

Date: March 26, 2025

At a meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), held at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738 on the 26th day of March, 2025, the following members of the Agency were:

Present: Frederick C. Braun III, Chairman
Martin Callahan, Vice Chair
Ann-Marie Scheidt, Secretary
John Rose, Member

Recused: Mitchell H. Pally, Treasurer

Excused: Frank C. Trotta, Asst. Treasurer
Felix J. Grucci, Jr., Asst. Secretary

Also Present: Lisa M. G. Mulligan, Chief Executive Officer
Lori LaPonte, Chief Financial Officer
Amy Illardo, Director of Marketing and Project Development
Jocelyn Linse, Executive Assistant
Annette Eaderesto, Esq., Counsel to the Agency
Andrew D. Komaromi, Esq., Transaction Counsel
Barry Carrigan, Esq., Transaction Counsel
Howard Gross, Esq., Transaction Counsel (via Zoom)

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 commercial facility more particularly described below (Ornstein Leyton Company LLC 2025 Facility) and the leasing of the facility to Ornstein Leyton Company LLC.

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

Voting Aye

Voting Nay

Braun
Callahan
Scheidt
Rose

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY APPROVING THE ACQUISITION
CONSTRUCTION AND EQUIPPING OF A COMMERCIAL
FACILITY, AND MAKING CERTAIN FINDINGS AND
DETERMINATIONS IIN CONNECTION THEREWITH AND
APPROVING THE FORM, SUBSTANCE AND EXECUTION OF
RELATED DOCUMENTS AND TAKING OTHER ACTIONS

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, Ornstein Leyton Company 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 Ornstein Leyton Company 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 approximately 12.35 acres of land located on the southside of New York State Route 25, east of New Lane, Coram, New York (also known as Tax Map No. District 0200, Section 475.00, Block 01.00, Lot 012.004 and District 0200, Section 475.00, Block 02.00 Lot 001.002) (the "**Land**"), (B) the construction, equipping and furnishing of approximately 74 new senior residential rental units across multiple buildings totaling approximately 98,675 square feet of rental area, and a 2,620 square foot clubhouse, with (i) four (4) of such units to be reserved as affordable housing for residents whose incomes are at or below 50% of the median income according to household size for the Nassau-Suffolk primary metropolitan statistical area as defined by the Federal Department of Housing and Urban Development ("**AMI**"), (ii) four (4) of such units to be reserved as affordable housing for residents whose incomes are at or below 65% of AMI, (iii) two (2) of such units to be reserved as workforce housing for residents whose incomes are at or below 80% of AMI, (iv) two (2) of such units to be reserved as workforce housing for residents whose incomes are at or below 100% of AMI, and (v) three (3) of such units to be reserved as workforce housing for residents whose incomes are at or below 120% of AMI, 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, shared common areas and other amenities and the furnishing thereof, furniture, appliances, structures, clubhouse, pool, 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 known as Vineyards at Coram and used by the Company to provide senior housing for the residents of Coram and Long Island (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 March 1, 2025, 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 March 1, 2025, 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 **\$20,000,000.00**, corresponding to mortgage recording tax exemptions not to exceed **\$150,000.00**, in connection with the financing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of the acquisition, construction and equipping of the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed **\$1,071,000.00**, 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 Cost Benefit Analysis ("**CBA**") developed by the Agency in accordance with the provisions of Section 859-a(5)(b) of the Act, a copy of which CBA is attached hereto as Exhibit F; and

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

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

WHEREAS, a public hearing (the "**Hearing**") was held on March 25, 2025, 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 March 14, 2025, 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**"), together with such letters or reports from interested parties and governmental agencies or officials (the "**Letters of Support**"; and together with the Feasibility Study and other relevant materials, 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. Vineyards at Coram, dated November 2024, and prepared 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

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 ("**NYSDEC**") (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, pursuant to a resolution, dated December 17, 2024, the Town of Brookhaven Town Board, following a uncoordinated review, determined that the Project was an Unlisted Action (the "**Action**") for SEQR purposes and adopted a negative declaration that the Project will not have a significant impact on the environment, and adopted a Negative Declaration for the Facility pursuant to the provisions of SEQR (the "**2024 SEQR Determination**"); and

WHEREAS, pursuant to SEQRA, to aid the Agency in determining whether the Project may have a significant adverse impact upon the environment, the Agency has completed, received and/or reviewed the: (1) Questionnaire; (2) NYSDEC's Environmental Resource Mapper; (3)

New York State Historic Preservation Office's Cultural Resources Mapper; (4) 2024 SEQRA Determination; (5) Brookhaven Town Board Site Plan approval, dated December 17, 2024 (the "Site Plan Approval"); (6) the application of the Company to the Agency; (7) Site Plan Set (Sheets 1-24) for the Project prepared by Nelson & Pope, last revised November 1, 2024; and (8) other relevant environmental information (collectively, 1, 2, 3, 4, 5, 6, 7 and 8 shall be referred to as the "Environmental Information"); and

WHEREAS, pursuant to 6 NYCRR Part 617.2(al), the proposed action is classified as an Unlisted Action; and

WHEREAS, the Agency has reviewed the Environmental Information as the Agency felt it necessary or appropriate to examine to adequately review the proposed Action; and

WHEREAS, after review of the Environmental Information, the Agency finds that the 2024 SEQRA Determination 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 Questionnaire prepared by the Company and the Environmental Information reviewed by the Agency, the Agency determines that the action relating to the acquisition, construction and equipping of the Facility is an "Unlisted" action under SEQRA, as that term is defined under SEQR. Based upon the foregoing investigations of the potential environmental impacts of the Project and considering both the magnitude and importance of each environmental impact indicated, the Agency has determined that the Project will not have a significant adverse impact upon the environment and issues a negative declaration as part of an uncoordinated SEQRA review. The reasons supporting this determination and finding are attached hereto as Exhibit G. Based on the foregoing, the Agency finds and determines that the requirements of 6 N.Y.C.R.R. Part 617 have been met and that that no environmental impact statement shall be required or prepared. This determination constitutes a negative declaration for purposes of SEQR. Notice of this determination shall be filed to the extent required by the applicable regulations under SEQR or as may be deemed advisable by the Chairman or the Chief Executive Officer of the Agency or counsel to the Agency.

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

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

(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; and

(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, promote employment opportunities and prevent economic deterioration 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; and

(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, 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, construction and equipping of the Facility is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

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

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

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

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

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

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

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

Section 6. The Agency is hereby authorized to acquire an interest in 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, 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 \$20,000,000.00, corresponding to mortgage recording tax exemptions not to exceed \$150,000.00, in connection with the financing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of the acquisition, construction and equipping of the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$1,071,000.00, 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 F.

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, 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, 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 \$1,071,000.00, in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time. The aforesaid appointment of the Company is subject to the completion of the transaction and the execution of the documents contemplated by this resolution.

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

Section 10. The form and substance of the Company Lease, the Lease Agreement and the Loan Documents to which the Agency is a party (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved subject to provisions requiring that (v) that four (4) dwelling units at the Facility shall be occupied (but not on a transient basis) by individuals who are age 55 or over whose income per unit based upon family size (provided that for purposes of determining the income of a unit, a unit which does not have a separate bedroom shall be deemed to have one occupant, and a unit which has one or more separate bedrooms shall be deemed to have one and one-half occupants for each separate bedroom) does not exceed 50% of Area Median Gross Income for the Nassau-Suffolk region ("AMGI") for the current year (or if the AMGI shall cease to be issued, then such other index as the Agency may select) and the gross rent for such dwelling unit (as determined under 26 USCS §42 (together with the regulations promulgated thereunder, the "Tax Credit Law")) shall not exceed 30% of 50% of the AMGI; (w) four (4) dwelling units at the Facility shall be occupied (but not on a transient basis) by individuals who are age 55 or over whose income per unit based upon family size (determined as above provided) does not

exceed 65% of the AMGI for the current year (or if the AMGI shall cease to be issued, then such other index as the Agency may select) and the gross rent for such dwelling unit (as determined under the Tax Credit Law) shall not exceed 30% of 65% of the AMGI; (x) two (2) dwelling units at the Facility shall be occupied (but not on a transient basis) by individuals who are age 55 or over whose income per unit based upon family size (determined as above provided) does not exceed 80% of the AMGI for the current year (or if the AMGI shall cease to be issued, then such other index as the Agency may select) and the gross rent for such dwelling unit (as determined under the Tax Credit Law) shall not exceed 30% of 80% of the AMGI; (y) two (2) dwelling units at the Facility shall be occupied (but not on a transient basis) by individuals who are age 55 or over whose income per unit based upon family size (determined as above provided) does not exceed 100% of the AMGI for the current year (or if the AMGI shall cease to be issued, then such other index as the Agency may select) and the gross rent for such dwelling unit (as determined under the Tax Credit Law) shall not exceed 30% of 100% of the AMGI; and (z) three (3) dwelling units at the Facility shall be occupied (but not on a transient basis) by individuals who are age 55 or over whose income per unit based upon family size (determined as above provided) does not exceed 120% of the AMGI for the current year (or if the AMGI shall cease to be issued, then such other index as the Agency may select) and the gross rent for such dwelling unit (as determined under the Tax Credit Law) shall not exceed 30% of 120% of the AMGI.

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 at 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 on the 26th day of March, 2025, 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 public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, 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 26th day of March, 2025.

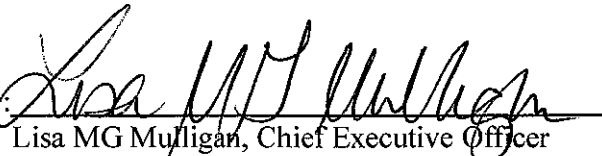
By: 
Lisa MG Mulligan, Chief Executive Officer

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 25th day of March, 2025, at 10:00 a.m. local time, at the Agency's offices located at the Town of Brookhaven Town Hall, 2nd Floor, One Independence Hill, Farmingville, New York 11738, in connection with the following matters:

Ornstein Leyton Company 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 Ornstein Leyton Company 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 approximately 12.35 acres of land located on the southside of New York State Route 25, east of New Lane, Coram, New York (also known as Tax Map No. District 0200, Section 475.00, Block 01.00, Lot 012.004 and District 0200, Section 475.00, Block 02.00 Lot 001.002) (the "**Land**"), (B) the construction, equipping and furnishing of approximately 74 new senior residential rental units across multiple buildings totaling approximately 98,675 square feet of rental area, and a 2,620 square foot clubhouse, with (i) four (4) of such units to be reserved as affordable housing for residents whose incomes are at or below 50% of the median income according to household size for the Nassau-Suffolk primary metropolitan statistical area as defined by the Federal Department of Housing and Urban Development ("**AMI**"), (ii) four (4) of such units to be reserved as affordable housing for residents whose incomes are at or below 65% of AMI, (iii) two (2) of such units to be reserved as affordable housing for residents whose incomes are at or below 80% of AMI, (iv) two (2) of such units to be reserved as affordable housing for residents whose incomes are at or below 100% of AMI, and (v) three (3) of such units to be reserved as workforce housing for residents whose incomes are at or below 120% of AMI, 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, shared common areas and other amenities and the furnishing thereof, furniture, appliances, structures, clubhouse, pool, 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 known as Vineyards at Coram and used by the Company to provide senior housing for the residents of Coram and Long Island (the "**Project**"). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and Improvements and title to the Equipment and will lease 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, all consistent with the uniform tax exemption policy ("**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: March 14, 2025

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON March 25, 2025

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY (ORNSTEIN LEYTON COMPANY LLC 2025 FACILITY)

Section 1. Lisa MG Mulligan, Chief Executive Officer of the Town of Brookhaven Industrial Development Agency (the "**Agency**") called the hearing to order.

