

**Amended and Restated UTEP Resolution**

A regular meeting of the Glen Cove Industrial Development Agency (the "Agency") was convened in public session at City Hall, 9-13 Glen Street, 2nd floor conference room, City of Glen Cove, Nassau County, New York, on July 25, 2023, at 6:33 p.m., local time.

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

PRESENT:

Pamela D. Panzenbeck	Chairperson
Vincent C. Hartley	Vice Chairperson/Treasurer
James J. Cappiello	Member
Grady Farnan	Member
David V. Jimenez	Member
Tom Hopke	Member

NOT PRESENT:

John Fielding	Member
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THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Ann S. Fangmann	Executive Director
Camille Byrne	Secretary
Paul O'Brien, Esq.	Transaction Counsel

The attached resolution no.6(a) was offered by Chairperson Panzenbeck, seconded by Vice Chair Hartley:

GC-IDA  
**ENTERED**  
7-25-23  
af

Resolution No. 6(a)

RESOLUTION OF THE GLEN COVE INDUSTRIAL  
DEVELOPMENT AGENCY (THE “AGENCY”) ADOPTING AN AMENDED AND  
RESTATED UNIFORM TAX EXEMPTION POLICY AND ADDRESSING OTHER  
MATTERS IN CONNECTION THEREWITH

WHEREAS, the Glen Cove 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 374 of the 1974 Laws of New York, as amended, constituting Section 919 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 last reconfirmed its uniform tax exemption policy by resolution of the members of the Agency adopted on June 30, 2016; 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 June 29, 2023, publishing notice of a public hearing to be held regarding the Restated Policy in the Glen Cove Herald on June 29, 2023 and holding such public hearing on July 13, 2023; and

WHEREAS, no member of the public nor any governmental official has provided any comments at the public hearing or 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 Restated 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: July 25, 2023

**EXHIBIT A**

**Uniform Tax Exemption Policy**

See Attached

GLEN COVE COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
UNIFORM TAX EXEMPTION POLICY

Adopted on 7/25/2023

The purposes of the Glen Cove 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 the City of Glen Cove. The Agency assists in the development of projects that create and retain jobs, generate revenue for the economy of the City of Glen Cove and expand and diversify the City’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 proposed projects (each, a “Project”) 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. With respect to each Project, the staff of the Agency shall document and present to the members of the Agency information as to the criteria for the evaluation and selection of Project, as follows:

i. Baseline Evaluation Criteria: For all Projects, the Agency shall evaluate: (1) the extent to which a Project will create or retain permanent jobs; (2) the extent to which a Project will create construction jobs; (3) the estimated value of tax exemptions to be provided with respect to the Project; (4) the amount of private sector investment generated or likely to be generated by the Project; (5) the likelihood of the Project being accomplished in a timely manner; (6) the extent of new revenue that would be provided to affected tax jurisdictions as a result of the Project; (7) whether affected tax jurisdictions shall be reimbursed by the Applicant if a Project does not fulfill the purposes for which an exemption was provided; (8) the impact of the Project on existing and proposed businesses and economic development projects in the vicinity; (9) the demonstrated public support for the Project; (10) the effect of the Project on the environment; (11) the extent to which the Project will require or will provide any additional infrastructure and/or services, including, but not limited to, additional utilities, educational, transportation, police, emergency, medical or fire services; (12) the environmental benefits of the Project, including, without limitation, the “Green” component and/or the LEED certification, if any; and (13) any other miscellaneous public benefits that might result from the Project.

ii. Project Specific Evaluation Criteria: The Agency shall evaluate, inter alia, the following additional criteria with respect to a particular type of Project, to the extent applicable:

(1) whether wage rates for the Applicant’s employees are above median wages for the area;

(3) the extent to which construction and/or permanent jobs opportunities will be filled by residents of the Long Island Economic Development Region (as established pursuant to Section 230 of the New York State Economic Development

Law); whether the Project will result in regional wealth creation as a result of sales to customers outside the Long Island Economic Development Region;

(4) the extent to which purchases of goods and services with respect to the Project will be made from within the Long Island Economic Development Region;

