$10,255,000 but not to exceed \$11,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$76,913, but not to exceed \$82,500, in connection with the financing of the acquisition, demolition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of the acquisition, demolition, construction and equipping of the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$279,450, 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. 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 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 D.

Section 8. Subject to the provisions of this resolution, the Company is herewith and hereby appointed the agent of the Agency to acquire, 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 acquire, demolish, 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 acquire, demolish, 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 \$279,450 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 abatement 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. The provisions of this resolution shall continue to be effective for one year from the date hereof, whereupon the Agency may, at its option, terminate the effectiveness of this Resolution (except with respect to the matters contained in Section 13 hereof).

Section 15. 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 electronically via webinar and in person on the 15th day of September, 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.

That the Agency Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that, due to the ongoing public health crisis caused by the Novel Coronavirus (COVID-19) and pursuant to Chapter 417 of the laws of 2021, effective September 2, 2021 through January 15, 2022, permitting local governments to hold public hearings by telephone and video conference and/or similar device, the Agency’s Board Meeting on September 15, 2021 (the “**Board Meeting**”), was held electronically via webinar, as well as a public meeting open for the public to attend in person. Members of the public were advised, via the Agency’s website, to listen to the Board Meeting by visiting <https://us02web.zoom.us/j/84031117409?pwd=SE1sYytwenBRdjRaNnN6R096UFJFZz09> and entering passcode 945336, 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 15th day of September, 2021.

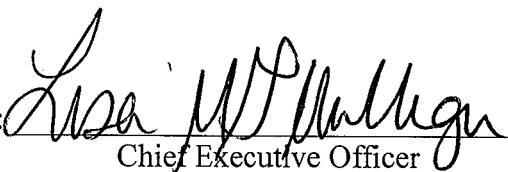
By: 
Chief Executive Officer

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York State General Municipal Law will be held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on the 14th day of September, 2021, at 1:00 p.m. local time, at the Port Jefferson Village Hall, 121 West Broadway, First Floor Conference Room, Port Jefferson, New York 11777, in connection with the following matters:

Port Development 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 of Port Development LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), has applied to the Agency to enter into a transaction in which the Agency will assist in (a) the acquisition of multiple parcels totaling approximately .87 acres of land located at 1 North Country Road, Port Jefferson, New York (the “**Land**”), (b) the demolition of two (2) existing buildings located thereon (one (1) building approximately 4,400 square feet and one (1) building approximately 1,800 square feet), (c) the construction, equipping and furnishing of a 3-story approximately 48,550 square foot building (excluding an approximately 1,800 square foot portion thereof that will be used for retail and/or office space) containing approximately 36 residential apartments (thirty-two (32) 1-bedroom units and four (4) 2-bedroom units), approximately 1,500 square foot private fitness/game room, lobby, recreation area, storage, utility room, elevator, outdoor and covered patio area, garage and outdoor parking of together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (c) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including shared common areas and other amenities and the furnishing thereof including, but not limited to, furniture, appliances, structures, equipment and personal property in the units (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to the Company to be used by the Company to provide a mixed-use development consisting of residential, office and retail space (the “**Project**”). The Facility will be initially owned and managed or operated by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment and 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 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 4, 2021

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON
SEPTEMBER 14, 2021 AT 1:00 P.M.

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY (PORT DEVELOPMENT LLC 2021 FACILITY)

Section 1. James M. Tullo, Deputy Director of the Town of Brookhaven Industrial Development Agency (the “**Agency**”) called the hearing to order.

Section 2. James M. Tullo then appointed himself the hearing officer of the Agency, to record the minutes of the hearing.

Section 3. The hearing officer then described the proposed transfer of the real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility as follows:

Port Development 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 of Port Development LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), has applied to the Agency to enter into a transaction in which the Agency will assist in (a) the acquisition of multiple parcels totaling approximately .87 acres of land located at 1 North Country Road, Port Jefferson, New York (the “**Land**”), (b) the demolition of two (2) existing buildings located thereon (one (1) building approximately 4,400 square feet and one (1) building approximately 1,800 square feet), (c) the construction, equipping and furnishing of a 3-story approximately 48,550 square foot building (excluding an approximately 1,800 square foot portion thereof that will be used for retail and/or office space) containing approximately 36 residential apartments (thirty-two (32) 1-bedroom units and four (4) 2-bedroom units), approximately 1,500 square foot private fitness/game room, lobby, recreation area, storage, utility room, elevator, outdoor and covered patio area, garage and outdoor parking of together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (c) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including shared common areas and other amenities and the furnishing thereof including, but not limited to, furniture, appliances, structures, equipment and personal property in the units (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to the Company to be used by the Company to provide a mixed-use development consisting of residential, office and retail space (the “**Project**”). The Facility will be initially owned and managed or operated by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment and 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 construction and equipping of the Facility and exemption of real property taxes consistent with the uniform tax exemption policies ("UTEP") of the Agency.

Section 4. The hearing officer then opened the hearing for comments from the floor for or against the proposed transfer of real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility. The following is a listing of the persons heard and a summary of their views:

See attached letter from Port Jefferson School District.

Section 5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at 1:30 p.m.

**PORT JEFFERSON SCHOOL DISTRICT
OFFICE OF THE SUPERINTENDENT OF SCHOOLS
550 SCRAGGY HILL ROAD
PORT JEFFERSON, NY 11777
PHONE (631)791-4221 FAX (631)476-4409**



Jessica Schmettan
Superintendent of Schools

BOARD OF EDUCATION
Ellen Boehm, President
Tracy Zamek, Vice-President
Randi DeWitt
David Keegan
Ravi Singh
Rene Tidwel

September 13, 2021

Lisa M. G. Mulligan, Chief Executive Officer
Industrial Development Agency
Town of Brookhaven
One Independence Hill
Farmingville, New York 11738

Dear Ms. Mulligan,

Thank you for allowing this opportunity for the Port Jefferson School District to express our views on the proposed project by Port Development, LLC. We are grateful for Port Development, LLC's interest in investing in the Port Jefferson community and we intend for this to become an amicable relationship.

We have several questions for the Agency:

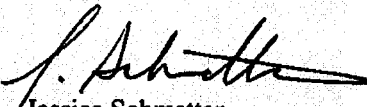
Has the IDA considered the adverse effect that granting a reduced PILOT will have upon the Port Jefferson School District? If the 36 unit project enrolls an estimated 3-4 students with the District, then the District will incur at least \$81,321 - \$108,488 in additional annual educational expense based upon the state established cost per student rate of \$27,107. How will the estimated annual school tax offset this increase in expense to the school district?

The obvious concern for the District is that any reduction in property taxes represents a reduction in revenue for the District. This would not be as great an issue if the project did not generate additional expenses for the District through school-age children. This additional expense would have to be passed along to resident taxpayers. Our estimates are that the tax revenue proposed through this project represents only a quarter of the expense of educating one student at Port Jefferson.

Our second concern is about the length of the proposal. The five additional years lengthens the amount of time to which the District expects full payment for the estimated students.

Thank you for the opportunity to participate in this public hearing today.

Sincerely,


Jessica Schmettan
Superintendent

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 foregoing copy of the minutes of a public hearing held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on September 14, 2021, at 1:00 p.m., local time, with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of the minutes in connection with such matter.

IN WITNESS WHEREOF, I have hereunto set my hand as of September 14, 2021.

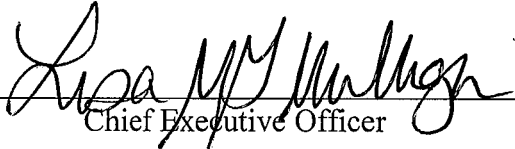

Chief Executive Officer

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), Village of Port Jefferson, Port Jefferson School District, Suffolk County and Appropriate Special Districts

Property Address: 1 North Country Road, Port Jefferson, New York

Tax Map Nos. 206.00-21.00-03.027, 028, and 029

School District: Port Jefferson School District

<u>Year</u>	<u>PILOT Payment</u>
-------------	----------------------

1.	\$33,446
2.	38,767
3.	47,451
4.	56,467
5.	65,824
6.	75,533
7.	85,604
8.	96,048
9.	106,875
10.	118,097
11.	129,725
12.	141,770
13.	154,246
14.	167,164
15.	180,537

EXHIBIT D

Requisite Materials

1. Proposed Mixed Use Development Benefit Analysis, dated July, 2021, and prepared by VHB Engineering, Surveying, Landscape Architecture and Geology, P.C;
2. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
3. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.; and

EXHIBIT D-1

**Proposed Mixed Use Development Benefit Analysis, dated July, 2021, and prepared by VHB
Engineering, Surveying, Landscape Architecture and Geology, P.C.**

Proposed Mixed Use Development

1 North Country Road
Incorporated Village of Port Jefferson,
Town of Brookhaven, Suffolk County

PREPARED FOR

One Country LLC
414 Main Street
Port Jefferson, NY 11777

PREPARED BY



**VHB Engineering, Surveying,
Landscape Architecture and
Geology, P.C.**

100 Motor Parkway, Suite 350
Hauppauge, New York 11788
631.787.3400

July 2021

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1

Introduction and Background

1.1 Project Overview

This report has been prepared at the request of One Country LLC on behalf of the Applicant, Port Development LLC (the "Applicant"). The Applicant is seeking Town of Brookhaven Industrial Development Agency (IDA) benefits associated with its proposed redevelopment (the "Project") of the property located at 1 and 17 North Country Road in the Incorporated Village of Port Jefferson, Town of Brookhaven, Suffolk County (the "subject property") (see Figure 1). The subject property is known on the Suffolk County Tax Map as District 0206 – Section 212.00 – Block 03.00 – Lots 027.000, 028.00 and 029.00. The subject property is currently improved with a one-story, 4,400±-square-foot (SF) vacant building that previously contained a restaurant and another two-story vacant building that previously contained an 1,800± SF florist, with associated gravel and paved-surface parking areas. The Project involves the demolition of existing structures and redevelopment of the subject property with a three-story, 48,550± SF mixed-use building, to include ground-floor commercial with residential apartments on all three floors and associated paved parking and landscaped areas. Specifically, the proposed building would include 36 residential apartments (approximately 32 one-bedroom and 4 two-bedroom) of which 7 would be affordable/workforce housing units. The ground level of the proposed building would include 1,800± SF of commercial/retail space. Additional resident amenities, including a fitness room, lobby and lounge spaces, an indoor garage, and a private outdoor patio and lawn/garden area would also be located on the ground floor.