Section 2. Lisa MG Mulligan then appointed herself 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:

Ornstein Leyton Company 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 Ornstein Leyton Company 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 approximately 12.35 acres of land located on the southside of New York State Route 25, east of New Lane, Coram, New York (also known as Tax Map No. District 0200, Section 475.00, Block 01.00, Lot 012.004 and District 0200, Section 475.00, Block 02.00 Lot 001.002) (the "**Land**"), (B) the construction, equipping and furnishing of approximately 74 new senior residential rental units across multiple buildings totaling approximately 98,675 square feet of rental area, and a 2,620 square foot clubhouse, with (i) four (4) of such units to be reserved as affordable housing for residents whose incomes are at or below 50% of the median income according to household size for the Nassau-Suffolk primary metropolitan statistical area as defined by the Federal Department of Housing and Urban Development ("**AMI**"), (ii) four (4) of such units to be reserved as affordable housing for residents whose incomes are at or below 65% of AMI, (iii) two (2) of such units to be reserved as affordable housing for residents whose incomes are at or below 80% of AMI, (iv) two (2) of such units to be reserved as affordable housing for residents whose incomes are at or below 100% of AMI, and (v) three (3) of such units to be reserved as workforce housing for residents whose incomes are at or below 120% of AMI, 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, shared common areas and other amenities and the furnishing thereof, furniture, appliances, structures, clubhouse, pool, 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 known as Vineyards at Coram and used by the Company to provide senior housing for the residents of Coram and Long Island (the "**Project**"). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment and lease 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 policies 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:

N/A

Section 5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at 10:15 a.m.

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 March 25, 2025 at 10:00 a.m., local time, in person, 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 March 25, 2025.

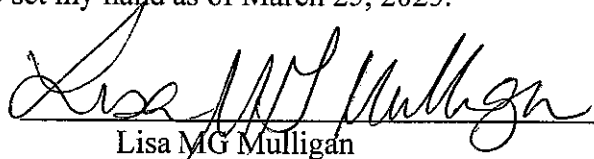

Lisa MG Mulligan
Chief Executive Officer

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), Longwood School District, Suffolk County and Appropriate Special Districts

Property Address: Southside of New York State Route 25, east of New Lane, Coram, New York

Tax Map Nos. 200-475.00-01.00-012.004
200-475.00-02.00-001.002

School District: Longwood

Tax Year	PILOT Payment
1.	\$39,620
2.	\$40,412
3.	\$65,141
4.	\$90,843
5.	\$117,546
6.	\$145,281
7.	\$174,079
8.	\$203,971
9.	\$234,988
10.	\$267,165
11.	\$300,535
12.	\$335,133
13.	\$370,994
14.	\$408,156
15.	\$507,329
And thereafter	Full taxes due

PILOT Payments shall be allocated among the Taxing Authorities in proportion to the amount of real property tax and other taxes which would have been received by each Taxing Authority if the Facility was owned by the Company exclusive of the Agency's leasehold interest.

All annual PILOT Payments as described above shall be payable in two equal semi-annual installments on or prior to January 31 and May 31 of each year of the Lease Term or on such other due dates as may be established from time to time during the Lease Term.

EXHIBIT D

Requisite Materials

1. Vineyards at Coram, dated November 2024, and prepared 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.*

EXHIBIT D-1

Vineyards at Coram, dated November 2024, and prepared VHB Engineering. Surveying,
Landscape Architecture and Geology, P.C

Vineyards at Coram

Middle Country Road

Town of Brookhaven, Suffolk County

PREPARED FOR

Orstein Leyton Company

223 Wall Street
P.O. Box 393
Huntington, New York 11743
631.868.7445

PREPARED BY



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

100 Motor Parkway
Suite 350
Hauppauge, NY 11788
631.787.3440

November 2024

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1

Introduction

1.1 Project Overview

This report has been prepared by the request of Ornstein Leyton Company (the "Applicant"). The Applicant is seeking Town of Brookhaven Industrial Development Agency (IDA) tax benefits (i.e., payment-in-lieu-of-taxes [PILOT] agreement, sales tax exemption and mortgage recording tax exemption) associated with the Applicant's proposed 74-unit planned retirement community (PRC) (the "Proposed Project"). The proposed 74-unit PRC would be located on a 12.43±-acre Subject Property on the south side of Middle Country Road (NYS Route 25), in the hamlet of Coram, Town of Brookhaven, Suffolk County, New York (Figure 1). The Subject Property comprises two parcels, identified on the Suffolk County Tax Map as District 0200 – Section 475.00 – Block 01.00 – Lot 012.004 and Block 02.00 – Lot 001.002 (Figure 2).

The Subject Property is situated along the south side of the Middle Country Road commercial corridor, which contains a mix of retail, commercial recreation and undeveloped properties, as well as existing multi-family residential developments. Currently, the Subject Property is zoned J Business 2, and is wooded/undeveloped throughout.

The Proposed Project involves a request for a change of zone to the PRC District to allow the construction of 74 rental residential units (including 12 affordable units), which would be age-restricted in accordance with the Town of Brookhaven Town Code (i.e., 55 years of age and older). The development would consist of six two-story residential buildings, a one-story community building, outdoor recreational amenities, a sewer pump station, stormwater management infrastructure, landscaped areas, and 119 surface parking spaces. Site access would be provided by a single-full movement driveway on Middle Country Road near the eastern limit of the Subject Property's frontage. The Proposed Project also involves the preservation of 4.99± acres (over 40 percent) of land as open space in its existing, vegetated state.

The purpose of this report is to evaluate the Proposed Project with respect to the guidelines to determine eligibility for Town of Brookhaven IDA approval of certain benefits (i.e., sales tax exemption, mortgage recording tax exemption and PILOT agreement). Specifically, the socioeconomic and community benefits and need for the Proposed Project, including economic activity during the construction and operational phases, and the purchasing power of the Proposed Project residents, are evaluated.

Figure 1: Site Location

Vineyards at Coram

Middle Country Road, Town of Brookhaven, Suffolk County



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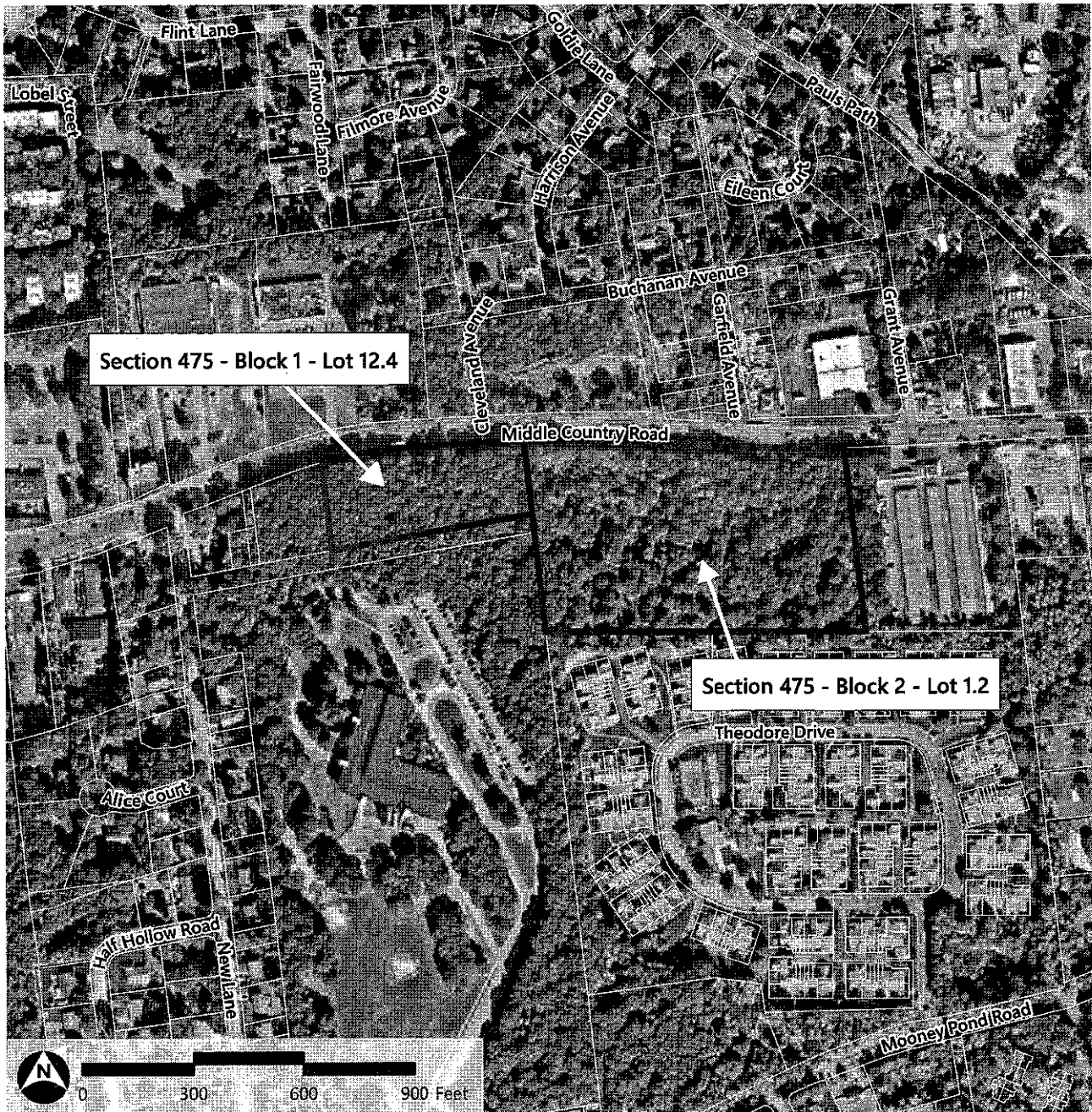
 Subject Property (boundaries are approximate)

Figure 2: Tax Map

Vineyards at Coram

Middle Country Road, Coram, Town of Brookhaven, Suffolk County



Subject Property (boundaries are approximate)

Suffolk County Tax Parcels

Source: Suffolk County Tax Parcels; Nearmap 2024

1.2 Comprehensive Planning Documents

- The Project's consistency with relevant comprehensive planning documents including the *1996 Town of Brookhaven Comprehensive Land Use Plan* (the "1996 Comprehensive Plan") and the *2006 Middle Country Road Land Use Plan for Coram, Middle Island and Ridge* (the "CMIR Land Use Plan"), is summarized below.

1.2.1 1996 Town of Brookhaven Comprehensive Land Use Plan

The *1996 Comprehensive Plan* is the latest effective Town-wide land use plan. The *1996 Comprehensive Plan* is largely based upon hamlet studies conducted leading up to the plan. It is noted that a hamlet study pertaining to Coram was not completed prior to the *1996 Comprehensive Plan* and, as such, one was not included in same (the *2006 Land Use Plan* that includes the hamlet of Coram is discussed later in this section). The *1996 Comprehensive Plan* includes an assessment of existing land uses; existing zoning and related codes; demographic data concerning the population, housing, social and economic conditions in the Town; historical and cultural facts; discussion of previous land use plans such as Brookhaven's 1975 and 1987 plans; and analyses of community services and facilities, traffic circulation and transportation infrastructure, and environmental resources. The *1996 Comprehensive Plan* also identifies existing problems, deficiencies and needs, as well as community strengths and assets, and sets forth goals and objectives to be achieved. Lastly, alternatives and implementation programs for achieving the goals and objectives are proposed in the *1996 Comprehensive Plan*.

In the *1996 Comprehensive Plan*, the future Land Use Plan, in which the location of the Subject Property appears, is shown as a high-density area in Figure 3. "High-density" is the densest of all the residential categories that are designated on the Land Use map. This category includes multi-family housing and PRCs.

The *1996 Comprehensive Plan* identifies the following Needs and Opportunities relevant to the Proposed Project:

- › Eliminating overabundant commercial zoning, including commercial strip zoning
- › Supporting and promoting senior citizen housing, to meet a growing need
- › Siting multi-family housing along major roadways, near activity centers
- › Clustering to maintain and create open space, especially in the Central Pine Barrens

The proposed Vineyards at Coram would accomplish these Town-wide goals with respect to residential and commercial development.