(5) the extent to which the Project will involve research, development and/or education activities;

(6) the extent to which the Applicant will make investments in energy efficiency or production with respect to the Project;

(7) whether the Applicant represents a demonstrated “flight risk”;

(8) whether the Project is located in a distressed census tract and/or whether the Project will contribute to the elimination of blight in the area;

(9) with respect to occupancy of an existing structure: (A) the vacancy history of such structure, (B) whether such structure has historic designation, (C) the age of the structure, and (D) the condition of the structure;

(10) whether the Project conforms to a local community development plan and is in alignment with local planning and development efforts;

(11) whether the site or structure is delinquent in the payment of property or other taxes;

(12) whether the site or structure presents environmental or safety issues;

(13) the extent of demonstrated local official support for the Project; and/or

(14) whether there is documented unmet demand for the service that would be provided by the Project.

d. In conformity with its procedures, and in compliance with the Applicable Laws, the Agency may, in its sole discretion, approve 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.

e. 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 enter into an agreement with the Applicant 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.



g. The Agency's Executive Director is authorized to grant a single extension of the Tax Letter for up to six (6) months for cause shown, subject to the Applicant paying an extension fee (currently \$2,500) and the Agency's legal fees and other costs, and the execution of appropriate documentation.

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 private-sector investment;
- iii. the degree and nature of the unemployment and the economic condition of the areas in which the Project is located and the degree and nature of the jobs, if any, to be created as a result of the non-Project related financing;
- 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;
- v. 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
- vi. consideration of other factors which, in the opinion of the members of the Agency, justify such exemption.

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 (or formula for determining the amount), duration and timing of the Payment In Lieu Of Taxes (the “PILOT”) that will be due under the Pilot Agreement.

(2) Require that the Applicant and its successors pay the PILOT to the Treasurer of the City of Glen Cove 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.

(3) Require the payment of any and all business improvement district or other 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, subject to the terms of this Policy.

(4) Require the execution, delivery and filing of a mortgage to secure the PILOT payments to the Treasurer of the City of Glen Cove, 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 the City of Glen Cove [and the Assessor of Nassau County].

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 earlier than the last to occur of the following: (1) the first tax status date for such Affected Taxing Jurisdiction subsequent to such filing; and (2) the first day of a tax year for such Affected Tax Jurisdiction subsequent to such tax status date; provided, however, that (i) the foregoing shall not apply, in the discretion of the Agency, if the Project is otherwise entitled to an exemption from real property taxation at the time the Agency acquires ownership, jurisdiction, supervision or control of the Project, and (ii) the Agency, in its discretion, may elect that the real property tax exemption take effect on a date later than the provisions of (1) and (2) above would require.

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 City of Glen Cove Assessor.

ii. An Applicant that is developing a New Construction Project shall enter into a PILOT Agreement that shall commence on the Closing Date of the Project transaction (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 Closing of the Project, subject to Section 4(b)(iv) of this Policy.

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 Affected Taxing Jurisdictions 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 equal to the product of (i) the assessed value, as determined by the Agency, that should apply to the land as of the Closing Date, and (ii) most recent tax rate data available to the Agency as of the Closing Date. The Agency shall determine the assessed value that should apply to the land as of the Closing Date and may accept input, in its discretion, from governmental assessing authorities and/or use independent consultants to assist in the determination of the assessed value, the cost of which shall be borne by the Applicant. 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 the City of Glen Cove 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 the City of Glen Cove 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.

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 the City of Glen Cove 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 Closing Date of the Project transaction (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 Closing of the Project, subject to Section 4(b)(iv) of this Policy.