Proposed Mixed Use Development | Port Jefferson, NY

Site Location Map

1 and 17 North Country Road
Village of Port Jefferson, Town of Brookhaven
Suffolk County

Source Info: Suffolk County GIS, ESRI

5.3.1, which encourages retail uses that meet the needs of workers, residents and commuters.

The proposed retail use would be contained within the first floor of the proposed building, facing Main Street and North Country Road. There are lobby and lounge amenities associated with the residential component of the mixed-use building which would occupy ground floor spaces. However, these uses are concentrated away from the Main Street road frontage.

Throughout the *2030 Plan*, access to transit and transit-oriented development (TOD) in uptown Port Jefferson are mentioned as key factors for developing the area in a desirable manner. The proposed Project would provide a TOD development in upper Port Jefferson through the addition of 36 residential units within walking distance of the Port Jefferson LIRR station. Not only would this minimize congestion in the Village, but it would also provide an additional boost to local businesses as transit riders walk to and from the station, patronizing local businesses as they meet their daily needs.

As demonstrated above, the Project is well aligned with the relevant goals and guidelines of the *Village of Port Jefferson 2030 Plan Comprehensive Plan Update*.

Upper Port Jefferson Revitalization Planning and Urban Design Study (2012)

The Upper Port Jefferson Revitalization Planning and Urban Design Study (the *Revitalization Plan*) was prepared to analyze land use patterns in Upper Port Jefferson, where there had previously been no planning studies. Although the proposed Project would be built adjacent to the *Revitalization Plan* Study Area, existing conditions on the site, as well as the proposed Project, align with the revitalization goals and objectives set forth in the *Revitalization Plan*. Goals in the study include:

- › House a neighborhood population that would help support and transform the existing commercial Main Street into a more vibrant shopping street serving local needs.
- › Support the Main Street businesses with a walkable, cohesive community. Encourage pedestrian activity, social interaction, and transit ridership.
- › Provide excellent local pedestrian access while accommodating automobile circulation. Safe and convenient sidewalks are critical to the success of walkable neighborhood businesses.
- › Require design quality through design guidelines and zoning controls.
- › Create a "friendly neighborhood" that adds to the quality of life. Design qualities and amenities, such as plazas, gardens, artwork, outdoor performance, farmers market etc. that are critical to a local neighborhood business district's success, and that can foster smaller businesses, studios, and artist activities.

The *Revitalization Plan* recommends C-2 zoning "be changed to permit mixed-use, residential over commercial" in order to provide the residential population necessary

to support thriving businesses in the area (pg. 41). The *Revitalization Plan* recommends a number of zoning and bulk and dimensional changes in the C-2 district as well as the creation of various overlay districts within the uptown area.

The plan also proposed improvements to the pedestrian environment, including sidewalk improvements, updating lighting, and new street crossings, to create connections to existing and proposed parks, the train station, and businesses in the Upper Port Jefferson area.

Though the proposed Project does not fall within the Upper Port Study Area, it is across the street from and faces the study area, and faces many of the same issues as properties within the Study Area. Thus, the subject property would benefit from some of the same updates and controls as those recommended in the *Revitalization Plan*. The Project would provide the same mixed-use residential and commercial development as recommended by the *Revitalization Plan*, increasing the population of the area to support the commercial district. The Project would be developed as a TOD, as noted above, allowing residents to easily walk to both local businesses and the LIRR station, promoting walkability in Upper Port Jefferson.

Town of Brookhaven Comprehensive Land Use Plan (Final 1996)

The *Town of Brookhaven Comprehensive Land Use Plan* (the *Brookhaven CLUP*) was prepared to address land use planning issues and serve as a guide for the future of the Town of Brookhaven. Although the proposed Project would be built within the Village of Port Jefferson, which is a separate municipality within the greater boundary of the Town, the broader demographic trends and needs of the population would be expected to generally apply within the Village as well. The plan proposed to control growth in such a way that maximizes environmental protection and enhances the community's quality of life, while providing for balanced economic growth and opportunity. The *Brookhaven CLUP* includes hamlet studies, goals, demographics data, and analyses of environmental resources, historic preservation, transportation and land use and zoning.

Section 4 of the *Brookhaven CLUP*, Demographics, details the projected changes in population, household size, age structure, density, and housing supply within the Town of Brookhaven. At the time the *Brookhaven CLUP* was created, the fully developed population was projected to be approximately 500,000 – 550,000 persons. To accommodate the increase of nearly 100,000 persons (from the 1990 population estimate of 407,871), the *Brookhaven CLUP* projected the construction of approximately 53,000 additional dwelling units (from the 1990 occupied housing unit estimation of 129,317). However, the *Brookhaven CLUP* acknowledged that the anticipated increase in population would be highly dependent on future development patterns, including the potential increase in subdivision approvals, multifamily developments, acquisition of open space, and other variable factors. As such, the Town of Brookhaven could experience a greater increase in population than anticipated in the *Brookhaven CLUP*. According to the 2019 American

Community Survey (ACS)², the Town of Brookhaven had a population of 483,546 and a total of 175,888 housing units as of 2019.

The Demographics section also outlines the decrease in household size seen throughout the Town. From 1980 to 1990, household size decreased to nearly 3.0 individuals per household. This trend towards 3.0 persons per household (or lower) has been seen throughout both Suffolk and Nassau Counties, and is anticipated to continue in the years to come. The *Brookhaven CLUP* identifies the shifting age demographics as a driving factor in this decline. From 1980 to 1990, the median age in the Town of Brookhaven had increased from 27.8 to 31.5 years. The *Brookhaven CLUP* notes this to be due to an increase in young adults and senior citizens, and a decrease in individuals age 19 or younger. According to the US Census 2019 ACS five-year estimates, the median age in the Town has increased to 40.0.

In consideration of the increasing and aging population, and the housing needed to accommodate these changing household demographics, the *Brookhaven CLUP* repeatedly stresses that housing options will need to be diversified. As opposed to the predominance of single-family residences found throughout the Town, diversified housing options would primarily include an increase in multi-family housing.

The *Brookhaven CLUP* reported that there were 129,137 housing units in the Town in 1990. The 2019 ACS estimate of 175,888 indicates an increase of 46,751 ± housing units between 1990 and 2019. Considering the *Brookhaven CLUP*'s estimate of 53,000 housing units needed to accommodate the Town's future population, there remains a need for additional housing construction. Though only a fraction of the dwelling units needed, the Project would aid in accommodating the population growth of the Town of Brookhaven. The Project would also help in providing alternative housing options; with a mix of one- and two-bedroom units, the Project would accommodate those smaller households that are increasingly becoming more prominent.

Suffolk County Comprehensive Master Plan 2035 (2015)

The *Suffolk County Comprehensive Master Plan 2035: Framework for the Future* (hereinafter, the "*Suffolk 2035 Plan*"), adopted by the Suffolk County Legislature on July 28, 2015, represents the final part of a planning effort that was initiated in 2011 with the publication of an inventory of data relating to demographics, the economy, and quality of life in Suffolk County. The *Suffolk 2035 Plan* is guided by six key priorities:

1. *Build a 21st Century Transit Network to Provide More Transportation Choices to Improve Mobility, Access, and Safety*
2. *Providing Equitable, Affordable, Fair Housing*

² U.S. Census Bureau, 2015-2019 American Community Survey 5-Year Estimates.

3. *Enhance Economic Competitiveness and Capacity to Build an Innovative Economy*
4. *Support Vibrant Communities*
5. *Streamline Government, Coordinate Policies, and Leverage Investment*
6. *Protect the Environment and Enhance Our Human Capital*

The *Suffolk 2035 Plan* notes that demographic changes in Suffolk County over the past two decades have created a demand for a higher proportion of smaller, multi-family housing units, a higher proportion of rental units, and more affordable units. However, the plan acknowledges that this need is not being met. In response, the plan details how established communities are well suited for supporting multi-family and rental housing, and even cites Port Jefferson as an example of the success that can be achieved by promoting such housing options.

Consistent with the *Suffolk 2035 Plan's* recommendations, the Project includes the redevelopment of an underutilized property to provide 36 residential rental units of various sizes (approximately 32 one-bedroom and 4 two-bedroom units), 7 of which are affordable or workforce housing units. The Project would thus increase the stock of rental units, specifically that of smaller, multi-family housing, and affordable/workforce units. In doing so, the Project will also build upon the successes already seen in Port Jefferson, as noted in the *Suffolk 2035 Plan*.

The *Suffolk 2035 Plan* also notes that while private sector employment has increased throughout the County, not all sectors of employment have experienced the same growth. Specifically, the *Suffolk 2035 Plan* states that "the County is losing high paying jobs and replacing them with lower skill and wage jobs." As described in *Anticipated Benefits of the Project*, below, implementation of the Project would support a total of approximately 125 jobs during construction and create approximately 12 jobs during operations, including jobs resulting from indirect and induced factors. Further, the Project would generate approximately \$8.1 million in annual income during construction, with an average salary of approximately \$65,118, and approximately \$543,306 in annual income during operations, with an average salary of approximately \$46,361, according to the IMPLAN analysis presented herein. The subject site is currently vacant. Therefore, the Project would directly generate approximately 8 new jobs to the site. As further discussed below (see section entitled, *Anticipated Benefits of the Project*), the average operational salary generated by implementation of the Project would be greater than the per capita income in the Town of Brookhaven.

