

## **Amended & Restated UTEP Resolution**

A regular meeting of the Nassau County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 1550 Franklin Avenue, Suite 235, Mineola, County of Nassau, New York, on June 22, 2011, at 5:00 p.m., local time.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

**PRESENT:**

Jeffrey L. Seltzer	Chairman
Louis G. Savinetti	Vice Chairman
Bruce Ungar	Treasurer
Christopher Fusco	Asst. Secretary

**ABSENT:**

Gary Weiss	Secretary
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**THE FOLLOWING PERSONS WERE ALSO PRESENT:**

Joseph J. Kearney	Executive Director
Colleen Pereira	Administrative Director
Paul O'Brien, Esq.	Bond/Transaction Counsel
Milan Tyler, Esq.	Bond/Transaction Counsel

The attached resolution no. 2011-15 was offered by L. Savinetti, seconded by B. Ungar:

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY (THE "AGENCY") ADOPTING AN AMENDED AND  
RESTATED UNIFORM TAX EXEMPTION POLICY AND ADDRESSING OTHER  
MATTERS IN CONNECTION THEREWITH

WHEREAS, the Nassau County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), and Chapter 674 of the 1975 Laws of New York, as amended, constituting Section 922 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, Section 874(4) of the Act requires that all industrial development agencies adopt a uniform tax exemption policy, which will apply to and govern the granting of "financial assistance" (as defined in Section 854 of the Act); and

WHEREAS, the Agency adopted its most recent uniform tax exemption policy by resolution of the members of the Agency adopted on December 3, 2010; and

WHEREAS, the Agency wishes to adopt an amended and restated uniform tax exemption policy (the "Restated Policy") to make certain technical changes and to ensure continued compliance with current best practices in governance and applicable law, including, without limitation, Article 18-A of the General Municipal Law, the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009 (collectively, "Applicable Laws"); and

WHEREAS, the Agency formally sought input from all affected tax jurisdictions in the County of Nassau by mailing notice of its consideration of the Restated Policy to all affected tax jurisdictions by letters dated May 26, 2011; and

WHEREAS, no member of the public nor any governmental official has provided any comments in writing to the Agency with respect to the Restated Policy;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency hereby adopts the Restated Policy in the form annexed hereto as Exhibit A (the "Policy"). The Policy hereby replaces any and all uniform tax exemption policies heretofore adopted by the Agency and shall apply to all applications for financial assistance received on or after the date of adoption of this resolution.

Section 2. The Agency hereby authorizes and directs the Agency's Staff to post the Policy on the Agency's website and to make all other disclosures thereof required by Applicable Laws.

Section 3. This Resolution shall not preclude the Agency from adopting other or further policies relating to governance and activities of the Agency as determined from time to time by the members of the Agency.

Section 4. This Resolution shall take effect immediately.

ADOPTED: June 22, 2011

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Jeffrey L. Seltzer	VOTING	Aye
Louis G. Savinetti	VOTING	Aye
Bruce Ungar	VOTING	Aye
Gary Weiss	ABSENT	
Christopher Fusco	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.

**EXHIBIT A**

**Uniform Tax Exemption Policy**

See Attached

Nassau County Industrial Development Agency  
Uniform Tax Exemption Policy

Adopted June 22, 2011

The purposes of the Nassau County Industrial Development Agency (“the Agency”) include the promotion of economic development, the prevention of economic deterioration and the advancement of employment opportunities to improve the general prosperity and economic welfare of the people of Nassau County. The Agency assists in the development of projects that create and retain jobs, generate revenue for the economy of Nassau County and expand and diversify the County’s tax base. To do this, the Agency encourages the construction, acquisition, retention and/or expansion of certain Projects, as authorized by Article 18-A of the New York General Municipal Law (the “Act”) by providing financial assistance in the form of (i) sales and use tax exemptions; (ii) mortgage recording tax exemptions; (iii) real property tax abatements and (iv) the issuance of tax-exempt or taxable bonds where appropriate (collectively, “Financial Assistance”). That portion of Financial Assistance that concerns (i) sales and use tax exemptions, (ii) mortgage recording tax exemptions and (iii) real property tax abatements shall, for the purpose of this Uniform Tax Exemption Policy (the “Policy”), be collectively referred to as “Tax Abatements”.

The granting of Financial Assistance is governed by the policies and procedures of the Agency, the Act and applicable Federal and State common and statutory laws (collectively, the “Applicable Laws”).

As required by the Act, this Policy provides a uniform policy for the claiming of Tax Abatements and deviations thereto and supersedes and supplants any previous policy adopted by the Agency.