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 Affected Taxing Jurisdictions 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 equal to the product of (i) the assessed value, as determined by the Agency, that should apply to the improved land as of the Closing Date, and (ii) most recent tax rate data available to the Agency as of the Closing Date. The Agency shall determine the assessed value that should apply to the improved land as of the Closing Date and may accept input, in its discretion, from governmental assessing authorities and/or use independent consultants to assist in the determination of the assessed value, the cost of which shall be borne by the Applicant. 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 the City of Glen Cove (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 the City of Glen Cove 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. 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 the City of Glen Cove 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.

e. PILOT SCHEDULE FOR AN ADAPTIVE REUSE PROJECT.

i. For purposes of this Policy, the term “Adaptive Reuse Project” shall mean a Project involving the acquisition, renovation, installation and/or equipping of a Project property without material improvement or expansion.

ii. An Applicant that is developing an Adaptive Reuse Project shall enter into a PILOT Agreement that shall commence on the Closing Date of the Project transaction (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 Closing Date of the Project transaction, subject to Section 4(b)(iv) of this Policy.

iv. The amount of the Adaptive Reuse 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 assessment that would be levied upon the Project by the respective Affected Taxing Jurisdictions 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 equal to the BASE PILOT adjusted as set forth below.

(a) The BASE PILOT shall be equal to the product of (i) the assessed value, as determined by the Agency, that should apply to the improved Project property as of the Closing Date, and (ii) most recent tax rate data available to the Agency as of the Closing Date. The Agency shall determine the assessed value that should apply to the improved Project property as of the Closing Date and may accept input, in its discretion, from governmental assessing authorities and/or use independent consultants to assist in the determination of the assessed value, the cost of which shall be borne by the Applicant.

(b) The BASE PILOT shall be payable each tax year for a period of ten (10) full tax years, with annual increases equal to the applicable New York State real property tax cap in effect as of the closing date, such increases to be made for each tax year after the third (3rd) tax year (i.e., Years 4-10 of the term of the PILOT).<sup>1</sup>

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<sup>1</sup> If no property tax cap is in effect as of the closing date, use 2% per annum increases.



(c) 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.

(f) PILOT SCHEDULE FOR A HOUSING PROJECT. Notwithstanding the foregoing PILOTS for Affordable Housing Projects, Assisted Living Facilities, Senior Living Facilities and Market Rate Housing Projects shall be governed by Schedule C 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., 4.d., 4.e. and 4.f. of this Policy in terms of duration, amounts and phase-in of such PILOT, as applicable.

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;

ii. The positive impact on infrastructure and community benefits, if any;

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. 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 OF BENEFITS

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 knowingly false or knowingly 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 material information in the application or supporting documentation false or misleading in any material respect, and that such knowingly false or knowingly misleading statement or such omission was made knowingly and intentionally for the purpose of obtaining Financial Assistance; and

ii. A “Recapture Event” as defined by any of the Project Documents, which may include, without limitation, those Recapture Events set forth in the Agency’s Uniform Project Agreement adopted pursuant to Section 859-a of the Act; and

iii. With respect to a sales and use tax exemption granted by the Agency for a Project, the use of such exemption (i) in a manner that is not authorized or for which the Project Applicant (or any contractor or subcontractor engaged by the Project Applicant and approved by the Agency as its agent) is not entitled to claim an exemption, (ii) to claim exemptions in excess of the maximum sales tax benefit authorized by the Agency for such Project, (iii) to purchase or lease goods or services that are not authorized under the Project Documents, or (iv) in a manner that violates the provisions 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 (as calculated for the period selected by the Agency) granted under the Project.

c. Upon a finding by the Executive Director of 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 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. Upon the occurrence of a Recapture Event, the Agency may, depending on the circumstances, make a determination not to impose a recapture of Benefits as set forth in subsection (c) or (d) above and enter into a modification of the PILOT Agreement with the Applicant to require increased payments in lieu of real property taxes. Such circumstances may include, but are not limited to, partial compliance by the Applicant with respect to a material covenant, condition or agreement in the Project Documents (e.g., partial compliance with a job covenant).

g. Subject to the provisions of the Project Documents, conditions reflective of the Applicant'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 to impose a recapture of Benefits or to enter into a modification of the PILOT Agreement.

h. Unless otherwise provided for by Applicable Law, upon the collection of a recapture of Benefits from an Applicant, the Agency shall redistribute or cause to be redistributed such recaptured Benefits to the appropriate affected tax jurisdiction(s), unless agreed to otherwise by any local taxing jurisdiction.