Figure 3: Town of Brookhaven Comprehensive Land Use Plan
Vineyards at Coram
Middle Country Road, Coram, Town of Brookhaven, Suffolk County



1.2.2 2006 Middle Country Road Land Use Plan for Coram, Middle Island, and Ridge

It is noted that because the specific hamlet plan for Coram was prepared 10 years after the 1996 *Comprehensive Plan*, the corridor plan provides more up-to-date information and recommendations for this hamlet.

As previously mentioned, the Subject Property is located within the area covered by the *CMIR Land Use Plan*. In contradiction to the 1996 *Comprehensive Plan*, the *CMIR Land Use Plan* identifies the Subject Property as Park/Open Space on "Figure 34 – Coram Land Use Plan" (Figure 4). For the parcels identified for Park/Open Space, the *CMIR Land Use Plan* states, "[a]cquisition or TDR [transfer of development rights] can be used to ensure preservation of these parcels" (p. 88). The *CMIR Land Use Plan* envisions the Middle Country Road corridor as a series of "hamlet centers and transition areas, where a greater density can be provided within the center and a lesser density at its perimeter..." (p. 67). The Subject Property is situated in a transitional area of Coram, west of the Coram Hamlet Center and east of Suffolk County Road 83 (CR 83). Other land uses envisioned for the transition area include single-family residential, low intensity commercial uses, farmers' markets, general stores, and religious uses.

The layout of the proposed Vineyards at Coram maintains a natural buffer throughout the front yard along Middle Country Road, will have a residential scale and appearance, and preserves a substantial portion of the Subject Property as naturally vegetated open space. As a result of these design features and site planning measures, the Proposed Project would maintain the transitional character of the Subject Property and achieve these relevant goals of the *CMIR Land Use Plan*. The proposed development would be set back within the Subject Property behind the natural buffer area with a minimum depth of 50 feet from Middle Country Road, with landscaped areas providing supplemental buffers between the natural area to be maintained on Middle Country Road and the development area within the interior of the Subject Property. The combination of the proposed natural buffer, interior landscaped areas, and the substantial setback of the proposed buildings within the Subject Property (i.e., a minimum of 93± feet for the community building and greater setbacks for all other buildings) would limit the visibility of the development from Middle Country Road.

The site layout of the Proposed Project would achieve open space/natural vegetation preservation at the Subject Property through the designation of a conservation area comprising the northwest portion of the Subject Property, and the buffer along Middle Country Road, with other portions of the site contiguous to these areas, resulting in a total of 4.99± acres of open space (i.e., 40.1 percent of the site). The proposed development would be concentrated within a 7.44±-acre area (59.9± percent of the site) on the eastern and central portions of the Subject Property, whereas the remainder of the site (western portions, along with the natural buffers to be retained along the northern and southern property boundaries) would remain natural, as noted above.

The Proposed Project includes a change-of-zone from J Business 2 to PRC Residence District. As noted in the Town Code, § 85-134, *Designation of districts*, the PRC Residence District is a more restrictive zoning district than the J Business 2 District, (i.e., reducing the intensity of development from the current zoning to the proposed zoning). The proposed PRC zoning, which is residential in character, is compatible with the relevant goals for the "transitional" portions of the corridor between hamlet centers, whereas the prevailing J Business 2 zoning would continue

to enable the retail commercial sprawl that is discouraged by the goals of the *1996 Comprehensive Plan* and the *CMIR Land Use Plan*.

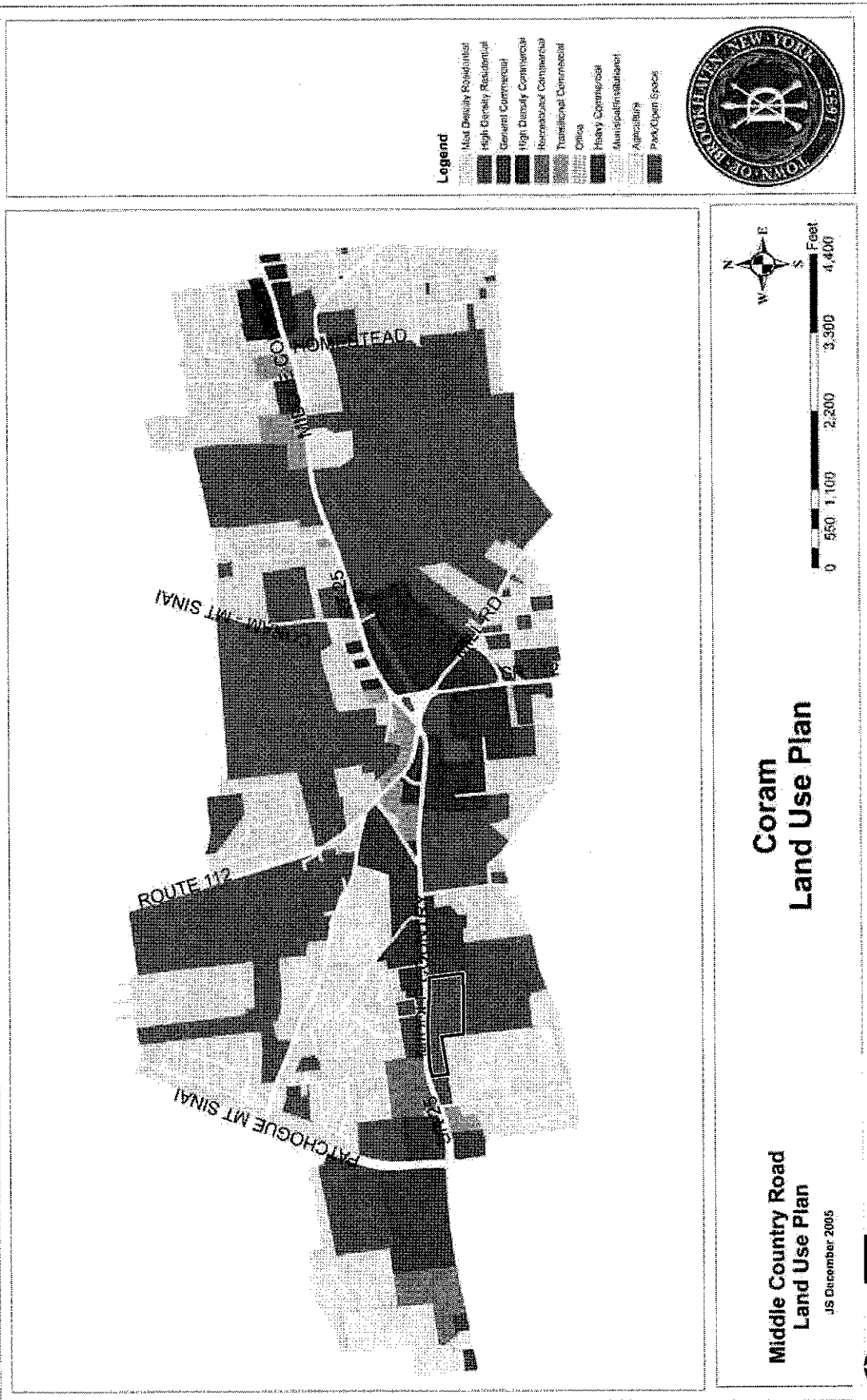
The following can be concluded based on the above analysis of the *1996 Comprehensive Plan* and the *CMIR Land Use Plan*:

- › The proposed PRC development would be residential in nature and compatible with the existing established transitional land use pattern of the corridor, and would support the nearby Coram Hamlet Center with additional shoppers and patrons.
- › While the site was identified as "open space" in the *CMIR Land Use Plan*, it has not been acquired for open space preservation in the approximately 18 years since the adoption of the *CMIR Land Use Plan*, and remains in private ownership zoned for commercial and retail use.
- › The proposed PRC development would result in the preservation of a substantial area of open space (i.e., 4.99± acres), including a substantial wooded buffer along the Middle Country Road corridor, which will be protected from development by a Conservation Easement requested by the Town of Brookhaven.
- › Additional open space would be preserved within the Town of Brookhaven (i.e., the Core Preservation Area of the Central Pine Barrens) as a result of the transfer of development rights through the redemption of Pine Barrens Credits.



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Figure 4: Coram Land Use Plan
 Vineyards at Coram
 Middle Country Road, Coram, Town of Brookhaven, Suffolk County



□ Subject Property (boundaries are approximate)

Source: Suffolk County, 1996 Middle Country Road Land Use Plan for Coram, Middle Island and Ridge

1.3 Rental and Senior Housing Trends and Data

The current need for affordable rental housing on Long Island, including senior housing, is well-documented and has become increasingly urgent in recent years. A March 2024 report published by the Regional Plan Association (RPA) found that Long Island experienced one of the largest drop-offs in the Tri-state area in the number of housing unit permits issued (including owner-occupied and renter-occupied units) per 1,000 residents between 1997-2009 and 2010-2022, and had the lowest number of housing unit permits per 1,000 residents issued within the period of 2010-2022 of the comparative regions with the Tri-state area.^{1,2} Specifically, between 1997-2009 and 2010-2022, Long Island had a decrease of housing units permitted per 1,000 residents from 21.9 to 9.3. In comparison, during the same period, the Lower Hudson Valley region observed a minor decrease in housing units permitted per 1,000 residents from 22.4 to 17.8. The RPA attributes this to restrictive zoning across Long Island and states that “apartment buildings are prohibited on more than 96% of the zoned land in Nassau and Suffolk Counties... [while] single-family housing can be built on 89% of the land on an as-of-right basis.”

With regard to the need for senior housing, according to the RPA,³

Seniors account for almost 40% of extremely low-income renter households statewide, and RPA has estimated that by 2040, the population of Long Island residents over 65 will increase by 40%. Older residents need more housing options on Long Island... single-family homes are not a good fit for many older adults who no longer want to or can no longer afford to meet the upkeep demands of the homes where they've lived their lives and raised their families.

The provision of housing that meets the needs of seniors not only helps them stay in the region, but also opens housing stock for prospective first-time home buyers who are a critical part of the regional economy and are contending with a limited supply of single-family homes on the market. As indicated by RPA in the *Long Island Housing Data Profiles*,⁴

Housing needs differ with age, with younger and older adults typically requiring smaller housing units than families. Long Island's housing stock is helping drive a demographic shift toward older households. With a lack of appropriate housing for younger adults and difficulties in attracting new businesses, the percentage of Long Island's population over 65 is increasing rapidly, while its share of younger households is shrinking... On Long Island, three quarters of households are headed by someone over 45. Population projections for Long Island as a whole estimate that the trend will continue. By 2040, the number of people over 65 is expected to increase by 40%, while its population under 35 could shrink by 13%. Long Island needs more diverse housing options for different ages and household lifecycles.

Despite the documented need for more housing options on Long Island, local municipalities have been slow to build new units. Per the 2018-2022 American Community Survey Five-Year Estimates, only approximately 3.7 percent of the existing housing stock within the Town of

¹Regional Plan Association. “Homes on Track: Building Thriving Communities Around Transit.” March 2024. Available at: <https://rpa.org/work/reports/homes-on-track>. Accessed October 2024.

²Comparative regions of the Study included the New Jersey Metro Core, the New Jersey Metro Periphery, New York City, Mid-Hudson Valley, Southwest Connecticut, the Lower Hudson Valley and the overall tri-state region.

³Regional Plan Association. “The Impact of Housing Insecurity on Long Island.” March 21, 2023. Available at: <https://rpa.org/news/lab/the-impact-of-housing-insecurity-on-long-island>. Accessed October 2024.

⁴Regional Plan Association. “Long Island Housing Data Profiles.” October 2020. Available at: <https://rpa.org/work/reports/long-island-housing-data-profiles>. Accessed October 2024.

Brookhaven was built in 2010 or later.⁵ With respect to renter occupied housing, according to the ACS data, since 2010, approximately 2,644 renter occupied units have been built in the Town, while in the prior decade (2000 to 2009), approximately 4,406 renter occupied units were built. Similarly, from 1990 to 1999, approximately 4,156 renter occupied units were built in the Town. This data indicates a trend of slowing rental housing construction in the Town as compared to previous decades.