In addition, the project includes measures that would help achieve the goals related to transit access and environmental protection by providing residential units within walking distance of the Port Jefferson LIRR station, reducing the need for personal vehicle use. The Project would also incorporate various environmentally conscious measures such as energy conservation shades and window treatments, as well as energy efficient appliances and HVAC units, and all LED lighting. The Project would also include 7 affordable/workforce units. Residents of the proposed Project would

be within walking distance of nearby businesses in the Upper Port Jefferson area, contributing to the creation of a walkable, vibrant commercial area.

1.3 Rental Housing Trends and Data

The current need for rental housing on Long Island is well documented, as identified in the Comprehensive Planning Documents section, above. The need for rental housing is also underscored in the Regional Planning Association's (RPA) 2020 *Long Island Housing Data Profiles* (Housing Profiles), which identifies housing and demographic trends in communities across Long Island.³ The following trends and statistics pertaining to Port Jefferson and Long Island were identified in the Housing Profiles, including the following:

- › Only 25 of the 3,223 housing units in Port Jefferson were built in 2010 or later.⁴
- › Rent burdened households make up 46.9% of renters in Port Jefferson.
- › Housing production, especially for multi-family units, has not kept up with demand.
- › Long Island has a shortage of rental housing that makes it difficult for young adults and lower-income families in particular to find housing.

In addition, a 2013 report from the RPA, *Long Island's Rental Housing Crisis* (LI Rental Housing)⁵ identifies a number of key trends and statistics pertaining to the Long Island housing market, including the following:

- › Long Island's 4.3% rental vacancy rate means that there are fewer available rental homes than in any other suburban area in the New York region.
- › 56% of renters pay more than 30% of their income for housing.
- › 64% of Long Island renters cannot afford a typical two-bedroom apartment.
- › 55% of 20-to-34 year-olds live with their parents or older relatives.
- › Over 25% of all the rental homes on Long Island are concentrated in ten communities (these communities do not include the Village of Port Jefferson).
- › Every 100 new units of rental housing generated 32 local jobs, \$2.3 million in income and \$395,000 in tax revenue annually.
- › Actions should be taken at all levels of government to create new homes that both meet community needs and relieve the rental housing crisis.

These results demonstrate that rental housing is limited on Long Island. Additionally, the 2019 ACS shows that only about 19 percent of occupied housing units on Long

³ Regional Plan Association. Long Island Housing Data Profiles. Oct 2020. Available at: <https://rpa.org/work/reports/long-island-housing-data-profiles>

⁴ Data used by the RPA for "Housing Units by Year Built" is gathered from the ACS 2018.

⁵ Regional Plan Association, *Long Island's Rental Housing Crisis* (2013), (accessed June 2021) available online at <https://s3.us-east-1.amazonaws.com/rpa-org/pdfs/RPA-Long-Islands-Rental-Housing-Crisis.pdf>

Island are rentals. For the most part, Suffolk County ranks far behind neighboring metropolitan area counties with respect to the percentage of occupied rental housing units, as shown in Table 1, below.

Table 1 – Rental Housing Units as Percentage of Total Occupied Housing Units

County	Percentage of Rental Units
Suffolk County, NY	19.1
Nassau County, NY	19.4
Hudson County, NJ	68.8
Essex County, NJ	55.5
Westchester County, NY	37.7
New Haven County, CT	39.5
Bergen County, NJ	35.3
Fairfield County, CT	33.9
Dutchess County, NY	33.3
Rockland County, NY	31.9
Putnam County, NY	20.8

Source: U.S. Census Bureau, 2015-2019 American Community Survey 5-Year Estimates.

Further, census data indicates the demand for rentals is increasing. Since its peak at 10.6 percent in 2010, the rental vacancy rate has fallen across the United States to an average of 6.8 in the first quarter of 2021,⁶ indicating that, nationally, the demand for rental units is increasing in relation to supply. The 2019 ACS five-year estimates show that the rental vacancy rate in the Town of Brookhaven and Suffolk County was 3.7 percent. Since 2018 there have been a number of developments totaling 255 units, but demand still exists. The other comparable developments, further discussed in Section 1.4 below, are planned and built around the Village of Port Jefferson. In providing an additional 36 rental housing units, it is anticipated that the Project will provide a much-needed housing type, not only in Port Jefferson as a whole, but in Upper Port Jefferson as well.

1.4 Comparable Rental Developments

The Suffolk County Department of Economic Development and Planning (SCDEP) gathers information on apartment complexes with 10 or more units either existing or currently under construction in the County. According to SCDEP data,⁷ there are 100 apartment complexes with a total of 16,814 units (including those that were under construction at the time of publication in 2018) in the Town of Brookhaven. Of these apartment complexes, 9 were in Port Jefferson, totaling 610 units, and none of them included affordable housing. According to the RPA Housing Profiles, there are 965

⁶ U.S. Census Bureau, *Quarterly Residential Vacancies and Homeownership, First Quarter 2021*, (accessed June 2021); available at <https://www.census.gov/housing/hvs/files/current/hvspress.pdf>

⁷ Suffolk County Department of Economic Development and Planning, *Apartment Complexes of 10 or More Units*, November 29, 2018, (accessed June 2021); available at <https://suffolkcountyny.gov/Portals/0/formsdocs/planning/Research/2018/AptS.pdf>

Benefits Analysis for Town of Brookhaven Industrial Development Agency

renter occupied housing units in Port Jefferson. In providing 36 rental apartments, the Project will increase the number of affordable and workforce housing in the Village.

A number of comparable developments have been completed since 2018 or are currently under construction in Port Jefferson. The list below provides the number of units and addresses of these apartment developments:

- › Shipyard at Port Jefferson Harbor: 112 units (201 W Broadway)
- › Port Jefferson Crossing: 45 units (1615 Main Street) – 100% affordable/workforce
- › Overbay Apartment Community: 52 units (217 W Broadway)
- › The Brookport: 44 units (52 Barnum Avenue).

2

Anticipated Benefits of the Project

2.1 IDA Evaluation Criteria

The IDA evaluates projects seeking benefits pursuant to the guidelines in its Uniform Tax Exemption Policy (UTEP).⁸ As the Project is seeking a PILOT Agreement with the IDA, it is subject to the guidelines presented below to determine eligibility for a real property tax abatement (Section 7(D)(1) of the Uniform Tax Exemption Policy). Relevant guidelines, and the Project's consistency therewith, are as follows:

Section 7(D)[1][i] *For purposes of the 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*

⁸ Town of Brookhaven Industrial Development Agency, *Uniform Tax Exemption Policy*, June 17, 2020, (accessed June 2021); available from <https://brookhavenida.org/files/Brookhaven%20UTEP%20Final%202020.pdf>.

Projects must be located in one of the following areas: a Community Development Block Grant 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 of 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.

The Project is a proposed 36-unit rental-residential facility and meets the UTEP definition for Market Rate Housing Projects. The Applicant is applying for an enhanced PILOT Agreement with a 15-year term. The project site is located in a Community Development Block Grant area (Census Tract 1582.06, Block Group 2 is designated a low/mod block group per US Department of Housing and Urban Development [HUD] definitions, based on 2011-2015 ACS for the FY2021 Entitlement CDBG Grantees) and is a Transit Oriented Development (mixed residential and commercial use approximately 5 minute walk to the Port Jefferson Long Island Rail Road Station). Thus, the Project is eligible for an enhanced PILOT Agreement pursuant to this guideline.

Section 7(D)[1][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.*

VHB conducted an analysis of the jobs projected to be generated by the Project using the IMPLAN software tool. This analysis was conducted for both the construction period and the operation of the Project. For the construction period, data inputs included the anticipated hard and soft costs associated with construction of the Project (\$12,905,000) and the construction start year of 2021.⁹ Construction of the Project is expected to be completed in 2023, over an 18-month (approximate) construction period. Based on these inputs, the Project is estimated to generate approximately 125 jobs during the construction phase. These employment impacts for the construction phase are the sum effect of three different impact types – Direct Effect, Indirect Effect and Induced Effect. Direct Effect impacts are a series of (or single) production changes or expenditures made by producers/consumers as a result of an activity or policy. These initial changes are determined to be a result of an activity or policy (e.g., construction jobs directly related to on-site activity). Indirect Effect impacts are the impacts of local industries buying goods and services from other local industries (e.g., jobs created from construction-related spending).

⁹Construction costs are based on information provided by the Applicant in the Form Application for Financial Assistance Town of Brookhaven Industrial Development Agency dated May 24, 2021. Construction costs do not include land or acquisition costs.

Induced Effect impacts are the response by an economy to an initial change (direct effect) that occurs through re-spending of income by a component of value added. Money is recirculated through the household spending patterns causing further local economic activity (e.g., jobs created through household spending of income from direct jobs). These jobs are broken down as follows:

Table 2 – Employment Impact (Construction Phase)¹⁰

Impact Type	Employment
Direct Effect	66
Indirect Effect	28
Induced Effect	31
<i>Total Effect</i>	<i>125</i>

The analysis of the Project's employment impacts upon completion of construction (i.e., during the operational phase) is based upon the assumption that the Project would directly generate 8 full-time or full-time equivalent (FTE) jobs when fully operational in the year 2021.¹¹ It is estimated that the retail portion of the Project will generate 3 direct jobs, and the residential portion of the Project will generate 2 full-time maintenance jobs and 6 part-time jobs for rental property leasing, property management, bookkeeping, management reporting and seasonal maintenance. It is noted that IDA benefits are sought only for the residential rental housing component (and associated amenities); benefits are not sought in connection with the proposed commercial space.

The results of the employment analysis for the operational phase of the Project are as follows:

Table 3 – Employment Impact (Operational Phase)¹²

Impact Type	Employment
Direct Effect	8
Indirect Effect	2
Induced Effect	2
<i>Total Effect</i>	<i>12</i>

As shown above, it is estimated that the Project has the potential to support approximately 125 jobs during construction and create a total of approximately 12 jobs during operation. The subject site is currently vacant with no employees on the

¹⁰ IMPLAN sectors include: Sector 60 – Construction of new multifamily residential structures; Sector 449 – Architectural, engineering, and related services; Sector 447 – Legal services; Sector 440 – Real estate; and, Monetary authorities and depository credit intermediation.