1. GENERAL PROCEDURE

a. The Applicable Laws determine those Projects that are eligible to receive Tax Abatements.

b. A company that desires to receive Tax Abatements (an “Applicant”) must present its proposal to the Agency in accordance with procedures adopted by the Agency, as same may be amended from time to time.

c. In conformity with its procedures, and in compliance with the Applicable Laws, the Agency may, in its sole discretion, approve a proposed project (a “Project”) by adopting an Inducement Resolution and thereafter proceed to Closing on such Project. For purposes of this Policy, the term “Closing” means the date the Agency acquires ownership, jurisdiction, supervision or control of a Project. The date on which the Closing occurs is referred to as the “Closing Date”. In determining whether to grant Financial Assistance for a Project in accordance with this Policy, the members of the Agency shall consider such factors as they deem relevant, including, without limitation, those factors set forth in Section 874(4)(a) of the Act.

d. At Closing, the Applicant will be required to execute documents that will (i) convey ownership, jurisdiction, supervision or control of the Project to the Agency and (ii) govern the terms and conditions pursuant to which the Agency shall grant Financial Assistance to the Applicant (such documents are referred to as the “Project Documents”).

## 2. SALES AND USE TAX EXEMPTION

a. “Personal Property”, as such term is hereinafter defined, that is purchased or leased in connection with a qualified Project shall be exempt from local and state sales and use taxes for the period commencing with the Closing and ending on the date (as such date may be extended in the sole discretion of the Agency) that the Project Documents require completion to occur in respect of the undertaking of the Project or other Project activities. “Personal Property” includes building materials, fixtures, furnishings and equipment, as well as certain services that may relate to any of the foregoing, provided that such purchases and equipment rentals and services are made by an entity as agent for the Agency.

b. Purchases, rentals of Personal Property and the use of services that are Personal Property will be fully exempt from local and New York State Sales and Use Taxes until the Project is required to have been completed (i.e. issuance of certificate of occupancy or similar event).

c. Operating and maintenance expenses of Projects are not incurred as agent of the Agency, and no sales tax exemption is provided for operating and maintenance expenses.

d. The Agency shall issue a letter that sets forth the parameters of the sales and use tax exemption (the “Tax Letter”).

e. The Tax Letter may be given prior to Closing if authorized by the Agency.

f. All Project Applicants must agree in writing to file with the New York State Department of Taxation, in form and at times required, an annual statement of the value of all sales and use taxes exemption claimed in connection with the Project in full compliance with Section 874(8) of the Act.

### 3. MORTGAGE RECORDING TAX EXEMPTION

a. The Mortgage Recording Tax Exemption permits mortgage recording tax exemptions on all Project-related financing to the full extent permitted by the Applicable Laws, whether or not the Agency has issued its bonds to finance the Project.

b. In addition, the Agency may, in its sole discretion, permit mortgage recording tax exemptions on non-Project related financings, (e.g. second mortgages on the Project to secure subordinated indebtedness of the Project Applicant). In determining whether to permit such exemptions on non-Project related financing, the Agency shall consider such factors as it deems appropriate, including, but not limited to, the following:

- i. The nature of the Project;
- ii. The degree of investment;
- iii. The degree and nature of the unemployment and the economic condition of the areas in which the Project is located;
- iv. The ability of the Project to achieve the goals of the Agency’s Strategic Financial Assistance Policy, as such may be amended from time to time;<sup>1</sup>
- v. The environmental benefits of a Project, including, without limitation, the “Green” component and/or the LEED certification of any Project, if any;
- vi. The manner and extent to which the Project complies with the enumerated factors set forth in §874(4)(a) of the Act as amended from time to time; and
- vii. Consideration of other factors which, in the opinion of the members of the Agency, justify such exemption.

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<sup>1</sup> A copy of the Strategic Assistance Policy is annexed hereto as Exhibit “A” and made a part hereof.

#### 4. ABATEMENT OF REAL PROPERTY TAXES

##### a. PILOT Agreement

i. Each Project receiving abatement from real property tax will be required to execute and deliver a Payment in Lieu of Tax Agreement in a form acceptable to and prescribed by the Agency (the "PILOT Agreement").

ii. The Pilot Agreement shall be a Project Document.

iii. The Pilot Agreement, in addition to other terms and conditions contained therein, will generally:

(1) Itemize in a schedule the amount, duration and timing of the Payment In Lieu Of Taxes (the "PILOT") that will be based upon a percentage of the taxes that would otherwise be due on the value-added portion of the improvement computed as if the Agency did not have ownership, jurisdiction, supervision or control of the Project.

(2) Require that the Applicant and its successors pay the PILOT to the Treasurer of Nassau County who shall distribute the PILOT to those jurisdictions having taxing authority over the Project as if the Agency did not have ownership, jurisdiction, supervision or control of the Project (the "Affected Taxing Jurisdictions"). Other terms with respect the billing and collection of the PILOT are set forth in the Agency's standard form of PILOT Agreement, a copy of which is attached to this Policy as Exhibit B.

(3) Require the payment of any and all special district assessments and special ad valorem levies assessed against or levied upon the Project independently of and in addition to the PILOT payments (collectively, "Special Assessments"), whether by the Nassau County Tax Assessor's Office (or other village or city assessor) or otherwise, as may be required by law from time to time, notwithstanding the Agency's ownership, jurisdiction, supervision or control of the Project.