The trends observed across Long Island create a housing environment for residents that is particularly burdensome. According to the ACS data, approximately 61.8 percent of renters in the Town are rent burdened (i.e., spending more than 30 percent of their income on housing costs).

In terms of housing choice, Long Island has similarly trended behind its neighboring counties and regions. The gap between the share of rental units in Nassau and Suffolk Counties and the share observed in neighboring metropolitan area counties is shown below in Table 1. Only rural Putnam County in the mid-Hudson Valley has a lower percentage of rental units than Nassau and Suffolk Counties.

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

County	Percentage of Rental Units 2018-2022
Suffolk County, NY	18.2%
Nassau County, NY	18.2%
Hudson County, NJ	67.8%
Essex County, NJ	55.3%
Westchester County, NY	37.8%
South Central Connecticut Planning Region, CT (containing New Haven County)	39.0%
Bergen County, NJ	34.9%
Western Connecticut Planning Region, CT (containing portions of Fairfield County)	33.9%
Greater Bridgeport Planning Region, CT (containing portions of Fairfield County)	33.7%
Dutchess County, NY	31.2%
Rockland County, NY	31.7%
Putnam County, NY	16.1%

Source: U.S. Census Bureau, 2022 American Community Survey 5-Year Estimates.⁶

⁵ United States Census Bureau, 2022 American Community Survey 5-Year Estimates. <https://data.census.gov>. Accessed October 2024.

⁶ In 2022, the US Census Bureau began collecting data for each of the nine "Planning Regions" within the State of Connecticut, rather than the State's historical 8 counties. As a result, data for Connecticut's Planning Regions prior to this date are not available and are not perfectly comparable to county data.

The high cost of living is a result of the dynamics of supply and demand for housing in the Town of Brookhaven and across Long Island. The demand for rental housing units exceeds the available supply, a condition which often results in high housing costs. This is evident by the fact that only 3.0 percent of rental units in the Town are vacant, according to vacancy data from the ACS.⁷ For Suffolk County, the rental vacancy rate is 3.2 percent and for New York State as a whole, the rental vacancy rate is 3.9 percent. In other words, though some rental units have been built in recent years across Long Island, the supply that has been created has not met the high demand.

The Proposed Project would help to address these trends by providing 74 rental units available to seniors, with 12 affordable units. The Proposed Project, similar to other comparable developments identified below, would help Coram, the Town and Long Island close the housing supply and demand gap.

1.4 Local Trends in Senior Housing

The Suffolk County Department of Economic and Planning (SCDEP) gathers data on senior citizen multi-unit housing communities with 10 or more units existing or currently under construction in the County. According to SCDEP data from 2021 (most recent available),⁸ in the Town of Brookhaven, there were 55 senior housing complexes with a total of 12,290 units. Of those complexes, 27 are apartment complexes with a total of 4,797 units. In Coram, the SCDEP data indicate seven senior housing complexes with a total of 923 units, including four apartment complexes with a total of 516 rental units. Thus, Coram contains approximately 7.5 percent of all senior housing units in the Town, and approximately 10.8 percent of all senior rental units in the Town. With the addition of 74 senior rental units, the Proposed Project would increase the Town's overall senior housing stock by approximately 0.6 percent, and increase the Town's senior rental housing stock by approximately 1.5 percent.

⁷ Calculated by comparing "Vacancy Status" and "Occupancy Characteristics" data from the 2018-2022 American Community Survey Five Year Estimates

⁸ Suffolk County Department of Economic Development and Planning, *Senior Citizen Multi-Unit Housing Complexes*, November 15, 2021. Available at: [Mulits SrCit.pdf](#). Accessed October 2024.

2

Anticipated Benefits of the Project

2.1 IDA Evaluation Criteria

The Town of Brookhaven IDA evaluates projects seeking benefits pursuant to the guidelines in its Uniform Tax Exemption Policy (UTEP),⁹ pursuant to Section 874(4)(a) of Title One of Article 18-A of the New York State General Municipal Law (hereinafter "the Act". As the Proposed Project is seeking a PILOT Agreement (as well as other benefits) from 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 UTEP). Relevant guidelines, and the Proposed Project's consistency therewith, are as follows:

It is noted that the Proposed Project only consists of a residential component. Therefore, Section 7(D)(1)(a) is not applicable to this application, as it relates to commercial and industrial uses seeking IDA benefits.

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.*

As indicated in a recent report prepared by Camoin Associates, *Contribution Analysis of Home Building on Long Island* (October 2024),¹⁰ it was found that Long Island's home building sector accounts for a significant portion of the regional economy. The report found the following economic benefits from Long Island's home building sector:

⁹ Town of Brookhaven IDA. *Town of Brookhaven Industrial Development Agency Uniform Tax Exemption Policy*. Available at: [Brookhaven UTEP Final 2020.pdf](#). Accessed October 2024.

¹⁰ Camoin Associates. *Contribution Analysis of Home Building on Long Island*. October 2024. Available at: <https://libi.org/contribution-analysis-of-home-building-on-long-island/>. Accessed November 2024.

- › 194,022 jobs (14 percent of Long Island's jobs)
- › \$15.4 billion in earnings (12 percent of Long Island's employee earnings)
- › \$41.7 billion in sales (over nine percent of Long Island's total sales)
- › \$122.6 million in sales tax contributions on Long Island
- › \$153.3 million in total fiscal impact (i.e., sales tax + income tax + property tax) on Long Island
- › \$30.6 million in property taxes collected from new home and apartment construction.

As shown above, there are clear economic benefits from the residential construction industry as a whole on Long Island. The discussion below summarizes the specific economic benefits that are anticipated from the Proposed Project.

VHB conducted an analysis of the jobs projected to generated by the Proposed Project using the IMPLAN software tool. This analysis was conducted for both the construction and operational periods of the Proposed Project. For the construction period, data inputs included the anticipated hard construction costs (i.e., building construction and site work), which is approximately \$20.4 million. Based on this construction cost, and with an anticipated 24 month construction period starting in July 2025, the Proposed Project is expected to support approximately 109 jobs during the construction phase. These jobs are broken down as follows:

Table 2 Employment Impact (Construction Phase)

<u>Impact Type</u>	<u>Employment</u>
Direct Effect ¹¹	75.1
Indirect Effect ¹²	6.5
Induced Effect ¹³	27.2
Total Effect	108.8

The analysis of the Proposed Project's employment impacts upon completion of construction (i.e., the operational phase) is based upon the assumption that the Proposed Project would directly generate 1.5 full-time equivalent (FTE) jobs when fully operational in the year 2027 (i.e., building super, maintenance and leasing jobs). As the existing Subject Property is undeveloped, no jobs would be lost as a result of the development of the Subject Property and, thus, this estimate of jobs is generated by the Proposed Project would represent a net increase.

¹¹ Direct Effect is 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 by an analyst to be a result of this activity or policy (i.e., construction jobs directly related to on-site activity).

¹² Indirect Effect is the impact of local industries buying goods and services from other local industries (i.e., jobs created from construction-related spending).

¹³ Induced Effect is 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 (i.e., jobs created through household spending of income from direct jobs).

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

Table 3 Employment Impact (Operational Phase)

Impact Type	Employment
Direct Effect	1.5
Indirect Effect	7.4
Induced Effect	2.1
Total Effect	11.0

As shown above, it is anticipated that the Proposed Project would support a total of approximately 11 jobs (including two direct jobs) during operation and approximately 109 total jobs (including 75 direct jobs) during construction. As noted above, the existing Subject Property is undeveloped, so no existing jobs would be lost.

The IMPLAN analysis also yields projections of the income from jobs that are anticipated to be created by the Proposed 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 presented below:

Table 4 Labor Income for Jobs Supported During Construction

Impact Type	Employment	Labor Income	Average Salary
Direct Effect	75.1	\$6,497,654	\$86,485
Indirect Effect	6.5	\$473,126	\$73,339
Induced Effect	27.2	\$1,817,457	\$66,769
Total Effect	108.8	\$8,788,237	\$80,773

Table 5 Labor Income for Jobs Generated During Operation

Impact Type	Employment	Labor Income	Average Salary
Direct Effect	1.5	\$122,625	\$81,750
Indirect Effect	7.4	\$436,018	\$58,757
Induced Effect	2.1	\$138,332	\$66,956
Total Effect	11.0	\$696,975	\$63,438

As demonstrated in Table 4 and Table 5 above, during the construction period, the Proposed Project would support approximately \$8.8 million in labor (payroll) income for all jobs (direct, indirect and induced), with an average salary of approximately \$80,773. During operations, the Proposed Project would generate approximately \$696,975 in labor (payroll) income for all jobs (direct, indirect and induced) with an average salary of approximately \$63,438, according to the IMPLAN analysis. As the Subject Property does not contain any active uses, the income supported by the Proposed Project would be new to the Town.

Data from the 2018-2022 American Community Survey 5-Year Estimates indicate that the per capita income in the Town of Brookhaven is approximately \$47,994.¹⁴ Therefore, the jobs supported and generated by the Proposed Project are expected to have incomes above the

¹⁴ United States Census Bureau, 2018-2022 American Community Survey 5-Year Estimates, <https://data.census.gov/>. Accessed October 2024

current per capita income for the Town. Additionally, the per capita income for Suffolk and Nassau Counties are \$53,317 and \$60,206, respectively. The jobs supported and generated by the Proposed Project would therefore be in-line with, or above, 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 approximately \$31.64 million¹⁵ in development costs, resulting in an overall economic output¹⁶ of approximately \$33.7 million during construction and \$3.9 million annually during operations.¹⁷ The Proposed Project offers numerous benefits, including the better and more economically viable utilization of a current undeveloped property, increasing high-quality senior citizen housing stock, including affordable senior housing, and growth of the Town'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.*

As discussed in Section 1.2 of this report, the Proposed Project is not only consistent with, but would directly advance the goals and recommendations of the 1996 *Town of Brookhaven Comprehensive Land Use Plan* and the 2006 *Middle Country Road Land Use Plan for Coram, Middle Island, and Ridge*. These plans identify the need for increased housing and emphasize the importance in expanding and diversifying housing stock for senior citizens. Through the inclusion of 12 affordable housing units among the 74 proposed age-restricted units, the Proposed Project would provide the diversity of housing for a range of incomes that has been sought by the Town.

The Proposed Project would generate new economic activity with the hamlet of Coram and the Town. Table 6, below, shows the household spending that would be anticipated to be generated by the Proposed Project on notable retail goods and services, including apparel and services, entertainment and recreation and food, based upon existing average spending by households within Coram.¹⁸

¹⁵ The capital investment includes hard construction costs and soft costs, including the purchase and redemption of Pine Barrens Credits.

¹⁶ As defined by IMPLAN, output is the total production value of an industry, including all components of production value or output for a given industry. See: <https://support.implan.com/hc/en-us/articles/18944799551387-Economic-Effect-Indicators#:~:text=of%20the%20economy-,OUTPUT,known%20as%20revenue%20or%20sales>.

¹⁷ Calculated through IMPLAN.

¹⁸ Estimated household spending was calculated based upon an analysis conducted through Esri Business Analyst. Household spending data is sourced from 2019 and 2020 Consumer Expenditure Surveys published by the Bureau of Labor Statistics. Other types of household expenditures excluded from this table include education, health care, household furnishings and equipment, personal care products and services, shelter, support payments/cash contributions/gifts in kind, travel, and vehicle maintenance and repairs.

Table 6 Anticipated Retail Goods and Service Household Annual Spending of Proposed Project

Type of Expenditure	Average Spending of Existing Households	Anticipated Spending by Proposed Project's Households
Apparel and Services	\$2,712.89	\$200,753.86
Entertainment and Recreation	\$4,711.94	\$348,683.56
Food	\$12,924.83	\$956,437.42

Overall, the Proposed Project would bring new economic activity to the Town and contribute to the diversification of housing opportunities. In this way, the Proposed Project would meet the criteria under Section 7(D)(1)(d).