¹¹ Employment estimates based on information provided by the Applicant in the Form Application for Financial Assistance Town of Brookhaven Industrial Development Agency dated May 24, 2021.

¹² IMPLAN sectors include: Sector 468 – Services to buildings; Sector 440 Real estate; and, Sector 406 – Retail – Miscellaneous store retailers.

site. Therefore, the operational jobs will be new to the Town of Brookhaven. The residential component of the proposed Project will generate 8 direct workers and an additional 4 indirect and induced workers.

The IMPLAN analysis also yields projections of the income from jobs that are anticipated to be created by the Project. This includes income from direct, indirect and induced jobs. The results of this analysis, for both the construction and operational phases of the Project are as follows:

Table 4 – Labor Income for Jobs Generated During Construction

Impact Type	Employment	Labor Income	Average Salary
Direct Effect	66	\$4,724,609	\$71,443
Indirect Effect	28	\$1,730,135	\$61,986
Induced Effect	31	\$1,688,495	\$54,449
Total Effect	125	\$8,143,240	\$65,118

Table 5 – Labor Income for Jobs Generated During Operation

Impact Type	Employment	Labor Income	Average Salary
Direct Effect	8	\$342,903	\$42,863
Indirect Effect	2	\$88,530	\$54,437
Induced Effect	2	\$111,873	\$54,246
Total Effect	12	\$543,306	\$46,361

As demonstrated in Table 4 and Table 5 above, the Project would generate approximately \$8,143,240 in labor (payroll) income for all jobs (direct, indirect and induced) during construction, with an average salary of approximately \$65,118. During Project operations, the Project would generate approximately \$543,306 in labor (payroll) income for all jobs (direct, indirect and induced), with an average salary of approximately \$46,361, according to the IMPLAN analysis.

The per capita income in the Town of Brookhaven is \$41,104 as per the 2015-2019 American Community Survey 5-Year Estimates, therefore, the jobs generated by the proposed Project would be greater than the current per capita income of the Town of Brookhaven. Additionally, the per capita income for Suffolk and Nassau Counties are \$44,465 and \$51,422, respectively. The jobs generated by the proposed Project would therefore be in line with the current per capita income for Long Island.

Section 7[D][1][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.*

The proposed Project would provide capital investment of \$12,905,000 in construction costs, resulting in an overall economic output of approximately \$21.6 million,¹³ including labor income, other property type income, indirect business taxes, etc.

The proposed Project offers numerous public benefits, including the better utilization of a currently vacant property; contribution to the Village's character as a walkable community; and growth of the Village's economic base.

Section 7[D][1][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.*

The Project is consistent with the 2030 Plan, the Brookhaven CLUP, the Revitalization Plan, and the Suffolk 2035 Plan, as discussed in detail in Section 1.2 of this report, above. All four plans identify the need for increased housing and emphasize the importance in diversifying housing options. The Project is especially well aligned with the Village of Port Jefferson's planning efforts, constructing the type of mixed-use development that fosters walkability which the 2030 Plan proposes for future development.

The Project will also expand the local economic base. Under a conservative estimate of 1.66 persons per one-bedroom renter-occupied units and 2.51 persons per two-bedroom units, in Port Jefferson, 36 housing units will provide living space for approximately 64 individuals.¹⁴ The Project would therefore bring increased spending power to the Village, helping to support local businesses and generate additional tax revenues.

Section 7[D][1][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.*

The Project would include energy conservation shades and window treatments, as well as energy efficient appliances and HVAC units, and all lighting would use LED light bulbs. The Project site is located within walking distance of transit options, such as the Port Jefferson LIRR station, reducing the need for residents to use personal vehicles.

In addition, the Project would include an improved stormwater management system in compliance with all local, state and federal regulations. The new stormwater management system would increase stormwater capacity at the site and minimize overflow to adjacent properties or stormwater systems. This system would minimize the amount of pollutants entering soil and groundwater at the Project site.

¹³ Calculated through IMPLAN.

¹⁴ Rutgers University, Center for Urban Policy Research. *Residential Demographic Multipliers: Estimates of the Occupants of New Housing*. June 2006.

Prior to implementation of the Project, the proposed project would be subject to a review of potential environmental impacts in accordance with the State Environmental Quality Review Act (SEQRA) and its implementing regulations at 6 NYCRR Part 617. The Project includes the redevelopment of an existing developed site, obviating the need to develop a greenfield site to provide the needed housing options in the community. Extensive landscape plantings are proposed throughout the subject property, improving environmental conditions at the site.

Section 7[D][1][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.*

The proposed Project includes 7 affordable and workforce housing units that will comply with the requirements outlined in Section 7[D][1][j] as described above.

Section 7[D][1][j] *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.*

The need for the Project is demonstrated throughout Section 1 of this report. There are documented needs for a more diverse housing stock, affordable and workforce housing, and mixed use developments located in commercial areas with access to transit options. Compliance with the Act is demonstrated throughout Section 2 of this report.

Regarding taxes, the site currently generates \$26,805.14 in taxes, including \$771.82 to the Town of Brookhaven, \$4,733.04 to Suffolk County, \$17,150.78 to the Port Jefferson Union Free School District (UFSD), and \$4,149.50 to other various special districts. After development of the proposed Project, when the assessed value of the subject site is increased to reflect the improvements and new uses, any taxes or PILOT payments paid on the site would be higher than the currently paid taxes. It is anticipated that all taxing jurisdictions will benefit over the course of, and beyond, the PILOT agreement.

Table 6 – Existing Property Taxes for the Subject Site by Taxing Jurisdiction

Taxing Jurisdiction	Taxes
School District (Port Jefferson UFSD)	\$17,150.78
Library District	\$1,451.75
County of Suffolk	\$301.85
County of Suffolk - Police	\$4,431.19
Town - Town Wide Fund	\$608.69
Highway - Town Wide Fund	\$163.13
NYS MTA Tax	\$14.81
Open Space Preservation	\$230.19
Fire District	\$937.76
Ambulance District	\$483.33
County Sewer District	\$623.95
Real Property Tax Law	\$313.74
Out of County Tuition	\$72.07
Suffolk County Community College	\$21.90
Total	\$26,805.14

Source: Town of Brookhaven Statement of Taxes, 2020-2021

With respect to the potential for the proposed Project to affect the local public-school district (i.e., the Port Jefferson UFSD), it should be noted that the proposed multifamily residential development would be expected to generate extremely few school-aged children. Based upon the results of a 2019 study published by the Real Estate Institute at Stony Brook University College of Business, multifamily residential development on Long Island generates, on average, 0.09 school-aged children per unit. Applied to the 36 proposed units, this would represent less than 4 school-aged children within the Port Jefferson UFSD, which has a current enrollment of approximately 1,065 children (i.e., an increase of less than 0.38 percent). A 2017 study performed by Vision Long Island of transit-oriented development on Long Island identified an average of only 0.026 school-aged children per unit, which, applied to the proposed 36 units, would suggest that less than 1 school-aged child would reside at the proposed development. It should also be noted that nearly all of the proposed residential units (i.e., 32 of the 36 units) would be one-bedroom units, which are inherently less attractive to families with school-aged children than units

with two or more bedrooms. Overall, the proposed development is expected to generate extremely few school-aged children, and no significant adverse impacts upon the local school district are anticipated.

There are two developments that were identified to be of significance within the vicinity of the proposed Project. One is 52 Barnum Avenue, which is a proposed mixed-use development north of the subject property. 52 Barnum Avenue would consist of 44 rental apartment units, 1,500 sf of restaurant space, and 1,200 sf of general commercial space. The other planned development is the proposed renovation at the Mather Hospital Campus, located east of the project site, which would not include any additional housing.

2.2 Other Project Benefits

Currently, the 0.87± acre subject property is improved with a one-story, 4,400±-square-foot (SF) vacant building that previously contained a restaurant and a two-story vacant building that previously contained an 1,800± SF florist, with associated gravel and paved-surface parking areas. As a strictly commercial facility within walking distance to Upper Port Jefferson and the Port Jefferson LIRR station, the subject property is underutilized. The Project will better utilize the subject property, establishing a mixed-use development in a TOD location with nearby shops in walking distance. In doing so, the Project will invigorate the site in a manner that will enhance the character of the neighborhood and advance relevant goals of the Village's Comprehensive Plan. The Project would be especially beneficial in supporting the Comprehensive Plan's housing and development goals, as previously described by providing 36 new units, 7 of which would be affordable. In addition, the Project would support the goals of the *Revitalization Plan*, though it is adjacent to the subject site. The Project would provide housing within walking distance of the Port Jefferson LIRR station, minimizing the need for commuting residents to use personal vehicles. The increased foot traffic would provide "eyes on the street" increasing the safety of the area.

The redevelopment of the subject property with a 36-unit rental housing structure would provide a much-needed housing option for that portion of the population that could otherwise relocate elsewhere (i.e., individuals seeking rental housing and/or non-single-family residential options). With approximately 64 new residents anticipated, the Project has the potential to significantly contribute to the economy of the Village of Port Jefferson. Future residents would likely patronize nearby local businesses, benefitting the local economy and generating increased tax revenues. Considering the Project's proximity to the shops and services in Upper Port Jefferson, nearby businesses stand to benefit from the implementation of the Project.

3

Conclusions

For various reasons discussed above, there is currently a high demand for rental housing in the Town of Brookhaven and the Port Jefferson area. As demonstrated by Census data, rental options are not plentiful on Long Island. In fact, the availability of rental housing on Long Island lags behind other metropolitan counties, even as demographic shifts have led to a higher demand for diversified housing options.

The Project would be consistent with identified goals, objectives and priorities in the *2030 Plan*, the *Brookhaven CLUP*, the *Revitalization Plan*, and the *Suffolk 2035 Plan*, which all identify the need for additional rental housing. The Project would add a type of housing (rental apartment) that is in high demand throughout the Town of Brookhaven and Long Island, as indicated by the low vacancy rates identified in Census Data. By providing 36 residential rental units, the Project will cater to residents seeking such housing and will encourage these individuals to remain in the region, rather than locate elsewhere.