(4) Require the execution, delivery and filing of a mortgage to secure the PILOT payments to the Treasurer of Nassau County, unless otherwise determined by the members of the Agency.

(5) Require the Recapture of Benefits in certain circumstances.

##### b. SCHEDULE AND ALLOCATION OF PILOT



i. The schedule used to calculate PILOT payments and the amount of such payments is not set forth in the Act. PILOT payments must be made in accordance with the PILOT payment schedules included within this Policy or be based on an approved deviation.

ii. Unless otherwise agreed by the Affected Taxing Jurisdictions, such PILOT Agreement payments shall be allocated among the affected taxing jurisdictions in proportion to the amount of real property tax and other taxes that would have been received by each Affected Taxing Jurisdiction if the Agency did not have ownership, jurisdiction, supervision or control of the Project.

iii. 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 Nassau County and any Village or City if such Project is located in a Village or City with an Assessing Unit other than the County of Nassau.

iv. Once an Exemption Form with respect to a particular Project is properly filed, the real property tax exemption for such Project shall not take effect until (1) a tax status date for such Affected Taxing Jurisdiction occurs subsequent to such filing; (2) the real property is noted as "Exempt" on the assessment roll for such Affected Taxing Jurisdiction; (3) such assessment roll becomes the basis for the preparation of a tax roll for the Affected Taxing Jurisdiction; and (4) the tax year related to such tax roll commences.

c. PILOT FOR A NEW CONSTRUCTION PROJECT

i. For purposes of this Policy, the term "New Construction Project" shall mean (i) the construction of a building on vacant, unimproved land or (ii) construction of an improvement or additional building(s) on an improved land that has a taxable assessed value of \$0.00 or other de minimis amount as determined by the Nassau County Department of Assessment and, if in an incorporated Village or City, the Assessing Unit of such Village or City.

ii. An Applicant that is developing a New Construction Project shall enter into a PILOT Agreement that shall commence on the first tax status date of the County of Nassau after Closing (the "Commencement Date").

iii. The duration of the PILOT Agreement shall be ten (10) years commencing on the “Effective Date” for each Affected Taxing Jurisdiction. The “Effective Date” for each Affected Taxing Jurisdiction shall be the first day of the first tax year occurring after the first tax status date occurring after the Scheduled Completion Date of the Project. The Scheduled Completion Date of the Project shall be determined by the Agency.

iv. The amount of the New Construction Project PILOT shall be computed as follows:

(1) For the period commencing on the Commencement Date to and including the day prior to the Effective Date, the PILOT shall be equal to one hundred percent (100%) of the taxes and assessments that would be levied upon the Project by the respective Taxing Authorities without taking into consideration the transfer of ownership, jurisdiction, supervision or control of the Project to the Agency.

(2) For the period commencing on the Effective Date and continuing for ten (10) full tax years thereafter, the amount of the PILOT shall be the sum of the LAND PILOT and the IMPROVEMENT PILOT, as phased in as set forth in Schedule A annexed hereto and made a part hereof.

(a) The LAND PILOT shall be the amount of all taxes paid on such land (and de minimis improvements) based on the most recent data available to the Agency for the tax year in which the Closing Date occurs. In accordance with Section 11 of this Policy, the LAND PILOT shall be reduced by the amount of Special Assessments, if any. The LAND PILOT shall not otherwise decrease or increase over the duration of the PILOT Agreement.

(b) The IMPROVEMENT PILOT shall be the product of (i) the “Assessed Value of the Improvement”, as defined below; (ii) the “PILOT RATE”, as defined below and (iii) the number .01.

(3) The “Assessed Value of the Improvement” shall be the assessed value of the Project, less the assessed value of the land.

(4) The “Assessed Value of the Improvement” shall be computed as follows:

(a) The fair market value of the improvement, computed as of the estimated date of completion, shall be determined by the Agency at or prior to Closing, using an accepted methodology including, but not limited to, income capitalization, cost of construction or sales comparison. The fair market value of the improvement shall not include the value of the land. The Agency may, in its sole discretion, accept input from the Assessor of Nassau County (or other village or city assessor) and/or use independent consultants to assist in the computation of fair market value, the cost of which assessors and/or consultants shall be borne by the Applicant.

(b) The fair market value of the improvement shall then be multiplied by the Level of Assessment used by the Assessor of Nassau County as of the year in which the Closing occurs.

(c) The product of the fair market value of the improvement and the Level of Assessment shall be the Assessed Value of the Improvement.

(5) The “PILOT RATE” shall be the sum of all “Applicable Tax Rates Per Hundred”, exclusive of rates used to compute Special Assessments, if any.

(a) For property located outside of an incorporated Village and outside of a City, the “Applicable Tax Rates Per Hundred” shall be the total of all tax rates applicable to the property, exclusive of rates used to compute Special Assessments, if any. The “Applicable Tax Rates Per Hundred” shall be evidenced by School Tax Bills and General Tax Bills based on the most recent data available to the Agency as of the year that Closing has occurred with the Agency.