i. Notwithstanding any provision of this Section 6 to the contrary, upon a finding by the Agency that a Recapture Event has occurred at any time during the term of the Project Documents, the Agency shall require that the Applicant pay to the Agency as a return of sales and use tax benefits conferred by the Agency, an amount equal to 100% of the amount of sales and use tax exemptions claimed by or on behalf of the Applicant in connection with a Project. The Agency shall remit to the State of New York the portion of such benefits constituting “State Sales and Use Taxes” to the extent required by Section 875 of the General Municipal Law. “States Sales and Use Taxes” shall mean sales and compensating use taxes and fees imposed by Article 28 or Article 28-A of the New York State Tax Law, but excluding such taxes imposed in a city by Section 1107 or Section 1108 of such Article 28.

## 7. SUSPENSION OR DISCONTINUANCE OF BENEFITS

a. A “Suspension/Discontinuance Event” is defined as: (i) a default or violation in the performance or observance of any material covenant, condition or agreement on the

part of the Applicant in any Project Document and the continuance thereof for a specified period after written notice thereof is given by the Agency to the Applicant, or, if such material covenant, condition or agreement is capable of cure but cannot be cured within a specified period, the failure of the Applicant to commence to cure within such specified period and to prosecute the cure to completion with due diligence, (ii) if any certificate, statement, representation, warranty or financial statement made to the Agency by or on behalf of the Applicant shall prove to have been false, misleading or incorrect in any material respect at the time as of which the facts therein set forth were made, or to have omitted any material liability or claim against the Applicant, or (iii) the occurrence of an “Event of Default” as defined by any of the Project Documents.

b. Upon a finding by the Executive Director that a Suspension/Discontinuance Event has occurred, and subject to the provisions of the Project Documents, the Agency may (but shall not be required to do so), inter alia, (i) terminate the Project Documents, and/or (ii) suspend the right of the Company (and its contractors and subcontractors approved by the Agency as its agents) to act as agent for the Agency in connection with the project, including, without limitation, as its agent for the purpose of the sales and use tax exemption granted pursuant to the Project Documents, and/or (iii) discontinue the payments required by the PILOT Agreement and require the Applicant to make payments in lieu of real property taxes under the PILOT Agreement in amounts equal to the amounts the Applicant would otherwise be required to pay if the Applicant were the owner of the project facility (and the Agency did not hold an interest therein), and/or (iv) suspend or discontinue any other Benefits provided by the Agency to the Applicant with respect to the Project.

c. Upon the occurrence of a Suspension/Discontinuance Event, the Agency may, depending on the circumstances, make a determination not to impose one (1) or more of the remedies set forth in subsection (b) above and enter into a modification of the PILOT Agreement with the Applicant to require increased payments in lieu of real property taxes. Such circumstances may include, but are not limited to, partial compliance by the Applicant with respect to a material covenant, condition or agreement in the Project Documents (e.g., partial compliance with a job covenant).

d. Subject to the provisions of the Project Documents, conditions reflective of the Applicant'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 Suspension/Discontinuance Event has occurred.

## 8. EFFECTIVE DATE

a. This Policy shall be effective as of 7/26/2023 and shall apply to all Projects that the Agency approves after 7/26/2023. It shall not, however, apply to any Projects approved by the Agency on or prior to 7/25/2023 whether or not such Projects are subsequently refinanced or modified, unless otherwise determined by the Agency.

## 9. 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.

10. 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.

11. 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 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.