An IMPLAN analysis was undertaken to evaluate the anticipated employment and economic benefits of the Project during construction and operation phases. This analysis indicates that the Project will generate a total of approximately 125 jobs (including direct, indirect and induced jobs) during the 18-month construction period, with a total labor (payroll) income of approximately \$8,143,240. Further, it is estimated that the operation phase of the Project upon completion of construction would potentially generate a total of approximately 12 jobs (including direct, indirect and induced jobs), with a total labor (payroll) income of approximately \$543,306. In addition, the Applicant estimates the total Project costs at \$15,255,000, which is a significant investment in the Village of Port Jefferson and the Town of Brookhaven.

Based on the analysis presented in this report, the Project is consistent with the guidelines and criteria of the IDA UTEP, would result in public benefits related to the community's housing options and employment, and would also result in substantial direct and indirect economic benefits.

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EXHIBIT D-2

**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,

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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*¹ 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 determination 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-3

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
In the Matter of DONALD L. RYAN, FLAVIA
IANNACCONI, JAMES DENON, JOHN M. WILLIAMS,
REGINAL LUCAS and ROBERT DeBREW, JR.,

Petitioners,

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

-against-

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

Respondents.
-----X

TRIAL/IAS PART 13

INDEX # 5324/16

Mot. Seq. 1

Mot. Date 9.13.16

Submit Date 11.17.16

XXX

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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

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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 TOHDA 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 TOHDA; 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 Indus. 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.

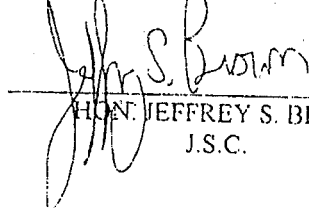
Where, as here, the project at issue promotes employment opportunities and serves to combat economic deterioration in an area served by an industrial development agency, a finding that the project falls within the ambit of the IDA is rationally based; neither arbitrary or capricious or an abuse of discretion, 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 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

Reasonableness Assessment for Financial Assistance, prepared by Camoin Associates

PREPARED FOR:

Town of Brookhaven Industrial Development Agency
One Independence Hill
Farmingville, NY 11738

Reasonableness Assessment for Financial Assistance

PORT DEVELOPMENT LLC
NORTH COUNTRY ROAD PROJECT
SEPTEMBER 9, 2021

PREPARED BY:



ABOUT CAMOIN ASSOCIATES

Camoin Associates has provided economic development consulting services to municipalities, economic development agencies, and private enterprises since 1999. Through the services offered, Camoin Associates has had the opportunity to serve EDOs and local and state governments from Maine to California; corporations and organizations that include Lowes Home Improvement, FedEx, Amazon, Volvo (Nova Bus) and the New York Islanders; as well as private developers proposing projects in excess of \$6 billion. Our reputation for detailed, place-specific, and accurate analysis has led to projects in 32 states and garnered attention from national media outlets including Marketplace (NPR), Crain's New York Business, Forbes magazine, The New York Times, and The Wall Street Journal. Additionally, our marketing strategies have helped our clients gain both national and local media coverage for their projects in order to build public support and leverage additional funding. We are based in Saratoga Springs, NY, with regional offices in Portland, ME; Boston, MA; Richmond, VA and Brattleboro, VT. To learn more about our experience and projects in all of our service lines, please visit our website at www.camoinassociates.com. You can also find us on Twitter [@camoinassociate](https://twitter.com/camoinassociate) and on [**Facebook**](#) and [**LinkedIn**](#).

ABOUT STORRS ASSOCIATES

Storrs Associates, LLC is a partner and advisor to public and private entities seeking to encourage economic growth and to make direct public and private investments. We deliver client-driven, high quality advice, customized analyses and reports, public speaking and learning sessions, and transaction management. Storrs Associates is a woman-owned firm located in Bethlehem, NY.

Victoria Storrs, the company President, founded the firm in 2021 to provide direct, responsive service to municipal governments and the public and private organizations who work with and for them. She has worked with municipal governments for more than 20 years, beginning as an investment banker at First Albany Corporation and managing debt financings for state public authorities. She taught money and capital markets at the State University of New York at Albany School of Business, and has been a development finance and economic development consultant for more than seven years, including five years at Camoin 310, where she became the firm's first Development Finance Practice Leader. You can learn more at www.storrsassociates.com.

THE PROJECT TEAM

Camoin Associates

Rachel Selsky

Vice President, Project Principal

Storrs Associates

Victoria Storrs

President and CEO

EXECUTIVE SUMMARY

Project Description

The Town of Brookhaven Industrial Development Agency (Agency) received an application for financial assistance for the construction of a mixed-use development (Project) at 1 North Country Road, Village of Port Jefferson, and adjacent parcels, featuring:

- ♦ 29 market rate apartments
- ♦ 7 Affordable/Workforce apartments affordable to households earning approximately \$72,000 for a 2-person household
- ♦ 1,800 square feet of retail space
- ♦ 7 garage parking spaces and 10 storage units for residents

The Project represents a nearly \$16.5 million investment and is anticipated by the Applicant to generate 2 full-time and 6 part-time permanent jobs within two years

Request for Financial Assistance, Estimated \$1,315,877

Port Development LLC (Applicant) requests:

- ♦ 15 years reduced taxes through a PILOT agreement, applicable to residential component only, savings of \$959,514
- ♦ Mortgage Tax Exemption, estimated \$76,913
- ♦ Sales and Use Tax Exemption on construction and equipping materials, estimated \$279,450

Purpose of this Analysis

An objective, third-party review of the assumptions and estimated operating and financial performance of a project helps Industrial Development Agencies perform a complete review of a proposed Projects. Camoin 310, working with Storrs Associates, was engaged to analyze the Project and deliver an analysis and opinion to answer three important questions:

Are the operating assumptions such as rent, vacancy, and expenses within norms for the region?

Is the assistance necessary for the Project to be financially feasible, and therefore undertaken by the Applicant?

If assistance is awarded, will the Applicant's rate of return on investment be similar to market expectations for similar projects in the region, and therefore reasonable?

This analysis concludes that the answer to each of these questions is yes: the assumptions are within norms, the assistance is necessary to Project feasibility, and the rate of return to the Applicant is similar to market expectations and therefore reasonable.

As part of this review, the project team benchmarks operations using regional data from CoStar, and financial assumptions and returns from RealtyRates.com.

Components of this Report

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Operating Assumptions	3
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Table 1

RATE OF RETURN

An estimated return on investment to the Applicant is calculated using data from the application, plus an operating pro forma and capital structure also submitted by the Applicant. This analysis measures whether the financial assistance is necessary and reasonable.

Financial performance with and without a PILOT is estimated over the full PILOT period. Three metrics are used to evaluate outcomes:

The Equity Dividend Rate is net cashflow for each year, divided by the initial equity investment. Averages are calculated for 5-year time periods to summarize performance over time. Equity Dividend Rates are benchmarked using current market information from RealtyRates.com for similar projects in the region. Equity Dividend Rates that are close to the benchmarks indicate a Project outcome in line with the current market, and the Applicant is earning a reasonable return. Very low or negative rates indicate the Project is unlikely to be undertaken if compared to other possible investments.

Cumulative Cash Flow shows net cashflow to the Project's investor over time. It is useful to note cashflow differences between a PILOT and No PILOT scenario, as this is another indicator of whether the Applicant is earning a return. No benchmarks are published.

Debt Service Coverage estimates how well Project net income, after taxes, supports repayment of debt. Benchmarks are from RealtyRates.com based on current bank practices.

Comparison of Return on Investment

	With PILOT	No PILOT
<u>Equity Dividend Rates: Benchmarks 6.17% to 14.69%</u>		
Average Years 1-5	5.39%	4.00%
Average Years 6-10	6.88%	5.95%
Average Years 11 - 15	8.57%	8.21%
Average, 15 Years	6.95%	6.05%
<u>Cumulative Cash Flow</u>		
End of Year 5	\$ 1,931,437	\$ 1,433,996
End of Year 10	\$ 4,398,348	\$ 3,566,710
End of Year 15	\$ 7,471,308	\$ 6,511,794
<u>Debt Service Coverage: Benchmarks 1.35 to 1.86</u>		
Average	1.89	1.78
Minimum	1.62	1.42
Maximum	2.19	2.18

Benchmarks from RealtyRates for Q2 2021

Results Summary

- **Equity Dividend Rates** are based on an initial equity investment of \$7,171,500. For the No PILOT scenario they are below benchmarks until the last five years, indicating that the Project will not produce a return comparable to similar projects in the region. With the PILOT, taxes are reduced sufficiently to improve performance and deliver returns that exceed the benchmarks after the first five years, which includes the startup period. This suggests a PILOT is necessary and is sufficient to improve performance to market expectations.
- **Cumulative Cash Flow** and annual cashflow are positive for all years with or without a PILOT. The initial equity investment is fully recouped by Year 15.
- **Debt Service Coverage** exceeds the benchmarks. Debt comprises only 56% of the capital structure.

This analysis concludes that the assistance is necessary to Project feasibility, and the rate of return to the Applicant is within market expectations.

OPERATING ASSUMPTIONS

Operating assumptions were compared to CoStar estimates for rent and vacancy during 2021 in Suffolk County.

Results Summary

Retail costs match the county average.

The ability of households in Suffolk County to afford either market rate or affordable apartments was estimated by calculating the income necessary to pay no more than 30% of income on rent.

The rents for affordable apartments are accessible to households earning just above 70% of Area Median Income (AMI) the county.

Table 2

Retail Square Footage and Rent, and Parking Use

Retail	Square Feet (SF)	Rent/SF	Rent/Year	Evaluation Using CoStar
Project Total Retail	1,800	\$ 35	\$ 63,000	Within Range
Suffolk County Rent/SF, 2021 est.		\$ 32		
Vacancy Rate	5%			Within Range

Parking and Storage	Spots	Rent/Month	Rent/Year	Evaluation Using CoStar
Garage Parking	7	\$ 75	\$ 900	n/a
Storage Unit	10	\$ 40	\$ 480	n/a

Source of rent and vacancy: Applicant. Vacancy Rates from CoStar 2021 estimates for Suffolk County.

