TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY
STRAIGHT LEASE TRANSACTIONS

<u>Structure of Straight Lease</u>

- Real estate is conveyed to Agency

- Agency leases real estate to Company
  - Lease is triple net (i.e., tenant is responsible for all obligations)
  - Agency appoints Company as its agent to construct or renovate a building and equip the facility (e.g., manufacturing equipment, material handling equipment, office equipment (e.g., furniture, computers))
  - Company pays all PILOT (payments in lieu of real estate taxes), and all costs of Agency
  - At conclusion of lease term (approximately 10 years, intended to coincide with the end of the PILOT benefits), real estate, including the improvements and equipment, are re-conveyed to the Company
  - Company is owner for income tax purposes (e.g., depreciation)

- Two tier real estate structure is permissible, that is,
  - Real estate entity (the "Company") is formed solely to "own" the real estate and improvements
  - Operating Company subleases the real estate and improvements from the real estate entity
  - Ownership of both entities is substantially the same

- Financing
  - Company arranges conventional financing from its lenders as if the Agency were not involved, that is, acquisition, construction and permanent mortgage loans [but advises the lenders that the transaction involves the Agency and will be structured as a straight lease transaction]
  - The Company (and usually the operating company and the principals) is obligated to the lenders under the usual loan documents (e.g., mortgage note, mortgage, guaranty, environmental indemnifications, etc.)
  - The Agency (as the actual owner of the real estate) grants to the lenders a lien on the real estate, however, all obligations associated with the liens and with compliance with the mortgage loans requirements, are the responsibility of the Company (e.g., debt service, casualty and liability insurance, title insurance, surveys, commitment fees, environmental investigations, appraisals, etc.)

Advantages

- Real Estate Tax Abatements - improvements to the real estate will be real estate tax exempt
  - The Agency and the Company will enter into a payment in lieu of real estate tax agreement (PILOT) pursuant to which, assuming sufficient new employment, the new building, or the increased value due to renovations, may be exempt from taxation for up to 10 years (the Company will continue to pay the real estate taxes assessed on the land as if vacant)

- Sales Tax Exemptions – the construction of a new building, or the renovation of an existing building, and the purchase of equipment will be sales tax exempt
  - Note: in ordinary projects, although the construction or renovation is a capital improvement for which sales tax is not payable by the owner, contractors and subcontractors pay sales tax on materials and the expense is included in the contractor's price

- Mortgage Tax Exemption –recording tax is not charged on the mortgages filed securing the lenders' loans as the real estate is titled in the IDA

Disadvantages

- Additional Expenses
  - Agency Fees – application fee, project fee
  - Agency Attorney Fees
  - Additional liability insurance requirements to protect the Agency
  - Addition title insurance requirement to protect the Agency

- Reporting Requirements
  - Annual employment reports
  - Sales tax reports