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SCHEDULE A  
PILOT SCHEDULE FOR NEW CONSTRUCTION

SCHEDULE A: NEW CONSTRUCTION PROJECT			
Begin	End	Assessed Value of Improvement ("AV")	PILOT RATE
Commencement Date	1 day prior to Effective Date	N/A	N/A
Effective Date	1 yr Anniversary of Effective Date	.00 * AV	SUM OF TAX RATES AS OF YEAR OF CLOSING "RATE")
1 yr Anniversary of Effective Date	2 yr Anniversary of Effective Date	.10 * AV	RATE
2 yr Anniversary of Effective Date	3 yr Anniversary of Effective Date	.20 * AV	RATE
3 yr Anniversary of Effective Date	4 yr Anniversary of Effective Date	.30 * AV	RATE * <sup>2</sup>
4 yr Anniversary of Effective Date	5 yr Anniversary of Effective Date	.40*AV	RATE *
5 yr Anniversary of Effective Date	6 yr Anniversary of Effective Date	.50*AV	RATE *
6 yr Anniversary of Effective Date	7 yr Anniversary of Effective Date	.60*AV	RATE *
7 yr Anniversary of Effective Date	8 yr Anniversary of Effective Date	.70*AV	RATE *
8 yr Anniversary of Effective Date	9 yr Anniversary of Effective Date	.80*AV	RATE *
9 yr Anniversary of Effective Date	10 yr Anniversary of Effective Date	.90* AV	RATE *
LAND PILOT	IMPROVEMENT PILOT	TOTAL PILOT	
100 % of taxes as of year of Closing	100 % of taxes as of year of Closing	LAND PILOT + IMPROVEMENT PILOT	
100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	
100% of taxes as of year of Closing	AV* PILOT RATE	LAND PILOT + IMPROVEMENT PILOT	

The rate shall be increased by the applicable New York State real property tax cap in effect as of the closing date (compounded). If no property tax cap is in effect as of the closing date, use 2% per annum increases.



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/
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 * 1.02
6	4 yr Anniversary of Effective Date	5 yr Anniversary of Effective Date	.40 * AV	RATE * 1.0404
7	5 yr Anniversary of Effective Date	6 yr Anniversary of Effective Date	.50 * AV	RATE * 1.0612
8	6 yr Anniversary of Effective Date	7 yr Anniversary of Effective Date	.60 * AV	RATE * 1.0824
9	7 yr Anniversary of Effective Date	8 yr Anniversary of Effective Date	.70 * AV	RATE * 1.1041
10	8 yr Anniversary of Effective Date	9 yr Anniversary of Effective Date	.80 * AV	RATE * 1.1262
11	9 yr Anniversary of Effective Date	10 yr Anniversary of Effective Date	.90 * AV	RATE * 1.1487
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	

## SCHEDULE C - HOUSING PROJECTS

(a) For purposes of this UTEP, “**Affordable Housing Projects**” are defined as housing projects (i) utilizing either (a) four percent (4%) Low Income Housing Tax credits AND tax-exempt bonds, OR (b) nine percent (9%) Low Income Housing Tax credits, (ii) housing projects that receive funding through the HOME, CDBG or any HUD program which restricts the income levels of the residents of the housing project by the terms of the funding agreements or Regulatory Agreement which 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, or City 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 Regulatory Agreement which is recorded 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 20 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 15-year term or a 20-year term, at the sole discretion of the Agency, with PILOT Payments set at an annual amount equal to 10% of the total revenues of the Affordable Housing Project minus utilities of the Affordable Housing Project. In order to determine the 10% Shelter Rent PILOT, the revenue and utility information of the Affordable Housing Project will need to be provided by the project Applicant to the Agency in conjunction with the Affordable Housing Project at the time of the Application and thereafter on an annual basis. In the event the Affordable Housing Project is financed by tax exempt bonds or 9% Low Income Housing Tax Credits or the project is subject to a recorded Regulatory Agreement recorded by a Municipality or a governmental entity restricting the income levels of the residents of the residents of the housing project and the amount of rent payable by the residents, the PILOT Agreement may, in the sole discretion of the Agency,

run concurrently with the term of the bond financing or the term of the Regulatory Agreement or such period as may be required by a state or federal housing agency or authority that is also providing financing or benefits to such project or such lesser period as the Agency shall determine.

(b) 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 15 to 20 years with fixed PILOT Payments to be determined by the Agency in its sole discretion. However, in the event the Assisted Living Facility, 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 an Assisted Living Facility Project be considered to be an Affordable Housing Project as defined above. In the event the Assisted Living Facility is financed by tax-exempt bonds, the PILOT Agreement may, in the sole discretion of the Agency, run concurrently with the term of the bonds or such lesser period as the Agency shall determine.