Table 3

Apartment Unit Type, Rent, and Household Income

Residential	Unit Type	Number of Units	Rent/Month	Rent/Year	Estimated Household Income (1)	Evaluation (2)
Market Rate, 79% of Units	Studio	0	\$ -	\$ -	\$ -	50% of Households in Suffolk County Can Pay These Rents
	1BR	22	\$ 2,650	\$ 31,800	\$ 106,000	
	2BR	3	\$ 3,200	\$ 38,400	\$ 128,000	
	3BR	4	\$ 3,500	\$ 42,000	\$ 140,000	
Market Rate Weighted Average Rent per Month			\$ 2,824			
Suffolk County Rent per Month, 2021 est.			\$ 2,497 (\$2.72/SF)			
Affordable, 19% of Units	Studio (1 person)	0	\$ -	\$ -	\$ -	
	1BR (2 persons)	7	\$ 1,800	\$ 21,600	\$ 72,000	
	2BR (3 persons)	0	\$ -	\$ -	\$ -	
	3BR (5+ persons)	0	\$ -	\$ -	\$ -	
Total		36				

Source of rent and vacancy: Applicant. Vacancy Rates from CoStar 2021 estimates for Suffolk County.

(1) Income needed to pay no more than 30% on rent, calculated by Stars Associates

(2) Suffolk County Median Household Income is \$101,031. 50% of households earn at least this amount and can afford a 1BR. Income limits for 70% AMI are not published and were calculated by averaging 60% and 80% (\$60,780 and \$81,040)

OPERATING PERFORMANCE

Operating performance of the Project is measured using Year 5 of the Applicant's Pro Forma. Gross revenue and expenses both escalate at 3% per year, while vacancy rates and concessions are specific to the use. One adjustment to the Pro Forma were made for the purposes of this report:

1. Debt service on a long term loan to finance a portion of the construction was calculated by Storrs Associates in order to estimate a future sale value. Applicant's calculation of debt service was confirmed.

Results Summary

Operating performance and assumptions about vacancy and concessions, are within range of benchmarks. With the PILOT, real property taxes absorb 6% of project income. Debt service absorbs 42% of income. Together, operating expenses, tax, and debt service absorb 66% of project income, above the benchmark.

The PILOT scenario delivers NOI as a percent of Gross Income that exceeds the benchmark.

Table 4

Operations Snapshot, Year 5

	Project Performance	Project Performance as a % of Income	Benchmark Performance	Benchmark Source	Evaluation
Gross Operating Income, Total	\$ 1,367,034	100%			
<u>Calculation of Net Operating Income, Apartments</u>					
Gross Operating Income	\$ 1,276,327	93%	n/a		n/a
Vacancy Rate and Concessions	3%	n/a	5.00%	CoStar	Within Range
<u>Calculation of Net Operating Income, Retail/Office and Parking</u>					
Gross Operating Income	\$ 90,707	7%	n/a	n/a	n/a
Vacancy Rate (Retail/Office only)	7%	n/a	5.00%	CoStar	Within Range
Effective Gross Income (EGI), All Uses (1)	\$ 1,319,458	97%	91%	RealtyRates	Within Range
Operating Expenses and Reserve	\$ (249,517)	18%	44%	RealtyRates	More Efficient
<u>Real Property Taxes</u>	\$ (83,931)	6%	n/a	n/a	n/a
Net Operating Income	\$ 986,009	77%	56%	RealtyRates	More Efficient
Less: Debt Service	\$ (558,696)	42%	n/a	See Comparison of Returns for Coverage	
Cashflow after Operating Costs, Taxes, Debt	\$ 427,314	31%	n/a	n/a	n/a

Source: Applicant. Benchmarks from RealtyRates. Evaluation by Storrs Associates.

(1) Net of vacancy and concessions.

PILOT ANALYSIS

A PILOT is proposed for the residential component of the Project. Retail/commercial will use 1,800 square feet and the value associated with this portion is not exempted from real property taxes and not included in the PILOT. The retail portion of the Project will be subject to full real property taxes.

The PILOT analysis uses an aggregated tax rate for the jurisdictions to calculate future taxes on the residential portion. Taxes for the retail/commercial portion are also calculated this way. Taxes billed by the Village of Port Jefferson, including for business improvement and sewer, are not subject to the PILOT and will also be paid in full.

Steps in this analysis for the affected and non-affected jurisdictions:

1. Using the estimated completed Assessed Value from the Assessor for the Village of Port Jefferson, apply values for the residential and retail/commercial components and then estimate taxes for the first year, anticipated to be 2023/2024 (See Table 5, which also shows tax estimates with no Project).
2. Estimate future taxes on the parcels with and without the completed project. Tax rates are estimated to increase 2% annually.
3. Propose a PILOT schedule that reduces taxes on the residential component to improve Project financial performance and induce construction.

Table 6 summarizes the PILOT and estimated benefits. Table 7 shows the timeline of current, PILOT, and tax payments generated by the Project, and calculates both the benefits to the municipalities and the benefits, or savings, to the Project. The table shows that only the residential component is subject to the PILOT; the commercial component will pay full taxes.

Table 5

Basic Assumptions for PILOT and Estimated Taxes	
Anticipated Full Market Value	\$ 7,735,000.00
Assessed Value	\$ 57,240.00
Assessed Value Eligible for PILOT	\$ 53,725.00
Assessed Value Not Eligible for PILOT	\$ 3,515.00
Estimated Taxes on Current Assessed Value, 2020/2021	\$ 30,599.13
Estimated Taxes on Current Assessed Value, 2023/2024	\$ 31,835.33

Table 6

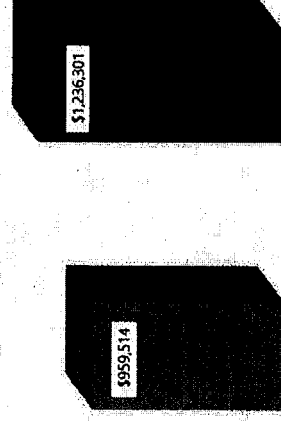
Real Property Tax Comparison	
Comparison of Taxes on Full Value of Project and with PILOT	
Taxes without PILOT	\$ 2,746,357
Less: PILOT/Tax Payments	\$ (1,497,553)
Less: Estimated Taxes Not Included in PILOT	\$ (289,290)
Foregone Revenue (Benefits to Project)	\$ 959,514
Abatement Percent	36%

Net New Taxes Compared with No Project

PILOT and Estimated Tax Payments	\$ 1,786,842
Less: Estimated Taxes without Project	\$ (550,542)
Estimated New Tax Revenue (Benefits to Municipalities)	\$ 1,236,301

Figure 1

Comparison of Tax Benefits to Project and New Tax Revenue to Municipalities



Foregone Revenue (Benefits to Project) Estimated New Tax Revenue (Benefits to Municipalities)

Table 7

Present Value Discount Rate is 2%.

FINANCING PLAN

The Sources and Uses of Funds, Table 8, shows the total project costs and capital structure of debt and equity.

An estimated market value of the Project at the end of the PILOT was calculated for the purposes of this analysis only, as the Applicant has not indicated a sale. As shown in Table 10, a sale value is calculated using the Net Operating Income (NOI) method using current capitalization and tax rates¹. Because the long term debt amortizes over 25 years, the outstanding principal is calculated and assumed to be repaid with sale proceeds.

Table 8

Sources and Uses of Funds			
Sources of Funds			
Bank Financing	\$	9,300,000	56%
Equity and Working Capital	\$	7,171,500	44%
Total Sources	\$	16,471,500	100%
Uses of Funds			
Total Acquisition and Transaction Costs	\$	2,527,500	15%
Total Construction Costs	\$	13,944,000	85%
Total Uses of Funds	\$	16,471,500	100%

Source: Applicant

Table 9

Terms of the Senior (Long Term) Debt			
Terms	Benchmark	Evaluation	
Amount Borrowed	\$ 9,300,000	n/a	
Loan to Total Project Cost	56%	80% to 40%	Within Range
Annual Interest Rate	3.50%	2.27% to 7.32%	Within Range
Maturity in Years	25	15 to 40	Within Range
Annual Principal and Interest	\$ 558,696	n/a	

Source: Applicant. Benchmarks: RealtyRates.

Table 10

Calculation of Market Value at 15 Years

Assumes Sale Price Based on Projected Project Income

Net Operating Income (NOI) after full tax	\$1,018,134
Reversion Capitalization Rate (Cap Rate)	7.57%
Reversion (Sale) Value (NOI/Cap Rate)	\$13,449,586
Loan Payoff	(\$4,708,256)
Net Sale Proceeds	\$8,741,330

Source: Applicant. Calculations: Storrs Associates. Cap Rate: RealtyRates

¹ NOI ÷ Capitalization Rate = Sale Value. The Capitalization Rate used is a weighted-average of RealtyRates.com's benchmarks for apartments and retail.