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.*

Prior to the necessary permits and approvals, the Proposed Project will 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 potential environmental impacts of the Proposed Project were evaluated within an Environmental Assessment Report (EAR), dated October 2024, submitted to the Town under separate cover. The EAR includes analyses of potential environmental impact areas, including land use and zoning, topography, water resources, critical environmental areas, and transportation. As detailed in the EAR, the Proposed Project is not expected to have a significant adverse environmental impact. Several measures have been incorporated into the Proposed Project that would minimize environmental impacts, including:

- › Leaving 4.99± acres of the 12.43±-acre Subject Property undisturbed, to be preserved as natural open space
- › Installation of erosion and sediment control measures prior to site grading and construction
- › Control and capture of stormwater runoff via systems of leaching pools, shallow depressions and a recharge basin. The stormwater management system is designed to capture an eight-inch rainfall event. Stormwater management and erosion and sediment control practices, including implementation of a Stormwater Pollution Prevention Plan will be installed pursuant to Chapter 86, *Stormwater Management and Erosion Control*, of the Brookhaven Town Code
- › The Proposed Project will utilize an out-of-district sewer connection to Suffolk County Sewer District No. 11 – Selden, to avoid on-site sanitary wastewater disposal and impacts to groundwater resources. Measures will be taken during construction of the off-site sewer line to minimize the extent and duration of disturbances and to minimize the disruption to traffic activities with the requirements of the respective highway agencies (e.g., New York State Department of Transportation, Suffolk County Department of Public Works, and the Town of Brookhaven)
- › The Proposed Project is consistent with the relevant recommendations of *Long Island Comprehensive Special Groundwater Protection Area Plan (SGPA Plan)*, which encourage rezonings to limit the expansion of strip commercial areas. Additionally, the connection of the

Proposed Project to a sewer district will eliminate on-site sewage effluent discharge and, thus, would minimize potential groundwater impacts within the designated Central Suffolk SGPA

- › The Proposed Project is consistent with the standards within the *Central Pine Barrens Comprehensive Land Use Plan (CLUP)*. These standards include, among other things, limits on vegetative clearance and minimum natural vegetation requirements. The Proposed Project involves the preservation of 40.1 percent of the site, and the clearing of 59.9 percent, meeting the clearing limit standard. The Proposed Project also includes a 4.60±-acre unbroken block of open space consisting of native pine barrens vegetation in the western portion of the site. Other preserved open space along the property frontage and along a portion of the southern property border, composed of additional existing forested habitat and native landscaped buffers, would be contiguous with the larger western open space portion of the site. Overall, the Proposed Project would preserve over 4.99± acres of contiguous open space that would further adjoin existing pitch pine and oak-dominated forest communities located to the west and south of the Subject Property, thereby preserving connectivity with offsite forested areas and maintaining existing habitat corridors for resident wildlife
- › As New York Natural Heritage Program reports that a non-site-specific record exists for the endangered Northern Long-eared Bat in the vicinity of the Subject Property, the Proposed Project would be constructed in accordance with all applicable NYSDEC protections for the Northern Long-eared Bat, including seasonal tree clearing restrictions designed to limit tree removal to the winter hibernation period, when any resident bats would not be occupying summer roost trees, thereby avoiding any potential take of Northern Long-eared Bat. Moreover, the preservation of 4.99± acres of forested open space would preserve foraging habitat and potential summer trees for this species
- › Less than 15 percent of the Subject Property would be established in fertilizer-dependent vegetation. Furthermore, non-native/invasive plants listed as "specifically not recommended" for use within the Central Pine Barrens, are excluded from the proposed landscape plan, in conformance with the *Central Pine Barrens CLUP*
- › Regarding traffic, a Traffic Impact Study (TIS) was prepared for the Proposed Project, and is appended to the EAR. Based on a detailed analysis, the TIS made the following conclusions:
 - All of the studied roadways and intersections, including NY-25 and CR-83, NY-25 and Wincoram Way, and NY-25 and NY-112, will continue to operate under the overall anticipated No Build Level of Service with minor increases in delays in some individual traffic movements as a result of the Proposed Project
 - Based on the results of the TIS, the Proposed Project will not have an adverse impact on the studied intersections or roadway network, and no mitigation is necessary or proposed to accommodate the Proposed Project's site generated traffic.

In terms of sustainable and energy efficiency features, the Proposed Project would include the following:

- › Sustainable and/or recycled materials would be incorporated into the construction of the development to the extent feasible, and energy efficient systems and equipment would be utilized
- › Air sealing construction techniques would be incorporated and a blower door test would be conducted to ensure compliance
- › Energy Star appliances would be installed in the proposed residential units

- › All lighting would be LED and utilize occupancy sensors, where appropriate
- › The building envelop would meet or exceed current energy code with insulated walls, floors, roof and foundation
- › Electric heat pump technology is proposed to be used for the heating and cooling of the proposed residential units
- › Low-flow plumbing fixtures and smart irrigation systems would be incorporated across the development.

Based on the analysis presented in the EAR and the sustainable and energy efficiency measures described above, the Proposed Project is consistent with this criterion.

Note: Criteria 7(D)(1)(f), (g) and (i) relate to Affordable Housing Projects, Assisted Living Facilities, and Market Rate Housing Projects, as defined in the UTEP, respectively. The Proposed Project is a Senior Living Facility, as defined in the UTEP (i.e., an independent living facility which is age restricted for residents 55 years of age or older per the Town Code). Therefore, Criteria 7(D)(1)(f), (g) and (i) are not relevant to the Proposed Project. Criterion 7(D)(1)(h), which relates to Senior Living Facilities, is discussed below.

Section 7(D)(1)(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 [sic] 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.*

The Proposed Project is a senior living facility, including 74 age-restricted units, 12 of which would be designated as affordable units. The Applicant is seeking a 15-year PILOT, consistent with this criterion.

Note: Criterion 7(D)(1)(j) relates to Market Rate Housing Projects, and is therefore not relevant to the Proposed Project.

Section 7(D)(1)(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.*

The need for the Proposed Project is demonstrated throughout Section 1 of this report. There are documented needs in the Town and throughout Long Island for more senior housing stock, affordable senior housing, and efforts to shift away from overabundant commercial strip zoning. Compliance with the Act is demonstrated throughout Section 2 of this report.

As shown in Table 7 below, collectively, the two tax parcels that comprise the Subject Property currently generate approximately \$37,232 in annual property taxes, including \$2,263 to the Town of Brookhaven and its highway fund; \$3,997 to Suffolk County and the Suffolk County Police Department; \$25,181 to the Middle Country Central School District (CSD), \$2,452 to the Middle Country Public Library; and \$3,339 to various other special districts.¹⁹ After development of the Proposed Project, when the assessed value of the Subject Property is increased to reflect the improvements and new uses, taxes or PILOT payments paid on the site would be higher than the currently paid taxes. It is anticipated that all taxing jurisdictions would benefit over the course of, and beyond, the PILOT agreement.

Table 7 Existing Property Taxes for the Subject Property by Taxing Jurisdiction

Taxing Jurisdiction	Taxes
School District – Middle Country CSD	\$25,180.96
Library District – Middle Country CSD	\$2,452.21
County of Suffolk	\$207.21
County of Suffolk – Police	\$3,789.44
Town – Town Wide Fund	\$579.43
Highway – Town Wide Fund	\$152.70
Town – Part Town Fund	\$181.45
Highway – Part Town Fund/ Snow Removal	\$1,349.47
NYS MTA Tax	\$12.40
Open Space Preservation	\$196.26
Fire District – Selden	\$2,593.88
Lighting District – Brookhaven	\$109.68
Real Property Tax Law	\$345.02
Out of County Tuition	\$63.83
Suffolk County Community College Tax	\$17.88
Total	\$37,231.82

Source: Town of Brookhaven Statement of Taxes, 2023-2024.

Regarding the potential for the Proposed Project to affect the local public school district (i.e., Middle Country CSD), the proposed PRC zoning district restricts occupancy to persons aged 55 or over, and the children and grandchild of those occupants, provided that they are over 19 years of age. Since the 74 proposed residential units would be age-restricted, it is expected that they would not generate any school-aged children attending the Middle Country CSD. Therefore, future increases in property tax revenue (and PILOT payments) to the Middle Country CSD would be a financial benefit to the school district, without additional costs associated with a new student population.

¹⁹ Town of Brookhaven. *Town of Brookhaven Statement of Taxes, 2023-2024*. Available from the Town of Brookhaven GIS Map Portal at: <https://tob-nv.maps.arcgis.com/apps/instant/sidebar/index.html?appid=2de044a2146e492a9269701cf7eda140>. Accessed October 2024.

Regarding the services provided by other special districts, the Subject Property is currently served by the Suffolk County Police Department – Sixth Precinct, the Selden Fire District and the Middle Country Public Library. Project residents will utilize services from these special districts, and these providers would benefit from increased revenue streams resulting from the increased assessment when the Subject Property is improved from vacant land to a modern, attractive and cohesive development that will generate property tax revenue, even with the implementation of a PILOT. Over time, as the PILOT is phased out and there is a transition to a full property tax assessment, it is expected that the financial benefits to the special districts will continue to rise. It is also noted that the local community facilities and services already serve a large established population and numerous businesses throughout the area. As such, the increased residential population at the Proposed Project would be a *de minimis* portion of the demand for community facilities and services.

Based on the information above, the Proposed Project would comply with the provisions of Section 7(D)(1)(k) of the Town of Brookhaven IDA's UTEP.

3

Conclusions

For various reasons discussed above, the Proposed Project would address many of the concerns that are deemed priorities within the *1996 Comprehensive Plan* and the *CMIR Land Use Plan*. The Proposed Project would introduce 74 new senior rental apartments, including 12 affordable units. The Proposed Project would accomplish Town-wide goals of diversifying and expanding housing stock for seniors. The Proposed Project would enhance the area's character and foster new economic activity within Coram and the Town, while helping to combat current housing trends that continue to place financial burdens on renters across Long Island. As demonstrated by the U.S. 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, especially for senior housing options.

In terms of economic benefits to be expected from the Proposed Project, an IMPLAN analysis was undertaken to evaluate the anticipated employment and economic benefits of the Proposed Project during the construction and operation phases. This analysis indicates that the Proposed Project would support a total of approximately 109 jobs (including direct, indirect, and induced jobs) during the 24-month construction period, with a total labor (payroll) income of approximately \$8.8 million. Furthermore, it is estimated that the operational phase of the Proposed Project would potentially generate a total of 11 jobs (including direct, indirect, and induced jobs), with a total labor (payroll) income of approximately \$696,975, annually. In addition, the total development cost of \$31.6 million, including \$20.4 million in hard construction costs, represent a substantial investment in the Town. Following development, annual household spending by the 74 residential units would continue to grow the economic base for the Town.

Based on the analysis presented in this report, the Proposed Project is consistent with the guidelines of the Brookhaven IDA's UTEP and would result in public benefits related to the provision of senior housing (including affordable units), employment, generation of direct and indirect economic benefits to the community, and elimination of commercial strip-zoned land within the Town.

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,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

residential developments certainly are eligible to receive IDA benefits.

'Matter of Ryan'

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

The financial benefits and assistance granted by the TOHIDA included:

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

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

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

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

The court agreed with the respondents and dismissed the petition.

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

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

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

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

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

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

Conclusion

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

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

Mot. Seq. 1
Mot. Date 9.13.16
Submit Date 11.17.16

Petitioners,

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

XXX

-against-

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

Respondents.

-----X

The following papers were read on this motion:

Papers Numbered

Notice of Petition, Affidavits, Exhibits, Memorandum Annexed.....	1,2
Verified Answers.....	3,4,5
Opposing Affidavits.....	6,7,8,9,10,11,12
Reply Affidavits.....	13, 14
Sur-Reply Affidavit.....	15
Hearing Record (3 Vols.).....	16

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

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

The financial benefits and assistance granted include:

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

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

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

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

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

The alleged flaws are not fatal and do not provide a basis for dismissal. Petitioners have standing to maintain an action for equitable or declaratory relief under State Finance Law § 123-b *vis-a-vis* the issue of whether the project herein falls within the definition of a "project" for which IDA benefits may be granted (*see Nearpass v Seneca County 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" (Ops. 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.