(b) For property located within an incorporated Village, the “Applicable Tax Rates Per Hundred” shall be the total of all tax rates applicable to the property, exclusive of rates used to compute Special Assessments, if any. The “Applicable Tax Rates Per Hundred” shall be evidenced by School Tax Bills, General Tax Bills and Village Tax Bills based on the most recent data available to the Agency as of the year that Closing has occurred with the Agency. If a Village does not use the Nassau County Assessment Roll to compute Village Taxes, the Village tax rate shall be equalized so that the tax rate reflected on the Village Tax Bills is adjusted so that it is based on an assessed value that is equal to the Assessed Value of the Improvement.

(c) For property located within a City, the “Applicable Tax Rates Per Hundred” shall be the total of all tax rates applicable to the property, exclusive of rates used to compute Special Assessments, if any. The “Applicable Tax Rates Per Hundred” shall be evidenced by School Tax Bills, General Tax Bills and City Tax Bills based on the most recent data available to the Agency as of the year that Closing has occurred with the Agency. If a City does not use the Nassau County Assessment Roll to compute City Taxes, the City tax rate shall be equalized so that the tax rate reflected on the City Tax Bills is adjusted so that it is based on an assessed value that is equal to the Assessed Value of the Improvement.

(d) If property is located partially within an incorporated Village and partially without an incorporated Village, the “Applicable Tax Rates Per Hundred” shall be the total of all tax rates applicable to the property, exclusive of rates used to compute Special Assessments, if any. The “Applicable Tax Rates Per Hundred” shall be evidenced by School Tax Bills, General Tax Bills and Village Tax Bills based on the most recent data available to the Agency as of the year that Closing has occurred with the Agency. If a Village does not use the Nassau County Assessment Roll to compute Village Taxes, the Village tax rate shall be equalized so that the tax rate reflected on the Village Tax Bills is adjusted so that it is based on an assessed value that is equal to the Assessed Value of the Improvement.

(e) If property is located partially within a City and partially without a City, the “Applicable Tax Rates Per Hundred” shall be the total of all tax rates applicable to the property, exclusive of rates used to compute Special Assessments, if any. The “Applicable Tax Rates Per Hundred” shall be evidenced by School Tax Bills, General Tax Bills and City Tax Bills based on the most recent data available to the Agency as of the year that Closing has occurred with the Agency. If a City does not use the Nassau County Assessment Roll to compute City Taxes, the City tax rate shall be equalized so that the tax rate reflected on the City Tax Bills is adjusted so that it is based on an assessed value that is equal to the Assessed Value of the Improvement.

v. The amount of the PILOT for a New Construction Project shall be adjusted and phased in as set forth in Schedule A attached hereto which is incorporated herein with the same force and effect as if more fully set forth at length herein.

d. PILOT SCHEDULE FOR AN IMPROVEMENT PROJECT

i. For purposes of this Policy, the term "Improvement Project" shall mean (i) the construction of an addition, improvement, rehabilitation, modification or similar work to an existing building or buildings or (ii) the construction of an additional building or buildings on a tax lot that is improved with a building or buildings.

ii. An Applicant that is developing an Improvement Project shall enter into a PILOT Agreement that shall commence on the first tax status date of the County of Nassau after Closing (the "Commencement Date").

iii. The duration of the PILOT Agreement shall be ten (10) years commencing on the "Effective Date" for each Affected Taxing Jurisdiction. The "Effective Date" for each Affected Taxing Jurisdiction shall be the first day of the first tax year occurring after the first tax status date occurring after the Scheduled Completion Date of the Project. The Scheduled Completion Date of the Project shall be determined by the Agency.

iv. The amount of the Improvement Project PILOT shall be computed as follows:

(1) For the period commencing on the Commencement Date to and including the day prior to the Effective Date, the PILOT shall be equal to one hundred percent (100%) of the taxes and assessments that would be levied upon the Project by the respective Taxing Authorities without taking into consideration the transfer of ownership, jurisdiction, supervision or control of the Project to the Agency.

(2) For the period commencing on the Effective Date and continuing for ten (10) full tax years thereafter, the amount of the PILOT shall be the sum of the BASE PILOT and the IMPROVEMENT PILOT, as phased in as set forth in Schedule B annexed hereto and made a part hereof.

(a) The BASE PILOT shall be the amount of all taxes paid on such improved land, without reference to the Improvement for which the Agency has granted Financial Assistance and shall be based on the most recent data

available to the Agency for the tax year in which the Closing Date occurs. In accordance with Section 11 of this Policy, the BASE PILOT shall be reduced by the amount of Special Assessments, if any. The BASE PILOT shall not otherwise decrease or increase over the duration of the PILOT Agreement.

(b) The IMPROVEMENT PILOT shall be the product of (i) the “Assessed Value of the Improvement”, as defined below; (ii) the “PILOT RATE”, as defined below and (iii) the number .01.