ATTACHMENT 1: PRO FORMA

Operating Cash Flow

Residential Income

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
22 One Bedroom Apts starting @ \$2,650	\$ 699,600	\$ 720,588	\$ 742,206	\$ 764,472	\$ 787,406	\$ 811,028	\$ 835,359	\$ 860,420
3 One Bedroom Apts starting @ \$3,200	\$ 115,200	\$ 118,656	\$ 122,216	\$ 125,882	\$ 129,659	\$ 133,548	\$ 137,555	\$ 141,681
4 Two Bedroom Apts starting @ \$3,500	\$ 168,000	\$ 173,040	\$ 178,231	\$ 183,578	\$ 189,085	\$ 194,758	\$ 200,601	\$ 206,619
7 One Bedroom Affordable Apts @ \$1,800	\$ 151,200	\$ 155,736	\$ 160,408	\$ 165,220	\$ 170,177	\$ 175,282	\$ 180,541	\$ 185,957
Less: Vacancy Allowance	\$ (36,162)	\$ (37,247)	\$ (38,364)	\$ (39,515)	\$ (40,701)	\$ (41,922)	\$ (43,179)	\$ (44,475)
Net Rental Income, Residential	\$ 1,097,838	\$ 1,130,773	\$ 1,164,696	\$ 1,199,637	\$ 1,235,626	\$ 1,272,695	\$ 1,310,876	\$ 1,350,202

Commercial/Industrial Income

1,800 sqft space starting @ \$35 Gross	\$ 63,000	\$ 64,890	\$ 66,837	\$ 68,842	\$ 70,907	\$ 73,034	\$ 75,225	\$ 77,482
Less: Vacancy Allowance	\$ (4,410)	\$ (4,719)	\$ (5,049)	\$ (5,402)	\$ (5,781)	\$ (6,185)	\$ (6,618)	\$ (7,081)
Net Rental Income, Commercial/Industrial	\$ 58,590	\$ 60,171	\$ 61,788	\$ 63,439	\$ 65,126	\$ 66,849	\$ 68,607	\$ 70,401

Other Income

7 Garage Spaces starting @ \$75	\$ 6,300	\$ 6,300	\$ 6,300	\$ 6,300	\$ 6,300	\$ 6,300	\$ 6,300	\$ 6,300
10 Storage Units starting @ \$40	\$ 4,800	\$ 4,800	\$ 4,800	\$ 4,800	\$ 4,800	\$ 4,800	\$ 4,800	\$ 4,800
29 Amenity Fee starting @ \$300	\$ 8,700	\$ 8,700	\$ 8,700	\$ 8,700	\$ 8,700	\$ 8,700	\$ 8,700	\$ 8,700
Less: Vacancy Allowance & Credit Allowance	\$ (1,095)	\$ (1,095)	\$ (1,095)	\$ (1,095)	\$ (1,095)	\$ (1,095)	\$ (1,095)	\$ (1,095)
Net Income, Other	\$ 18,705	\$ 18,705	\$ 18,705	\$ 18,705	\$ 18,705	\$ 18,705	\$ 18,705	\$ 18,705

Effective Gross Income (EGI)

	\$ 1,175,133	\$ 1,209,649	\$ 1,245,189	\$ 1,281,782	\$ 1,319,458	\$ 1,358,249	\$ 1,398,188	\$ 1,439,308
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Operating Expenses

	\$ 221,805	\$ 228,430	\$ 235,253	\$ 242,280	\$ 249,517	\$ 256,971	\$ 264,648	\$ 272,554
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Pre-Tax Operating Income (Revenue less Operating Expenses)

	\$ 953,328	\$ 981,219	\$ 1,009,936	\$ 1,039,502	\$ 1,069,941	\$ 1,101,278	\$ 1,133,540	\$ 1,166,754
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Real Property Taxes

	\$ 50,174	\$ 55,830	\$ 64,855	\$ 74,219	\$ 83,931	\$ 94,002	\$ 104,443	\$ 115,263
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Net Operating Income (NOI) after Taxes

	\$ 903,153	\$ 925,390	\$ 945,081	\$ 965,283	\$ 986,009	\$ 1,007,276	\$ 1,029,098	\$ 1,051,490
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Debt Service

	\$ 558,696	\$ 558,696	\$ 558,696	\$ 558,696	\$ 558,696	\$ 558,696	\$ 558,696	\$ 558,696
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Cash Flow After Financing and Reserve

	\$ 344,457	\$ 366,694	\$ 386,385	\$ 406,587	\$ 427,314	\$ 448,580	\$ 470,402	\$ 492,795
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Debt Service Coverage Ratio (DSCR)

	1.62	1.66	1.69	1.73	1.76	1.80	1.84	1.88
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Equity Dividend Rates

	4.80%	5.11%	5.39%	5.67%	5.96%	6.26%	6.56%	6.87%
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Reasonableness Assessment for Port Development LLC, Town of Brookhaven Industrial Development Agency

	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Operating Cash Flow							
Residential Income							
22 One Bedroom Apts starting @ \$2,650	\$ 886,232	\$ 912,819	\$ 940,204	\$ 968,410	\$ 997,462	\$ 1,027,386	\$ 1,058,208
3 One Bedroom Apts starting @ \$3,200	\$ 145,932	\$ 150,310	\$ 154,819	\$ 159,464	\$ 164,248	\$ 169,175	\$ 174,250
4 Two Bedroom Apts starting @ \$3,500	\$ 212,817	\$ 219,202	\$ 225,778	\$ 232,551	\$ 239,528	\$ 246,714	\$ 254,115
7 One Bedroom Affordable Apts @ \$1,800	\$ 191,536	\$ 197,282	\$ 203,200	\$ 209,296	\$ 215,575	\$ 222,042	\$ 228,704
Less: Vacancy Allowance	\$ (45,809)	\$ (47,183)	\$ (48,599)	\$ (50,057)	\$ (51,558)	\$ (53,105)	\$ (54,698)
Net Rental Income, Residential	\$ 1,390,708	\$ 1,432,430	\$ 1,475,402	\$ 1,519,665	\$ 1,565,254	\$ 1,612,212	\$ 1,660,578
Commercial/Industrial Income							
1,800 sqft space starting @ \$35 Gross	\$ 79,807	\$ 82,201	\$ 84,667	\$ 87,207	\$ 89,823	\$ 92,518	\$ 95,293
Less: Vacancy Allowance	\$ (7,577)	\$ (8,108)	\$ (8,675)	\$ (9,282)	\$ (9,932)	\$ (10,627)	\$ (11,371)
Net Rental Income, Commercial/Industrial	\$ 72,229	\$ 74,093	\$ 75,992	\$ 77,924	\$ 79,891	\$ 81,890	\$ 83,922
Other Income							
7 Garage Spaces starting @ \$75	\$ 6,300	\$ 6,300	\$ 6,300	\$ 6,300	\$ 6,300	\$ 6,300	\$ 6,300
10 Storage Units starting @ \$40	\$ 4,800	\$ 4,800	\$ 4,800	\$ 4,800	\$ 4,800	\$ 4,800	\$ 4,800
29 Amenity Fee starting @ \$300	\$ 8,700	\$ 8,700	\$ 8,700	\$ 8,700	\$ 8,700	\$ 8,700	\$ 8,700
Less: Vacancy Allowance & Credit Allowance	\$ (1,095)	\$ (1,095)	\$ (1,095)	\$ (1,095)	\$ (1,095)	\$ (1,095)	\$ (1,095)
Net Income, Other	\$ 18,705	\$ 18,705	\$ 18,705	\$ 18,705	\$ 18,705	\$ 18,705	\$ 18,705
Effective Gross Income (EGI)	\$ 1,481,643	\$ 1,525,228	\$ 1,570,099	\$ 1,616,294	\$ 1,663,850	\$ 1,712,807	\$ 1,763,205
Operating Expenses	\$ 280,697	\$ 289,083	\$ 297,721	\$ 306,616	\$ 315,777	\$ 325,212	\$ 334,929
Pre-Tax Operating Income (Revenue less Operating Expenses)	\$ 1,200,946	\$ 1,236,144	\$ 1,272,379	\$ 1,309,678	\$ 1,348,073	\$ 1,387,595	\$ 1,428,276
Real Property Taxes	\$ 126,475	\$ 138,088	\$ 150,116	\$ 162,570	\$ 175,462	\$ 188,804	\$ 202,610
Net Operating Income (NOI) after Taxes	\$ 1,074,471	\$ 1,098,056	\$ 1,122,262	\$ 1,147,108	\$ 1,172,612	\$ 1,198,791	\$ 1,225,666
Debt Service	\$ 558,696	\$ 558,696	\$ 558,696	\$ 558,696	\$ 558,696	\$ 558,696	\$ 558,696
Cash Flow After Financing and Reserve	\$ 515,775	\$ 539,360	\$ 563,566	\$ 588,412	\$ 613,916	\$ 640,095	\$ 666,970
Debt Service Coverage Ratio (DSCR)	1.92	1.97	2.01	2.05	2.10	2.15	2.19
Equity Dividend Rates	7.19%	7.52%	7.86%	8.20%	8.56%	8.93%	9.30%

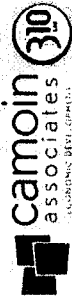
APPENDIX A: SCOPE OF SERVICES

To assist with its evaluation of Port Development LLC's request for financial assistance, Camoin 310 was commissioned by the Town of Brookhaven Industrial Development Agency to conduct the above analyses. Camoin 310 engaged Storrs Associates, LLC, as a subcontractor. The analysis is comprised of four tasks:

- *Test Assumptions* by comparing rents, operating costs, and vacancy rates to real estate benchmarks for similar projects and noting any significant differences. Operating performance and net income are also evaluated.
- *Review the Financing Plan* and perform an objective third-party evaluation of the estimated return on investment (ROI) to the Applicant with and without a PILOT agreement. We also analyze whether the capital structure and terms of the long-term debt are within market benchmarks for obtaining bank financing.
- *Evaluate the effects of one or more PILOTs* recommended by the Agency and determine whether the PILOT(s) would result in a return that is within what would normally be anticipated in the current market for a similar project.

RealtyRates.com™

RealtyRates.com™ is a comprehensive resource of real estate investment and development news, trends, analytics, and market research that support real estate professionals involved with more than 50 income producing and sell-out property types throughout the U.S. RealtyRates.com™ is the publisher of the award-winning Investor, Developer and Market Surveys, providing data essential to the appraisal, evaluation, disposition and marketing of investment and development real estate nationwide.



- *Provide an objective, third-party opinion* about the need for and reasonableness of the financial assistance.

Camoin 310 prepares an XL workbook designed to collect key information about pro forma project cashflows, sources and uses of funds, and financing terms as a supplement to the original application. This is sent to the developer or project owner by the IDA and the completed workbook is forwarded for use in the analysis.