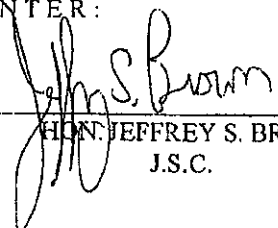
Where, as here, the project at issue promotes employment opportunities and serves to combat economic deterioration in an area served by an industrial development agency, a finding that the project falls within the ambit of the IDA is rationally based; neither arbitrary or capricious or an abuse of discretion,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

Attorney for Petitioner
LaReddola Lester & Assocs., LLP
600 Old Country Road, Ste. 224
Garden City, NY 11530
516-357-0056
5163570069@fax.nycourts.gov

Attorney for Respondent Renaissance Downtowns
Forchelli Curto Deegan Schwartz
Mineo & Terrana, LLP
333 Earle Ovington Blvd., Ste. 1010
Uniondale, NY 11553
516-248-1700
5162481729@fax.nycourts.gov

Attorneys for Respondent Hempstead Industrial
Lisa Bloom, Esq.
William F. Weir, Esq.
Nixon Peabody, LLP
50 Jericho Quadrangle, Ste. 300
Jericho, NY 11753
516-832-7500
lbloom@nixonpeabody.com

and

Ryan Brennan & Donnelly, LLP
John E. Ryan, Esq.
131 Tulip Avenue
Floral Park, NY 11001
516-328-1100
jryan@rbdllp.net

EXHIBIT E

Town of Brookhaven Industrial Development Agency Uniform Tax Exemption Policy

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

SECTION 1. PURPOSE AND AUTHORITY. Pursuant to Section 874(4)(a) of Title One of Article 18-A of the New York State General Municipal Law (the “**Act**”), Town of Brookhaven Industrial Development Agency (the “**Agency**”) is required to establish a uniform tax-exemption policy applicable to the provision of any financial assistance to any project. This uniform tax-exemption policy (“**UTEP**”) was adopted pursuant to a resolution enacted by the members of the Agency on June 20, 2012, as amended on October 15, 2014, September 20, 2017, May 13, 2019 and June 17, 2020.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(JJ) **"Village"** means any incorporated Village located within the Town.

SECTION 3. GENERAL PROVISIONS.

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

(B) Exceptions. The Agency reserves the right to deviate from such policy in special circumstances. In determining whether special circumstances exist to justify such a deviation, the Agency may consider the magnitude of the deviation sought and the factors which might make the project unusual, which factors might include but not be limited to the following factors: (1) The magnitude and/or importance of any permanent private sector job creation and/or retention related to the proposed project in question; (2) whether the Affected Tax Jurisdictions will be reimbursed by the project occupant if such project does not fulfill the purposes for which Tax Exemption was granted; (3) the impact of such project on existing and proposed businesses or economic development projects; (4) the amount of private sector investment generated or likely to be generated by such project; (5) the estimated value of the Tax Exemptions requested; (6) the extent to which such project will provide needed services and revenues to the Affected Tax Jurisdictions; (7) the effect of the proposed project upon the environment, the extent to which the project will utilize, to the fullest extent practicable and economically feasible, resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures; and (8) if the project is designated blighted as per the Town's Code. In addition, the Agency may consider the other factors outlined in Section 874(4)(a) of the Act.

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

(D) Public Hearings and Notice to Affected Tax Jurisdictions. No request for approval of an Applicant Project by the Agency which involves the issuance of bonds, notes or other evidences of indebtedness with respect thereto or any other application for Tax Exemptions, or

entering into a Lease and Project Agreement or PILOT Agreement, or the granting of other financial assistance to Project Applicant which may aggregate more than \$100,000 or which involves a proposed deviation from the provisions of this Uniform Tax Exemption Policy, shall be given final approval by the Agency unless and until the Agency: (1) has published a public notice and conducted a public hearing with respect to the location and nature of the project, the issuance of bonds or notes, if applicable, and the Tax Exemptions and other financial assistance to be granted by the Agency to the Project Applicant in accordance with the provisions of Section 859-a of the Act, (2) has sent written notice of said request to each Affected Tax Jurisdiction describing generally the location and nature of the project, the issuance of bonds or notes, if applicable, and the Tax Exemptions and other financial assistance to be granted by the Agency to the Project Applicant and if the request involves a deviation from this UTEP, describing such deviation and the need for such deviation, and (3) has given each Affected Tax Jurisdiction and members of the public a reasonable opportunity, either in writing or in person, to be heard by the Agency with respect to the location and nature of the project and proposed Tax Exemption to be granted to the Applicant in accordance with the Act. With respect to Non-Applicant Projects, the Agency shall comply with the provisions of Section 859-a of the Act, to the extent applicable. In addition, the Agency shall comply with all other notice provisions and public hearing requirements contained in the Act relative thereto.

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

SECTION 4. SALES AND USE TAX EXEMPTION.

(A) General. State law provides that purchases of tangible personal property by the Agency or by an agent of the Agency, and purchases of tangible personal property by a contractor for incorporation into or improving, maintaining, servicing or repairing real property of the Agency, are exempt from sales and use taxes imposed pursuant to Article 28 of the Tax Law. In accordance with the Act, the Agency has a policy of abating sales and use taxes applicable (1) only to the initial acquisition, construction, renovation and/or equipping of an Applicant Project and (2) to any Non-Applicant Project. The grant of sales and use tax exemptions by the Agency are subject to the Agency’s Recapture Policy.

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

- (1) General. The sales and use tax exemption for an Applicant Project shall be for the Sales Tax Exemption Period commencing no earlier than (i) the date of issuance by the Agency of bonds, notes or other evidences of indebtedness with respect to such project, or (ii) the execution and delivery by the Agency of a Lease and Project Agreement or other document evidencing the sales and use tax exemption relating to such project, and

ending on the date of completion of the project or specific date set by the Agency. The Sales Tax Exemption Period for a Non-Applicant Project shall extend for such period of time as the Agency shall determine.

- (2) Normal Termination. The Sales Tax Exemption Period for an Applicant Project will normally end upon the earlier of (i) completion of the acquisition, construction, renovation and/or equipping of such project, (ii) the specific date set by the Agency or (iii) the date upon which the Applicant has received the benefit of one hundred percent (100%) of the approved sales and use tax exemption regardless of whether the acquisition, construction, renovation and/or equipping of such project has been completed. The Agency and the Applicant shall agree on the estimated date of completion of the project, and the sales and use tax exemption shall cease on the agreed upon date, as stated in the Lease and Project Agreement or other document evidencing the sales and use tax exemption, unless terminated earlier in accordance with the terms of the lease agreement or other document evidencing the exemption.
- (3) Extension of Sales Tax Exemption Period/Increase in Amount. The Chief Executive Officer of the Agency is authorized on behalf of the Agency to approve (i) requests from Applicants regarding the extension of the completion date of its project and the extension of the Sales Tax Exemption Period, and (ii) requests from Applicants regarding an increase of sales and use tax exemptions in an amount not to exceed \$100,000, in connection with the purchase or lease of equipment, building materials, services or other personal property, without the need of approval of the Board of the Agency.
- (4) Items Exempted. The sales and use tax exemption granted by the Agency with respect to an Applicant Project shall extend only to items acquired and installed during the Sales Tax Exemption Period. The sales and use tax exemption shall only apply to the purchase or lease of such items as more particularly described in the Lease and Project Agreement or other such document evidencing the sales and use tax exemption. Such Lease and Project Agreement or other document shall also explicitly describe the items which are not eligible for sales and use tax exemption.
- (5) Percent of Exemption. Unless otherwise determined by resolution of the Agency, the sales and use tax exemption shall be equal to one hundred percent (100%) of the sales and use taxes that would have been levied if the project were not exempt by reason of the Agency's involvement in the project. If an exemption of less than one hundred percent (100%) is determined by the Agency to be applicable to a particular Applicant Project, then the Applicant shall be required to pay a PILOT Payment to the Agency equal to the applicable percentage of sales and use tax liability not being abated. The Agency shall remit such PILOT Payment, within thirty (30)

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

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

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

SECTION 5. MORTGAGE RECORDING TAX EXEMPTION.

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

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

- (1) The documents relating to such proposed mortgage contain the Agency's standard non-recourse and hold harmless language and such other provisions as the Agency may require, as provided to the lender;

- (2) The granting of the mortgage is permitted under any existing documents relating to the project, and any necessary consents relating thereto have been obtained by the project occupant;
- (3) The payment of the Agency Fee relating to same; and
- (4) The granting of such mortgage recording tax exemption is in the best interest of the Agency and in furtherance of the Agency's public purposes in accordance with the Act.

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

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

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

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

SECTION 6. REAL ESTATE TRANSFER TAXES.

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

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

SECTION 7. REAL ESTATE TAX EXEMPTION.

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

(B) PILOT Requirement. Unless the Applicant and/or project occupant and the Agency shall have entered into a PILOT Agreement, the project documents shall provide that the Agency will not file a New York State Department of Taxation and Finance, Division of Equalization and Assessment Form RP-412-a (an "**Exemption Form**") with the Assessor and each Affected Tax Jurisdiction with respect to the project, and the project documents shall provide that the Applicant and/or the project occupant shall be required to make PILOT Payments in such amounts as would result from taxes being levied on the project by the Affected Tax Jurisdictions as if the project were not owned by or under the jurisdiction or supervision or control of the Agency. The project documents shall provide that, if the Agency and the Applicant and/or project occupant have entered into (i) a Lease and Project Agreement that contains provisions for PILOT Payments or (ii) a standalone PILOT Agreement acceptable to the Agency, the project documents shall provide that the Agency will file an Exemption Form with the Assessor and each Affected Tax Jurisdiction. The terms of the PILOT Agreement shall control the amount of PILOT Payments until the expiration or sooner termination of such PILOT Agreement. Except as otherwise provided by resolution of the Agency, all real estate PILOT Payments are to be paid to the Agency for distribution to the Affected Tax Jurisdictions. Upon expiration of the initial period as aforesaid, the assessment of the project shall revert to a normal assessment (i.e., the project will be assessed as if the project were owned by the Applicant and not by the Agency). Also, any addition to the project shall be assessed normally as aforesaid, unless such addition shall be approved by the Agency as a separate project following notice and a public hearing as described in Section 859-a of the Act. Other than fixing the final assessment for the initial period as aforesaid, the policy of

the Agency is to not provide the Applicant and/or project occupant with any abatement, other than abatements allowed under the Real Property Tax Law.

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

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

- (1) Real Property Tax Abatement. The Agency provides real property tax abatements (“**Real Property Tax Abatements**”) in the form of reduction of existing taxes and/or freezing existing taxes and/or abating the increased taxes as the result of the project. Except as may described in this UTEP, the Agency’s standard PILOT Agreement will contain fixed PILOT Payments for each tax year throughout the term of the PILOT Agreement as determined by the Agency in its sole discretion. The standard real property tax abatement provided by the Agency is based on the total increased assessment for a project over a ten (10) year period, however, the Agency in its sole discretion may grant a fifteen (15) year PILOT Agreement or grant a five (5) year extension of a ten (10) year PILOT Agreement without such fifteen (15) year term be considered a deviation. As required by the Act, unless otherwise agreed to by the affected taxing jurisdictions, all PILOT Payments must be disbursed by the Agency to the Affected Taxing Jurisdictions in proportion to the amount of real property taxes and other taxes that would have been received by such Affected Taxing Jurisdiction had the project not been tax exempt due to the Act. Each abatement of real property taxes pursuant to a PILOT Agreement is based on a cost benefit analysis to determine if the project is eligible for the standard exemption. In cases where a project does not meet Agency guidelines for the standard exemption, a reduced abatement in terms of percent and/or duration may be extended to the applicant, the amount of such reduced abatement to be dependent on the facts and circumstances of each particular case. The guidelines to determine eligibility for the standard exemption are as follows:

- (a) Industrial, manufacturing, research and development, commercial, warehousing, distribution facilities, retail (subject to retail restrictions in the Act), and corporate office facilities are all eligible for the standard exemption. Speculative office projects may be

eligible for the standard exemption if they are projected to provide economic benefits in terms of jobs, involve significant capital investments in the Town, repurpose existing vacant or nearly vacant buildings, or will stimulate the local economy. The extent to which the project will directly create or retain permanent private sector jobs as well as "temporary" jobs during the construction period are factors that will be considered by the Agency in determining if a project is eligible for a PILOT Agreement. In addition, the level of secondary "multiplier" jobs that will be created or retained as a result of the project will be considered by the Agency. Current policy is to rely on a cost benefit analysis of the project.