(3) The “Assessed Value of the Improvement” shall be the assessed value of the Project, less the assessed value of the improved land immediately prior to undertaking of the Project.

(4) The “Assessed Value of the Improvement” shall be computed as follows:

(a) The fair market value of the improvement, computed as of the estimated date of completion, shall be determined by the Agency at or prior to Closing using an accepted methodology including, but not limited to, income capitalization, cost of construction or sales comparison. The fair market value of the improvement shall not include the value of the improved land immediately prior to the undertaking of the Project. The Agency may accept input from the Assessor of Nassau County (or other village or city assessor) and/or use independent consultants to assist in the computation of fair market value, the cost of which shall be borne by the Applicant.

(b) The fair market value of the improvement (less the fair market value of the improved land immediately prior to the undertaking of the Project) shall then be multiplied by the Level of Assessment used by the Assessor of Nassau County as of the year in which the Closing occurs.

(c) The product of the fair market value of the improvement (less the fair market value of the improved land immediately prior to undertaking of the Project) and the Level of Assessment shall be the Assessed Value of the Improvement.

(5) The “PILOT RATE” shall be the sum of all “Applicable Tax Rates Per Hundred”, exclusive of rates used to compute Special Assessments, if any.

(a) For property located outside of an incorporated Village and outside of a City, the “Applicable Tax Rates Per Hundred” shall be the total of all tax rates applicable to the property, exclusive of rates used to compute Special Assessments, if any. The “Applicable Tax Rates Per Hundred” shall be evidenced by School Tax Bills and General Tax Bills based on the most recent data available to the Agency as of the year that Closing has occurred with the Agency.

(b) For property located within an incorporated Village, the “Applicable Tax Rates Per Hundred” shall be the total of all tax rates applicable to the property, exclusive of rates used to compute Special Assessments, if any. The “Applicable Tax Rates Per Hundred” shall be evidenced by School Tax Bills, General Tax Bills and Village Tax Bills based on the most recent data available to the Agency as of the year that that Closing has occurred with the Agency. If a Village does not use the Nassau County Assessment Roll to compute Village Taxes, the Village tax rate shall be equalized so that the tax rate reflected on the Village Tax Bills is adjusted so that it is based on an assessed value that is equal to the Assessed Value of the Improvement.

(c) For property located within a City, the “Applicable Tax Rates Per Hundred” shall be the total of all tax rates applicable to the property, exclusive of rates used to compute Special Assessments, if any. The “Applicable Tax Rates Per Hundred” shall be evidenced by School Tax Bills, General Tax Bills and City Tax Bills based on the most recent data available to the Agency as of the year that Closing has occurred with the Agency. If a City does not use the Nassau County Assessment Roll to compute City Taxes, the City tax rate shall be equalized so that the tax rate reflected on the City Tax Bills is adjusted so that it is based on an assessed value that is equal to the Assessed Value of the Improvement.

(d) If property is located partially within an incorporated Village and partially without an incorporated Village, the “Applicable Tax Rates Per Hundred” shall be the total of all tax rates applicable to the property, exclusive of rates used to compute Special Assessments, if any. The “Applicable Tax Rates Per Hundred” shall be evidenced by School Tax Bills, General Tax Bills and Village Tax Bills based on the most recent data available to the Agency as of the year that Closing has

occurred with the Agency. If a Village does not use the Nassau County Assessment Roll to compute Village Taxes, the Village tax rate shall be equalized so that the tax rate reflected on the Village Tax Bills is adjusted so that it is based on an assessed value that is equal to the Assessed Value of the Improvement.

(e) If property is located partially within a City and partially without a City, the “Applicable Tax Rates Per Hundred” shall be the total of all tax rates applicable to the property, exclusive of rates used to compute Special Assessments, if any. The “Applicable Tax Rates Per Hundred” shall be evidenced by School Tax Bills, General Tax Bills and City Tax Bills based on the most recent data available to the Agency as of the year that Closing has occurred with the Agency. If a City does not use the Nassau County Assessment Roll to compute City Taxes, the City tax rate shall be equalized so that the tax rate reflected on the City Tax Bills is adjusted so that it is based on an assessed value that is equal to the Assessed Value of the Improvement.

v. The amount of the PILOT for an Improvement Project shall be adjusted and phased in as set forth in Schedule B attached hereto which is incorporated herein with the same force and effect as if more fully set forth at length herein.

##### 5. DEVIATION FROM PILOT

a. The Agency shall have the right, but not the obligation, to deviate from the PILOT schedules set forth in sections 4.c. and 4.d. of this Policy in terms of duration, amounts and phase-in of such PILOT.

b. Such deviation may be considered by the Agency upon request of the Applicant or upon its own motion.

c. Any such deviation will be made only with the specific approval of the Agency’s members after giving consideration to the following factors:

i. The ability of the Project to achieve the goals of the Agency’s Strategic Financial Assistance Policy, as it may be amended from time to time<sup>2</sup>;

ii. The environmental benefits of a Project, including, without limitation, the “Green” component and/or the LEED certification of a Project, if any;

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<sup>2</sup> A copy of the Strategic Assistance Policy is annexed hereto as Exhibit “A” and made a part hereof.



iii. The manner and extent to which the Project complies with the enumerated factors set forth in §874(4)(a) of the Act as amended from time to time;

iv. Any comments from Affected Taxing Jurisdictions;

v. Consideration of other factors, which in the opinion of the Agency justify such deviation.

d. Prior to granting any such deviation, the Agency shall notify the Affected Taxing Jurisdictions of the proposed deviation and the reasons therefore, as required by the Act.