Sources Consulted

- Application dated May 24, 2021.
- Project financing and annual cashflow workbook submitted by the Applicant in August, 2021, with submitted revisions.
- Real estate tax information and estimates received from the Agency, including anticipated future assessed value of the Project.
- CoStar data for multifamily projects in Suffolk County from 2018 through the second quarter of 2021.
- CoStar data for retail projects in Suffolk County from 2018 through the second quarter of 2021.
- RealtyRates.com's "Investor Survey" and "Market Survey," 2nd Quarter 2021.



CoStar is the leading source of commercial real estate intelligence in the U.S. It provides a full market inventory of properties and spaces—available as well as fully leased—by market and submarket. Details on vacancy, absorption, lease rates, inventory, and other real estate market data are provided, as well as property-specific information including photos and floor plans. More at www.costar.com.

APPENDIX B: DEFINITIONS

Equity Dividend Rate: This is calculated as the rate of return on the equity component of a project. It is calculated as follows: (Source: RealtyRates.com)

$$\text{Equity Dividend} / \text{Equity Investment} = \text{Equity Dividend Rate, where}$$
$$\text{Equity Dividend} = \text{Net Operating Income} - \text{Debt Service.}$$

Debt Service Coverage Ratio (DSCR): The ratio of annual debt repayment, including principal and interest, to total Net Operating Income (NOI). (Source: RealtyRates.com)

Net Operating Income (NOI): Income net of all operating costs including vacancy and collection loss but not including debt service. Appraisers also typically expense reserves for repairs and replacements. However, because reserves are not usually reported along with other transaction data, RealtyRates.com tracks lender requirements but does not include them in calculations. (Source: RealtyRates.com)

THE PROJECT TEAM

Rachel Selsky

Vice President, Camoin 310

Victoria Storrs

President & CEO, Storrs Associates

Leading action to
grow your economy



Cost-Benefit Analysis for Port Development, LLC

Prepared by Town of Brookhaven using InformAnalytics

Executive Summary

INVESTOR
Port Development, LLC

TOTAL JOBS
11 Ongoing;
77 Temporary

TOTAL INVESTED
\$15.3 Million

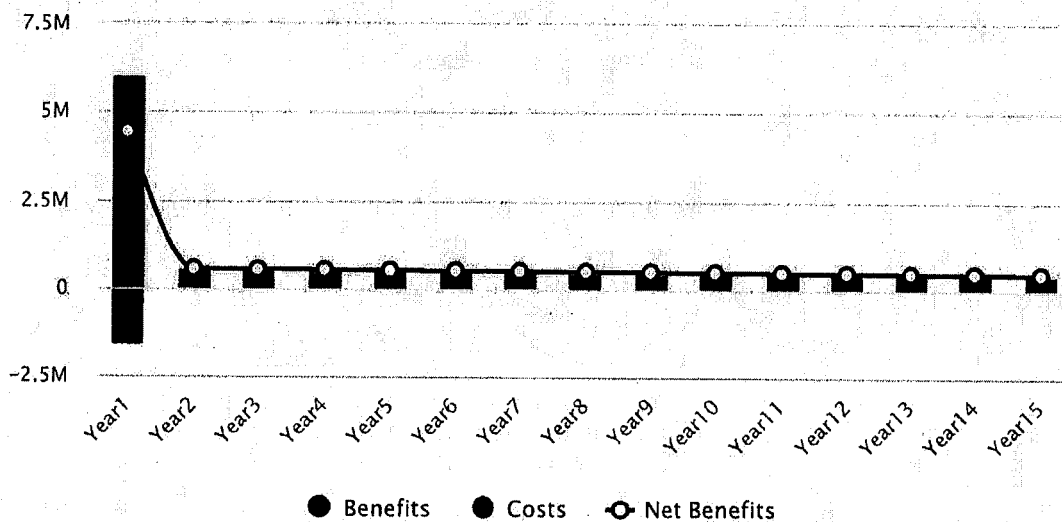
LOCATION
1 North Country Road, Port Jefferson, NY

TIMELINE
15 Years

F1 FIGURE 1

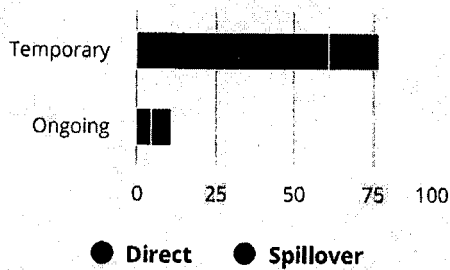
Discounted* Net Benefits for Port Development, LLC by Year

Total Net Benefits: \$11,202,000



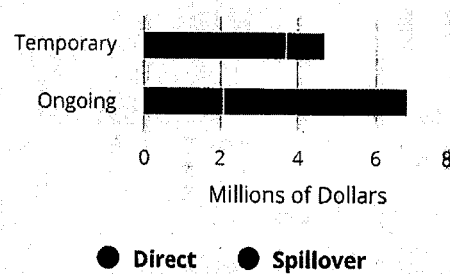
F2 FIGURE 2

Total Jobs



F3 FIGURE 3

Total Payroll



Proposed Investment

Port Development, LLC proposes to invest \$15.3 million at 1 North Country Road, Port Jefferson, NY over 15 years. Town of Brookhaven staff summarize the proposed with the following: Applicant proposes to demolish the existing structures and construct an approx. 48,000sf facility including 36 residential apartments (32 one bedroom @ approx 700-800 sf and 4 two bedroom @ approx 1,200 sf) including 7 affordable/workforce apartments. We expect that this project will be completed in a timely fashion. As per our Uniform Project Evaluation Criteria Policy, the criteria met for this project include, but are not limited to, promoting transit oriented or walkable community areas and capital investment by the applicant.

T1 TABLE 1

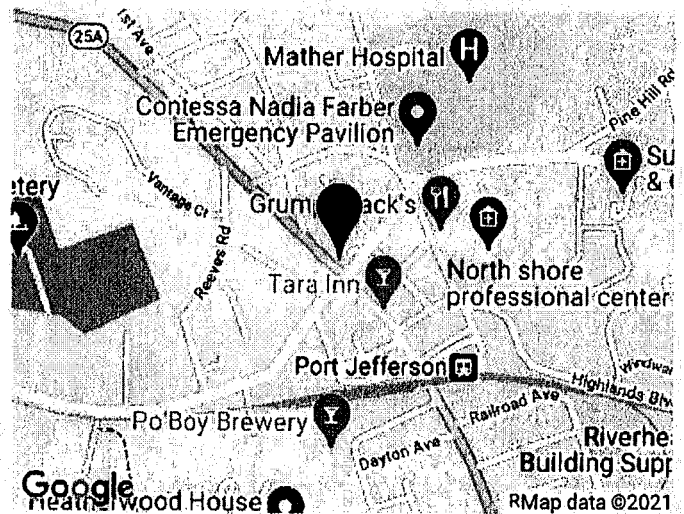
Proposed Investments

Description	Amount
CONSTRUCTION SPENDING	
Housing	\$9,000,000
OTHER SPENDING	
Land acquisition	\$2,350,000
Site Work	\$368,000
Machinery and equipment	\$2,052,000
Legal, Architectural, Engineering, financial charges	\$1,065,000
Insurance, bonds, permits	\$420,000
Total Investments	\$15,255,000
Discounted Total (2%)	\$15,255,000

May not sum to total due to rounding.

F4 FIGURE 4

Location of Investment



Cost-Benefit Analysis

A cost-benefit analysis of this proposed investment was conducted using InformAnalytics, an economic impact model developed by CGR. The report estimates the impact that a potential project will have on the local economy based on information provided by Town of Brookhaven. The report calculates the costs and benefits for specified local taxing districts over the first 15 years, with future returns discounted at a 2% rate.

T2 TABLE 2

Estimated Costs or Incentives

Town of Brookhaven is considering the following incentive package for Port Development, LLC.

Description	Nominal Value	Discounted Value*
Sales Tax Exemption	\$279,000	\$279,000
Mortgage Recording Tax Exemption	\$76,000	\$76,000
PILOT	\$1,236,000	\$1,236,000
Total Costs	\$1,592,000	\$1,592,000

May not sum to total due to rounding.

* Discounted at 2%

T3 TABLE 3

State & Regional Impact (Life of Project)

The following table estimates the total benefits from the project over its lifetime.

Description	Direct	Spillover	Total
REGIONAL BENEFITS	\$6,396,000	\$6,547,000	\$12,943,000
To Private Individuals	\$6,134,000	\$6,461,000	\$12,595,000
Temporary Payroll	\$3,727,000	\$1,046,000	\$4,773,000
Ongoing Payroll	\$2,407,000	\$5,415,000	\$7,821,000
To the Public	\$263,000	\$86,000	\$349,000
Temporary Sales Tax Revenue	\$50,000	\$14,000	\$64,000
Ongoing Sales Tax Revenue	\$32,000	\$72,000	\$104,000
Purchases Sales Tax Revenue	\$181,000	N/A	\$181,000
STATE BENEFITS	\$505,000	\$404,000	\$909,000
To the Public	\$505,000	\$404,000	\$909,000
Temporary Income Tax Revenue	\$192,000	\$54,000	\$246,000
Ongoing Income Tax Revenue	\$86,000	\$275,000	\$361,000
Temporary Sales Tax Revenue	\$43,000	\$12,000	\$55,000
Ongoing Sales Tax Revenue	\$28,000	\$63,000	\$90,000
Purchases Sales Tax Revenue	\$156,000	N/A	\$156,000
Total Benefits to State & Region	\$6,902,000	\$6,951,000	\$13,852,000
Discounted Total Benefits (2%)	\$6,579,000	\$6,215,000	\$12,795,000

May not sum to total due to rounding.

T4 TABLE 4**Benefit to Cost Ratio**

The following benefit to cost ratios were calculated using the discounted totals.

Description	Benefit*	Cost*	Ratio
Region	\$11,943,000	\$1,386,000	9:1
State	\$852,000	\$206,000	4:1
Grand Total	\$12,795,000	\$1,592,000	8:1

May not sum to total due to rounding.

* Discounted at 2%

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