- (b) Generally, new jobs created or existing jobs retained by the project should have projected average annual salaries in line with the median per capita income levels on Long Island at the time of application. Projects with low employment numbers may receive reduced benefits. Further, labor intensive industries are viewed favorably. The likelihood that a desirable project will locate in another municipality/region/state, resulting in subsequent real economic losses in the Town, the retention of current jobs at an existing project, and the possible failure to realize future economic benefits for attraction projects are factors that may be considered by the Agency in granting a PILOT Agreement.
- (c) The total amount of capital investment and/or public benefit at the project is a factor that may be considered by the Agency in granting a PILOT Agreement.
- (d) The extent to which a project will further local planning efforts by upgrading blighted areas, create jobs in areas of high unemployment, assist institutions of higher education, provide the opportunity for advanced high-tech growth or diversify the Town's economic base.
- (e) The effect of the proposed project on the environment and the extent to which the project will utilize, to the fullest extent practicable and economically feasible, resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures.
- (f) For purposes of this UTEP, "**Affordable Housing Projects**" are defined as housing projects (i) utilizing either four percent (4%) Low Income Housing Tax credits AND tax-exempt bonds OR nine percent (9%) Low Income Housing Tax credits, (ii) housing projects that receive funding through the HOME, CDBG or any HUD programs which restricts the income levels of the residents of the housing project by the terms of the funding agreements or a

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

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

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

- (h) For purposes of this UTEP, “**Senior Living Facilities**” are defined as independent living facilities which are restricted for residents 55 years of age or older per the Town Code. Senior Living Facilities may be granted a PILOT Agreement for a term of to 10 to 15 years with fixed PILOT Payments to be determined by the Agency in its sole discretion. However, in the event the Senior Living Facility is financed by tax exempt bonds, the PILOT Agreement may run concurrently with the term of the bond financing.
- (i) For Purposes of this UTEP, “**Market Rate Housing Projects**” are defined as all housing projects other than Affordable Housing Projects, Senior Living Facilities or Assisted Living Facilities. Market Rate Housing Projects may be granted a PILOT Agreement for a term of up to 7 years, starting at the current taxes on the land and any existing buildings, structures and improvements on the land and increasing to full taxation at the end of the PILOT Term with PILOT Payments to be determined by the Agency, in its sole discretion. However, Market Rate Housing Projects that are to be wholly located in or substantially located in one of the areas described below, may be eligible to be granted in the Agency’s sole and absolute discretion an enhanced PILOT Agreement for a 13 to 15-year term. The enhanced PILOT Agreement will generally equal land-only taxes for three to five years. The remaining ten years will generally mirror a “double 485-b” exemption. In order to be eligible to receive an enhanced PILOT Agreement, Market Rate Housing Projects must be located in one of the following areas: a Community Development Block Grant area, an Opportunity Zone, a revitalization area, a Transit Oriented Development, a Highly Distressed Area (as defined in the Act), an established downtown, a blighted area or parcel of land as per the Town’s Code, or if such Market Rate Housing Project is part of a Town or Village planned development zone or an incentive zoning program. All Market Rate Housing Projects, regardless of whether it receives an enhanced PILOT Agreement, must comply with the requirements of Section 7(D)(j) below.
- (j) All Market Rate Housing Projects will be required to include a minimum of 10% affordable units and 10% workforce units to be maintained as such for the life of the Lease and Project Agreement. Each of the “affordable” units shall rent at a reduced rent to tenants with an annual income at or below 80% of the median income for the Nassau-Suffolk primary metropolitan statistical area as defined by the Federal Department of Housing and Urban Development.

Each of the “workforce” units shall rent at a reduced rent to tenants with an annual income at or below 120% of the median income for the Nassau-Suffolk primary metropolitan statistical area as defined by the Federal Department of Housing and Urban Development. The project shall enter into a contract with a local not-for-profit housing advocacy group acceptable to the Agency to administer the affordability of the affordable units and the workforce units. This information must be provided to the Agency on an annual basis. Compliance with the above requirements for a minimum of 10% affordable units and a minimum of 10% workforce units will not make a Market Rate Housing Project be considered to be an Affordable Housing Project as defined in Section 7(D)(h) above.

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

employment levels), the PILOT Agreement may provide for the benefits provided thereby to the project to be reduced or eliminated if, in the sole judgment of the Agency, the project has failed to fulfill such minimum goals.

- (3) Expiration or Termination of PILOT Agreement: Upon expiration of the initial period as aforesaid, the assessment of the project shall revert to a normal assessment (i.e., the project will be assessed as if the project were owned by the Applicant and not by the Agency). Also, any addition to the project shall be assessed normally as aforesaid, unless such addition shall be approved by the Agency as a separate project following notice and a public hearing as described in Section 859-a of the Act. Other than fixing the final assessment for the initial period as aforesaid, the policy of the Agency is to not provide the Applicant and/or project occupant with any abatement, other than abatements allowed under the Real Property Tax Law.
- (4) Special District Taxes: As indicated above, the Agency is not exempt from special assessments and special ad valorem levies and accordingly, these amounts are not subject to abatement by reason of ownership of or the involvement in the project by the Agency. The PILOT Agreement shall make this clear and shall require that all such amounts be directly paid by the Applicant and/or project occupant. However, Applicants and project occupants should be aware that the courts have ruled that an Agency-sponsored project is also eligible to apply for an exemption from special district taxes pursuant to Section 485-b of the Real Property Tax Law. If an applicant or project occupant desires to obtain an exemption from special district taxes pursuant to said Section 485-b, it is the responsibility of the Applicant and/or project occupant to apply for same at its sole cost and expense.
- (5) Payment of PILOT Payments: Unless otherwise determined by resolution of the Agency or otherwise provided for in a Lease and Project Agreement or a PILOT Payment invoice from the Agency, all PILOT Payments payable to an Affected Tax Jurisdiction shall be billed and collected directly by the Agency. Pursuant to Section 874(3) of the Act, such PILOT Payments shall be remitted to each Affected Tax Jurisdiction within thirty (30) days of receipt.
- (6) Late Payment of PILOT Payments: Any PILOT Payments that are not paid on the date that such payments are due shall be subject to penalties and interest as required by the Act and the Lease and Project Agreement or the PILOT Agreement.
- (7) Recapture: All PILOT Agreements are subject to Recapture upon the recurrence of a Recapture Event.

- (8) Enforcement: An Affected Tax Jurisdiction which has not received a PILOT Payment due to it under a PILOT Agreement may exercise its remedies under Section 874(6) of the Act. In addition, such Affected Tax Jurisdiction may petition the Agency to exercise whatever remedies that the Agency may have under the project documents to enforce payment; and if such Affected Tax Jurisdiction indemnifies the Agency and agrees to pay the Agency's costs incurred in connection therewith, the Agency may take action to enforce the PILOT Agreement.

(E) Real Property Appraisals. Since the policy of the Agency stated in this Section 7 is to base the value of a project for payment in lieu of tax purposes on a valuation of such project performed by the respective Assessors, normally a separate real property appraisal is not required. However, the Agency may require the submission of a real property appraisal if (1) the Assessor of any particular Affected Tax Jurisdiction requires one, or (2) if the valuation of the project for payment in lieu of tax purposes is based on a value determined by the Applicant or by someone acting on behalf of the Applicant, rather than by an Assessor of an Affected Tax Jurisdiction or by the Agency. In lieu of an appraisal, the Agency may require that an Applicant submit to the Agency and each Assessor a certified enumeration of all project costs. If the Agency requires the submission of a real property appraisal, such appraisal shall be prepared by an independent MAI certified appraiser acceptable to the Agency.

SECTION 8. PROCEDURES FOR DEVIATION.

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

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

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

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

SECTION 9. RECAPTURE.

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

(B) For purposes of this UTEP, "**Recaptured Benefits**" shall mean all direct monetary benefits, Tax Exemptions and abatements and other financial assistance, if any, derived solely from the Agency's participation in the transaction contemplated by the Lease and Project Agreement and the PILOT Agreement including, but not limited to, the amount equal to 100% of:

- (i) mortgage recording tax exemption; and
- (ii) sales and use tax exemption savings realized by or for the benefit of the Applicant, including any savings realized by any agent of the Applicant pursuant to the Lease Agreement and Project Agreement and each sales tax agent authorization letter issued in connection with the Lease Agreement and Project Agreement ("**Sales Tax Savings**"); and
- (iii) Real Property Tax Abatement savings granted pursuant to the Lease Agreement and Project Agreement and the PILOT Agreement (i.e., full Taxes on the Facility less the PILOT Payments) (the "**Real Property Tax Abatement Savings**").

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

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

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

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

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

(iv) Failure of the Company to create or cause to be maintained the number of FTE jobs at the Facility as provided in the Lease and Project Agreement, which failure, in the sole judgment of the Agency, is not reflective of the business conditions of the Applicant or the subtenants of the Applicant, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions; or

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

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

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

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

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

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

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

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

EXHIBIT F

Cost Benefit Analysis

Town of Brookhaven Industrial Development Agency

MRB Cost Benefit Calculator

Date 5.2.24
Project Title Ornstein Leyton Company - Vineyards at Coram
Project Location South side of Middle Country Rd Between New Ln and Mooney Pond Rd Selden

MRB | group

Cost-Benefit Analysis Tool powered by MRB Group

Economic Impacts

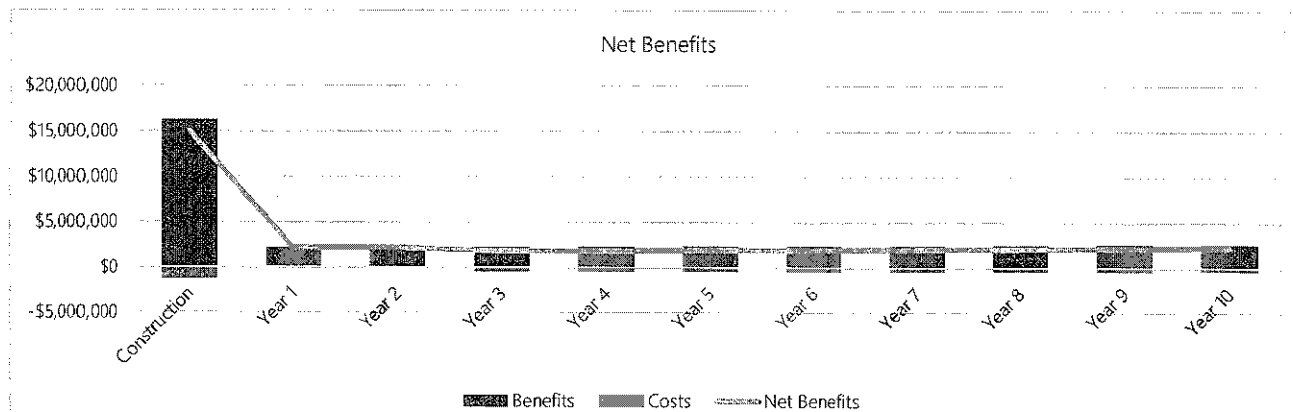
Summary of Economic Impacts over the Life of the PILOT

Project Total Investment
\$31,640,000

Temporary (Construction)			
	Direct	Indirect	Total
Jobs	208	44	253
Earnings	\$12,190,947	\$3,137,000	\$15,327,948
Local Spend	\$31,640,000	\$10,888,385	\$42,528,385

Ongoing (Operations)			
Aggregate over life of the PILOT			
	Direct	Indirect	Total
Jobs	26	8	34
Earnings	\$25,053,143	\$9,907,759	\$34,960,901

Figure 1



Net Benefits chart will always display construction through year 10, irrespective of the length of the PILOT.