## 6. RECAPTURE

a. A Recapture Event is defined as:

i. A finding by the Agency that an Applicant has submitted an application, or documentation in support of an application that contained a false or intentionally misleading statement as to any fact which is material to the Project Applicant's application for benefits or which omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, and that such false or misleading statement or omission was made knowingly and intentionally for the purpose of obtaining Financial Assistance; or

ii. A "Recapture Event" as defined by any of the Project Documents.

b. The term "Benefits" shall mean all direct monetary benefits, tax exemptions and other financial assistance, if any, derived solely from the Agency's participation in the transaction contemplated by the Project Documents including, but not limited to, the interest savings to an Applicant resulting from the issuance of tax exempt or taxable bonds by the Agency, plus the amount equal to 100% of any exemption from any applicable mortgage recording tax with respect to the Project on mortgages granted by the Agency, sales or use tax exemptions and real property tax abatements granted under the Project.

c. Upon a finding by the Agency that a Recapture Event has occurred and subject to the provisions of the Project Documents, the Agency may require the Applicant to pay to the Agency for its corporate purposes (unless otherwise determined by a resolution of the members of the Agency) as a return of Benefits conferred by the Agency, an amount as follows (the "Recapture Schedule"):

i. one hundred per cent (100%) of the Benefits if the Recapture Event occurs on or before the fifth (5<sup>th</sup>) anniversary of the Closing;

ii. eighty per cent (80%) of the Benefits if the Recapture Event occurs after the fifth (5<sup>th</sup>) anniversary of the Closing but on or before the sixth (6<sup>th</sup>) anniversary of the Closing;

iii. sixty per cent (60%) of the Benefits if the Recapture Event occurs after the sixth (6<sup>th</sup>) anniversary of the Closing but on or before the seventh (7<sup>th</sup>) anniversary of the Closing Date;

iv. forty per cent (40%) of the Benefits if the Recapture Event occurs after the seventh (7<sup>th</sup>) anniversary of the Closing but on or before the eighth (8<sup>th</sup>) anniversary of the Closing Date;

v. twenty per cent (20%) of the Benefits if the Recapture Event occurs after the eighth (8<sup>th</sup>) anniversary of the Closing but on or before the ninth (9<sup>th</sup>) anniversary of the Closing Date;

vi. ten per cent (10%) of the Benefits if the Recapture Event occurs after the ninth (9<sup>th</sup>) anniversary of the Closing but on or before the tenth (10<sup>th</sup>) anniversary of the Closing; or

vii. zero percent (0%) of the Benefits thereafter.

d. Notwithstanding the foregoing, if the Agency grants an exemption from real property taxes for a period of more than ten (10) years, then the Recapture Schedule shall be as follows:

i. one hundred per cent (100%) of the Benefits if the Recapture Event occurs when fifty percent (50%) or more of the total term of the PILOT Agreement would remain after the date of the Recapture Event (measured as if the Project Documents are not terminated);

ii. eighty per cent (80%) of the Benefits if the Recapture Event occurs when less than fifty percent (50%) but forty percent (40%) or more of the total term of the PILOT Agreement would remain after the date of the Recapture Event (measured as if the Project Documents are not terminated);

iii. sixty per cent (60%) of the Benefits if the Recapture Event occurs when less than forty percent (40%) but thirty percent (30%) or more of the total term of

the PILOT Agreement would remain after the date of the Recapture Event (measured as if the Project Documents are not terminated);

iv. forty per cent (40%) of the Benefits if the Recapture Event occurs when less than thirty percent (30%) but twenty percent (20%) or more of the total term of the PILOT Agreement would remain after the date of the Recapture Event (measured as if the Project Documents are not terminated);

v. twenty per cent (20%) of the Benefits if the Recapture Event occurs when less than twenty percent (20%) but ten percent (10%) or more of the total term of the PILOT Agreement would remain after the date of the Recapture Event (measured as if the Project Documents are not terminated); or

vi. ten per cent (10%) of the Benefits if the Recapture Event occurs when less than ten percent (10%) of the total term of the PILOT Agreement would remain after the date of the Recapture Event (measured as if the Project Documents are not terminated); or

vii. zero percent (0%) of the Benefits after the term of the PILOT Agreement has expired.

e. Notwithstanding anything to the contrary contained above, the good faith failure of an Applicant to meet any specific employment numbers set forth in the Application or documentation supporting the application shall not be deemed to be false or misleading in any material respect.

f. Subject to the provisions of the Project Documents, conditions reflective of the Company's business cycle or conditions, including 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 may be taken into consideration by the Agency before determining whether a Recapture Event has occurred.