(c) 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 City 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.

(d) 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 grant 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 City Code, or if such Market Rate Housing Project is part of a City 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 8 below.

(e) 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 (rounding-up the number of affordable and of workforce units so as to achieve at least 10% for each category. 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.

(f) 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 various 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.

## Garvies Block F - Approving Resolution

A regular meeting of the Glen Cove Industrial Development Agency (the "Agency") was convened in public session at City Hall, 9-13 Glen Street, 2nd floor conference room, City of Glen Cove, Nassau County, New York, on July 25, 2023, at 6:33 p.m., local time.

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

### PRESENT:

Pamela D. Panzenbeck	Chairperson
Vincent C. Hartley	Vice Chairperson/Treasurer
James J. Cappiello	Member
Grady Farnan	Member
David V. Jimenez	Member
Tom Hopke	Member

### NOT PRESENT:

John Fielding	Member
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### THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Ann S. Fangmann	Executive Director
Camille Byrne	Secretary
Paul O'Brien, Esq.	Transaction Counsel

The attached resolution no. 6(b) was offered by Chairperson Panzenbeck, seconded by Vice Chair Hartley:

GC-IDA  
ENTERED  
7-25-23  
CB

Resolution No. 6(b)

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND APPROVING THE STRAIGHT LEASE DOCUMENTS FOR A CERTAIN PROJECT FOR GARVIES BLOCK F LLC AND/OR ITS AFFILIATES OR RELATED DESIGNEES

WHEREAS, the Glen Cove 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 374 of the 1974 Laws of New York, as amended, constituting Section 919 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, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, RXR Glen Isle Partners LLC, a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the State of New York (“RXR”), presented a certain application for financial assistance (the “Initial Application”) to the Agency, which Initial Application requested that the Agency consider undertaking a mixed-use project (the “Project”) consisting of the following: (A) the acquisition of an interest in approximately 56 acres of land (the “Land”) located on Garvies Point Road, Herb Hill Road and Dickson Street in the City of Glen Cove, New York; (B) the acquisition and construction on the Land by RXR as part of a planned smart growth community of certain buildings and other improvements containing in the aggregate approximately 1,800,000 square feet of space comprising (i) approximately 1,720,000 square feet of space containing a total of up to 486 rental residential units, 513 for sale condominium units and 111 workforce housing units (55 for rent and 56 for sale) (collectively, the “Residential Units”), and (ii) up to approximately 75,000 square feet of retail, restaurant, cultural and related space (collectively, the “Commercial Space”, and together with the Residential Units, the “Improvements”); and (C) the acquisition and installation in and around the Improvements of certain items of machinery, personal property, fixtures and equipment (the “Equipment”, and together with the Land and the Improvements, the “Facility”); and

WHEREAS, RXR leased the Facility to the Agency pursuant to the terms and conditions set forth in that certain Lease Agreement dated as of November 1, 2016 by and among RXR, Glen Cove Local Economic Assistance Corporation (“GCLEAC”) and the Agency (as amended, the “Original Lease”); and

WHEREAS, the Agency subleased the Facility to RXR, all pursuant to the terms and conditions set forth in that certain Leaseback Agreement dated as of November 1, 2016 between RXR and the Agency (as amended, the “Original Leaseback Agreement”), and the other documents, instruments and agreements executed by RXR and/or the Agency in connection with the Project (collectively, the “Master Transaction Documents”); and

WHEREAS, in connection with the Project, RXR and the Agency entered into that certain Garvies Point Continuing Covenants Agreement dated as of November 22, 2016 (as amended, the “Covenants Agreement”), pursuant to which RXR made certain continuing covenants to the Agency and the City of Glen Cove, New York (the “City”), relating to the Project; and

WHEREAS, pursuant to a certain Bifurcation, Assignment and Assumption Agreement (or similar agreement approved by the Agency) (the “Bifurcation Agreement”) among the Agency, GCLEAC, RXR and/or certain affiliates of RXR, RXR will assign its interest in and to the Assumed Documents (as defined in the Bifurcation Agreement) with respect to the Assigned Site (as defined in the Bifurcation Agreement) to RXR Garvies P1 Building F Owner LLC (or another entity approved by the Agency) (“Building F Owner”); and