Figure 2

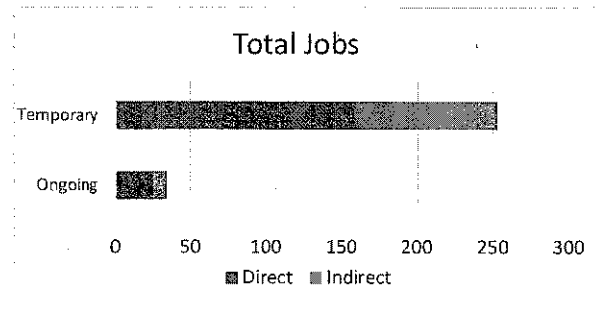
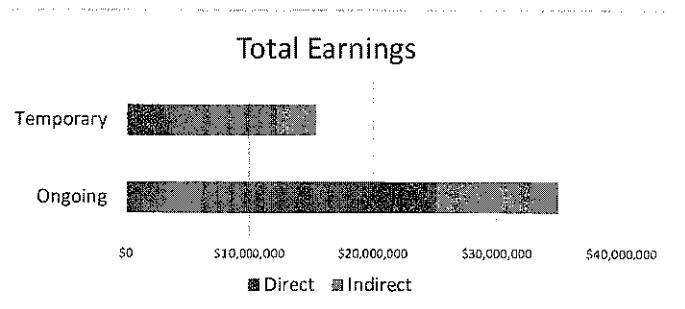


Figure 3



Fiscal Impacts

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Cost-Benefit Analysis Tool powered by MRB Group

Estimated Costs of Exemptions

	Nominal Value	Discounted Value*
Property Tax Exemption	\$4,594,188	\$3,922,075
Sales Tax Exemption	\$1,071,000	\$1,071,000
Local Sales Tax Exemption	\$581,400	\$581,400
State Sales Tax Exemption	\$489,600	\$489,600
Mortgage Recording Tax Exemption	\$150,000	\$150,000
Local Mortgage Recording Tax Exemption	\$50,000	\$50,000
State Mortgage Recording Tax Exemption	\$100,000	\$100,000
Total Costs	\$5,815,188	\$5,143,075

State and Local Benefits

	Nominal Value	Discounted Value*
Local Benefits	\$53,293,074	\$47,506,125
To Private Individuals	\$50,288,849	\$45,059,378
Temporary Payroll	\$15,327,948	\$15,327,948
Ongoing Payroll	\$34,960,901	\$29,731,430
Other Payments to Private Individuals	\$0	\$0
To the Public	\$3,004,225	\$2,446,748
Increase in Property Tax Revenue	\$2,428,978	\$1,938,496
Temporary Jobs - Sales Tax Revenue	\$127,414	\$127,414
Ongoing Jobs - Sales Tax Revenue	\$447,834	\$380,838
Other Local Municipal Revenue	\$0	\$0
State Benefits	\$2,747,417	\$2,455,673
To the Public	\$2,747,417	\$2,455,673
Temporary Income Tax Revenue	\$689,758	\$689,758
Ongoing Income Tax Revenue	\$1,573,241	\$1,337,914
Temporary Jobs - Sales Tax Revenue	\$107,296	\$107,296
Ongoing Jobs - Sales Tax Revenue	\$377,123	\$320,706
Total Benefits to State & Region	\$56,040,491	\$49,961,799

Benefit to Cost Ratio

	Benefit*	Cost*	Ratio
Local	\$47,506,125	\$4,553,475	10:1
State	\$2,455,673	\$589,600	4:1
Grand Total	\$49,961,799	\$5,143,075	10:1

*Discounted at 2%

Additional Comments from IDA

This project includes a 74 unit garden-style, 55+ apartment complex with affordable and workforce units (4 units at 50% of AMI, 4 units and 65% of AMI, 2 units at 80% of AMI, and 3 units at 120% of AMI) to be located on the south side of Middle Country Road between New Lane and Mooney Pond Road in Seiden. The project will include a clubhouse, community garden, pool and pickleball courts. The project will create 1.5 full-time equivalent employees and will be investing in a force-main sanitary line and an on-site pump station in order to connect to SC Sewer Plant #11. As per the Brookhaven IDA Uniform Project Evaluation Criteria Policy, the criteria met for this project include, but are not limited to, capital investment by the application and an increase in the

Does the IDA believe that the project can be accomplished in a timely fashion? Yes

EXHIBIT G

SEQRA Findings In Support of Negative Declaration

Based upon the Questionnaire prepared by the Company and the Environmental Information reviewed by the Agency, the Agency determines that the action relating to the acquisition, construction and equipping of the Facility is an "Unlisted" action, as that term is defined under SEQR. Based upon the foregoing investigations of the potential environmental impacts of the Project and considering both the magnitude and importance of each environmental impact indicated, the Agency has determined that the Project will not have a significant adverse impact upon the environment and issues a negative declaration as part of an uncoordinated SEQRA review. The reasons supporting this determination and finding are as follows:

1. Conformance of Project with the Town Code. The Project received Change of Zone approval and Site Plan approval from the Brookhaven Town Board on December 17, 2024. Such approvals required no variance relief. Accordingly, given the zoning and local approvals by the Town of Brookhaven, the Project conforms with the Town Code.

2. Impact on Land. The Project is not anticipated to create any potentially significant adverse impacts to land resources or land use. The surrounding areas south of Middle Country Road and in the vicinity of the southern proposed development parcels are characterized by J-Business-2 commercial uses to the east and west, consisting of mini-storage and retail uses, Middle Country Road (NYS Rt. 25), a major throughfare to the north, the Country Village Planned Retirement Community to the south, as well as the New Lane Memorial Elementary School to the southwest. Through the Project's general compliance with Town approvals, the land use and zoning character of the area will be protected. Accordingly, the Project is not anticipated to create any potentially significant adverse impacts to land resources or land use.

3. Impact on Water. The Project does not abut any waterbody or wetland based on the Questionnaire and the NYSDEC's Environmental Resource Mapper. In addition, the Project is not located in a designated 100-year or 500-year floodplain. Based on the Questionnaire, the Project will generate approximately 11,100 gallons per day of liquid waste and be connected to the Suffolk County Sewer District #11, Old Town Road facility. Further, stormwater runoff will be retained onsite. Although the Land is located in the Town of Brookhaven Hydrogeologic Sensitive Zone and Suffolk County Groundwater Management Zone III, which indicates that the Land is located within the deep recharge area to the underlying Nassau-Suffolk Sole Source Aquifer, no activities proposed for the Project are anticipated to impact groundwater or the aquifer, nor is the operation of such project anticipated to expose such aquifer to the undue threat of contamination. Accordingly, the Project will not have an adverse impact on water resources.

4. Impact on Air. The Project will not be a significant source of air emissions. The Project does not entail the types of activities or operations that require the Applicant to acquire an Air Facility Permit or that are associated with a significant

potential for air emissions. Any potential impact on air as a result of construction activities will be minor, and temporary in nature.

5. Impact on Health or Safety. The Questionnaire advises that the property and adjacent parcels are not within the NYSDEC remedial database and do not contain hazardous waste. The Project also does not entail the types of activities or operations that are associated with a significant potential for affecting public health. Accordingly, the Project will not create any significant adverse impact to public health, air, land or water resources.

6. Impact on Plants and Animals Including to Threatened or Endangered Species. The Questionnaire noted the Northern Long Eared Bat as a threatened or endangered species potentially located on the Land. The Questionnaire provides that all tree removal will be in accordance with NYSDEC regulations to protect the Northern Long Eared Bat, including compliance with seasonal tree clearing restrictions. The Project also includes a 4.99-acre conservation easement in a transition zone fronting on Middle Country Road, which is contiguous to existing natural areas on the adjacent school property and the unopened Lebanon Avenue. Accordingly, the Project will not cause a significant adverse impact to plants and animals or natural communities.

7. Impact on Agricultural Land Resources. The Project is located in an area currently devoted to commercial and residential uses. As a result, it will not involve the conversion or loss of agricultural land resources. Accordingly, the Project will not create any significant adverse impacts to agricultural land resources.

8. Impact on Aesthetic Resources. The Project will not be proximate to any officially designated federal, state or local scenic or aesthetic resource. The Land is situated in a developed commercial and residential area, is zoned for uses consistent with the Project, and the Facility is also consistent with surrounding uses. As the Facility is consistent with its surroundings, it is not anticipated to create any significant adverse impacts to aesthetic resources.

9. Impact on Historic and Archeological Resources. The Land is not within nor adjacent to any archeological area deemed sensitive by the State Historic Preservation Office nor any historic buildings. The Land, itself, is not improved with structures and contains no visible historical, archeological, architectural or aesthetic resources that will be impaired by the development of the Facility. Accordingly, the Project will not create any significant adverse impacts to historical or archaeological resources.

10. Impact on Open Space and Recreation. The Land and adjacent areas around it do not comprise public open space. Further, the density of the Project is not anticipated to create an adverse impact on local parkland. Accordingly, the Project will not create any significant adverse impacts to open space or recreational resources.

11. Impact on Critical Environmental Areas. The Land is located within the Central Pine Barrens Compatible Growth Area and the Central Suffolk Special Groundwater Protection Area, both recognized Critical Environmental Areas. The

Project complies with the clearing and development limitations imposed by the Central Pine Barrens Comprehensive Land Use Plan. Further, the Project does not include the type of use that would have any negative impact upon groundwater. Accordingly, the Project is not anticipated to have a significant adverse impact on Critical Environmental Areas.

12. Impact on Transportation. Based on the Questionnaire and the Agency's experience with similar projects, the Project will not result in a substantial increase in traffic above capacity of current traffic infrastructure, nor is it expected to generate substantial new demand for transportation facilities or services/infrastructure. Any impacts to transportation from construction activities associated with the Project will be minor and temporary in nature. Accordingly, it is not anticipated that the Project will create any significant adverse impacts to transportation.

13. Impact on Energy. The Project will result in an increase in energy usage, however, existing utilities serve the area where the Project will be developed and are anticipated to have adequate capacity to serve it. As a result, the Project will not create any significant adverse impacts to energy.

14. Impact on Noise and Odor and Impacts from Light. The Project is not expected to materially increase ambient noise levels or to create odors of consequence particularly considering such project setting including the Land. As a result, it is not anticipated that the operation of the Project will result in undue noise impacts. Further, any impacts to noise and/or odor from construction activities will be minor, and temporary in nature. In addition, any such noise from construction will be undertaken during work hours and as such is not anticipated to be significant. Accordingly, the Project will not create any significant adverse impacts to noise or odors.

15. Impact on Growth and Character of the Community and Neighborhood. The Project is not anticipated to result in significant growth out of character or beyond the capacity of the area to accommodate the same considering the zoning of the site of said project, existing improvements on the Land and surrounding uses. In sum, the Project is similar and is in character with surrounding uses. Accordingly, the Project is not anticipated to create any significant adverse impacts to the growth or character of the community.

16. No Related Actions being Funded, Undertaken or Approved by the Agency. The Project is not associated with any related action being undertaken, funded or approved by the Agency. Accordingly, the Project is not anticipated to have a cumulative impact that affects the consideration of the Project under SEQRA.

17. Changes Associated with the Project Will Not have a Significant Impact on the Environment in the Aggregate. No anticipated changes in two or more elements of the environment, neither of which has a significant impact on the environment, when considered together will result in a substantial adverse impact on the environment given existing environmental conditions and conditions of the Site Plan Approval.

Based on the foregoing, the Agency finds and determines that the requirements of 6 N.Y.C.R.R. Part 617 have been met and that that no environmental impact statement shall be required or prepared. This determination constitutes a negative declaration for purposes of SEQR. Notice of this determination shall be filed to the extent required by the applicable regulations under SEQR or as may be deemed advisable by the Chairman or the Chief Executive Officer of the Agency or counsel to the Agency.