## 7. EFFECTIVE DATE

a. This Policy shall be effective as of June 22, 2011 and shall apply to all Projects that the Agency approves after June 22, 2011. It shall not, however, apply to any Projects approved by the Agency on or prior to June 22, 2011, whether or not such Projects are subsequently refinanced or modified.

## 8. AMENDMENTS

a. The Agency, by resolution of its members, may amend or modify this Policy as it may, from time to time, in its sole discretion determine.

## 9. RELATIONSHIP WITH PROJECT DOCUMENTS

a. This Policy is intended to be a guide to the granting of Financial Assistance by the Agency.

b. In the event that there is an inconsistency between this Policy and any Project Document, the terms and conditions of the Project Document shall prevail.

## 10. SEVERABILITY

a. If any portion of this Policy is found by a Court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of the Policy shall not be affected and, in lieu of any provision that is found to be illegal, invalid or unenforceable, a provision that is as similar to the illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable will be submitted to the members of the Agency for consideration and adoption.

## 11. SPECIAL ASSESSMENTS ADJUSTMENT

PILOT Agreements will typically provide that the amount of the PILOT payments under a PILOT Agreement for each fiscal tax year, shall be reduced (but not below \$0) by the amount, if any, of Special Assessments assessed against or levied upon the Project. The amount of any such reduction of a PILOT payment shall be set forth on the applicable PILOT bill issued with respect to such fiscal tax year, if any, but the failure of the Applicant to receive such bill shall in no event affect the Applicant's obligation to pay such PILOT payment. In the event that (i) the amount of Special Assessments for a particular fiscal tax year exceeds the amount of the applicable PILOT payments for such fiscal tax year (such excess is hereinafter referred to as an "SA Credit"), or (ii) the amount of the applicable PILOT payment for a particular fiscal tax year is not reduced by the amount of Special Assessments for such fiscal tax year (the amount of such Special Assessments is hereinafter referred to as an "SA Reduction"), then the amount of such SA Credit or SA Reduction, as the case may be, shall be carried over as a credit for the following fiscal tax year(s); provided, however, that if there is an unused SA Credit at the end of the term of the PILOT payments under the PILOT Agreement, then the Applicant

shall not be entitled to (a) take such SA Credit against any further payments hereunder or against real property taxes assessed against the Project, or (b) an extension of the term of the PILOT Agreement.

**EXHIBIT A**  
**STRATEGIC FINANCIAL ASSISTANCE POLICY**  
**NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**Strategic Financial Assistance Policy**

The Nassau County Industrial Development Agency (the "Agency") is charged, pursuant to Article 18-A of the New York State General Municipal Law (as amended from time to time, the "Act"), with the purposes of, among others, promoting, developing, encouraging and assisting in industrial, manufacturing, warehousing, commercial, research and recreational facilities (including educational and cultural facilities among others) and thereby advancing the job opportunities, health, general prosperity and economic welfare of the people of Nassau County and of the State of New York. Toward that end, the Agency has been granted a number of powers under the Act. The purpose of this policy is to enumerate the strategic policies of the Agency, as general guidelines, in awarding "financial assistance" under the Act.

The Agency desires to encourage any and all "projects" authorized under the Act. However, the Agency may give special consideration to any project that advances one or more of the following public policy goals:

- A. retaining and attracting "knowledge based" industries and services which: (1) produce high-technology goods, and/or (2) are intensive users of high technology and/or employ the highly skilled workforce that is required to benefit fully from technological innovations, including, but not limited to, communications, finance, insurance, real estate, business services, health, education, defense, aerospace, energy, homeland security and life sciences;
- B. the expansion and improvement of Nassau County's sports, entertainment, film and tourism industries;
- C. the construction, reconstruction, maintenance and operation of affordable or "workforce" housing;
- D. the clean-up and reuse of "Brownfields" and other environmentally challenged sites;
- E. the development, redevelopment, betterment and more complete use of existing "downtown", underdeveloped and highly distressed areas;
- F. the development or redevelopment of the Hub Strategic Area (as such capitalized term is used in Resolution No. 2011-13 adopted by the members of the Agency on June 22, 2011);

G. the development or redevelopment of the Bethpage Strategic Area (as such capitalized term is used in Resolution No. 2011-14 adopted by the members of the Agency on June 22, 2011).

This policy is not intended to exclude any qualified "projects" under the Act, but is intended to enumerate those projects that may receive special consideration by the Agency.

**EXHIBIT B**

**STANDARD FORM PILOT AGREEMENT**

See Attached



**SCHEDULE A**  
**PILOT SCHEDULE FOR NEW CONSTRUCTION**

**SCHEDULE A: NEW CONSTRUCTION PROJECT**

Period	Begin	End	Assessed Value of Improvement ("AV")	PILOT RATE
1	Commencement Date	1 day prior to Effective Date	N/A	N/A
2	Effective Date	1 yr Anniversary of Effective Date	.00 * AV	SUM OF TAX RATES AS OF YEAR OF CLOSING "RATE")
3	1 yr Anniversary of Effective Date	2 yr Anniversary of Effective Date	.10 * AV	RATE
4	2 yr Anniversary of Effective Date	3 yr Anniversary of Effective Date	.20 * AV	RATE
5	3 yr Anniversary of Effective Date	4 yr Anniversary of Effective Date	.30 * AV	RATE * 1.03
6	4 yr Anniversary of Effective Date	5 yr Anniversary of Effective Date	.40 * AV	RATE * 1.0609
7	5 yr Anniversary of Effective Date	6 yr Anniversary of Effective Date	.50 * AV	RATE * 1.0927
8	6 yr Anniversary of Effective Date	7 yr Anniversary of Effective Date	.60 * AV	RATE * 1.1255
9	7 yr Anniversary of Effective Date	8 yr Anniversary of Effective Date	.70 * AV	RATE * 1.1593
10	8 yr Anniversary of Effective Date	9 yr Anniversary of Effective Date	.80 * AV	RATE * 1.1941
11	9 yr Anniversary of Effective Date	10 yr Anniversary of Effective Date	.90 * AV	RATE * 1.2299
Period	LAND PILOT	IMPROVEMENT PILOT	TOTAL PILOT	
1	100 % of taxes as of year of Closing	100 % of taxes as of year of Closing	LAND PILOT + IMPROVEMENT PILOT	
2	100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
3	100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
4	100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
5	100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
6	100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
7	100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
8	100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
9	100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
10	100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
11	100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	

SCHEDULE B: IMPROVEMENT PROJECT					
Period	Begin	End	Assessed Value of Improvement ("AV")	PILOT RATE	
1	Commencement Date	1 day prior to Effective Date	N/A	N/A	N/A
2	Effective Date	1 yr Anniversary of Effective Date	.00 * AV	SUM OF TAX RATES AS OF YEAR OF CLOSING ("RATE")	
3	1 yr Anniversary of Effective Date	2 yr Anniversary of Effective Date	.10 * AV	RATE	
4	2 yr Anniversary of Effective Date	3 yr Anniversary of Effective Date	.20 * AV	RATE	
5	3 yr Anniversary of Effective Date	4 yr Anniversary of Effective Date	.30 * AV	RATE * 1.03	
6	4 yr Anniversary of Effective Date	5 yr Anniversary of Effective Date	.40 * AV	RATE * 1.0609	
7	5 yr Anniversary of Effective Date	6 yr Anniversary of Effective Date	.50 * AV	RATE * 1.0927	
8	6 yr Anniversary of Effective Date	7 yr Anniversary of Effective Date	.60 * AV	RATE * 1.1255	
9	7 yr Anniversary of Effective Date	8 yr Anniversary of Effective Date	.70 * AV	RATE * 1.1593	
10	8 yr Anniversary of Effective Date	9 yr Anniversary of Effective Date	.80 * AV	RATE * 1.1941	
11	9 yr Anniversary of Effective Date	10 yr Anniversary of Effective Date	.90 * AV	RATE * 1.2299	
Period	BASE PILOT	IMPROVEMENT PILOT	TOTAL PILOT		
1	100 % of taxes as of year of Closing	100 % of taxes as of year of Closing	BASE PILOT + IMPROVEMENT PILOT		
2	100% of taxes as of year of Closing	AV*PILOT RATE	BASE PILOT + IMPROVEMENT PILOT		
3	100% of taxes as of year of Closing	AV*PILOT RATE	BASE PILOT + IMPROVEMENT PILOT		
4	100% of taxes as of year of Closing	AV*PILOT RATE	BASE PILOT + IMPROVEMENT PILOT		
5	100% of taxes as of year of Closing	AV*PILOT RATE	BASE PILOT + IMPROVEMENT PILOT		
6	100% of taxes as of year of Closing	AV*PILOT RATE	BASE PILOT + IMPROVEMENT PILOT		
7	100% of taxes as of year of Closing	AV*PILOT RATE	BASE PILOT + IMPROVEMENT PILOT		
8	100% of taxes as of year of Closing	AV*PILOT RATE	BASE PILOT + IMPROVEMENT PILOT		
9	100% of taxes as of year of Closing	AV*PILOT RATE	BASE PILOT + IMPROVEMENT PILOT		
10	100% of taxes as of year of Closing	AV*PILOT RATE	BASE PILOT + IMPROVEMENT PILOT		
11	100% of taxes as of year of Closing	AV*PILOT RATE	BASE PILOT + IMPROVEMENT PILOT		


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

I, the undersigned [Assistant] Secretary of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on June 22, 2011 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matter therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 22 day of June, 2011.

  
\_\_\_\_\_  
[Assistant] Secretary

(SEAL)