WHEREAS, pursuant to a certain Mortgage Modification Agreement (or similar agreement approved by the Agency) (the “Mortgage Modification”) by and among Building F Owner, the Agency, GCLEAC and The Bank of New York Mellon, as Trustee (the “Trustee”), Building F Owner will be released from its obligations with respect to the portion of the Assigned Site known as the northern approximately 1.99 acre portion of Section 21, Block 259, Lot 22 to be subdivided as Lot F (the “Block F Parcel”) upon execution and delivery of (i) a certain Lease Agreement (the “Block F Lease”) by and among RXR, GCLEAC and the Agency, pursuant to which RXR leases the Block F Parcel to the Agency, and (ii) a certain Leaseback Agreement (the “Block F Leaseback Agreement”) between the Agency and RXR, pursuant to which the Agency subleases the Block F Parcel to RXR; and

WHEREAS, pursuant to a notification and consent request letter dated April 17, 2023 (the “Consent Request Letter”), RXR requested that the Agency consent to the transfer by RXR to Garvies Block F LLC, a limited liability company organized and existing under the laws of the State of New York (the “Company”), of all of RXR’s right, title and interest in and to the Block F Lease, the Block F Leaseback Agreement and the related Master Transaction Documents (collectively, the “Assignment Transaction”), as required by Section 18 of the Covenants Agreement; and

WHEREAS, pursuant to a resolution adopted by the members of the Agency on June 13, 2023 (the “Consent Resolution”), the Agency consented to the Assignment Transaction; and

WHEREAS, the Company presented a certain application for financial assistance (the “Application”) to the Agency, which Application requested that the Agency consider undertaking the following (the “Proposed Project”): (A) the consent by the Agency to the assignment of all right, title and interest of RXR in and to the Block F Lease, the Block F Leaseback Agreement and the related Master Transaction Documents to the Company in place of RXR; (B) the construction, installation and equipping of the buildings and improvements on the Block F Parcel contemplated by the Block F Leaseback Agreement (collectively, the “Block F



Improvements”) by the Company as agent of the Agency; (C) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion of the Block F Improvements (collectively, the “Block F Equipment” and together with the Block F Parcel and the Block F Improvements, collectively, the “Block F Facility”) by the Company as agent of the Agency; and (D) the granting of certain additional “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes and mortgage recording taxes (collectively, the “Additional Financial Assistance”); and

WHEREAS, in accordance with Section 859-a of the Act, any approval of the Proposed Project is contingent upon, inter alia, a determination by the members of the Agency to proceed with the Proposed Project following a determination by the Agency that (A) the applicable procedural requirements contained in the Act relating to the Proposed Project have been satisfied; and (B) the undertaking of the Proposed Project by the Agency and the granting of the Additional Financial Assistance are and will be in compliance with all other applicable requirements of the Act, SEQRA (as hereinafter defined), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Proposed Project and/or the Block F Facility (collectively, the “Applicable Laws”); and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Proposed Project and the Additional Financial Assistance contemplated by the Agency with respect to the Proposed Project, to be mailed on June 29, 2023 to the chief executive officer of the City of Glen Cove, New York, and of each other affected tax jurisdiction within which the Block F Facility is or is to be located; (B) caused notice of the Public Hearing to be published on June 29, 2023 in the *Glen Cove Herald*, a newspaper of general circulation available to residents of the City of Glen Cove, New York; (C) caused the Public Hearing to be conducted on July 13, 2023 at 6:00 p.m., local time, at City Hall, 9-13 Glen Street, City of Glen Cove, Nassau County, New York; (D) caused the Public Hearing to be streamed on the Agency’s website in real-time and caused a recording of the Public Hearing to be posted on the Agency’s website, all in accordance with Section 857 of the Act; and (E) prepared a report of the Public Hearing (the “Report”), which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, the members of the Agency attended the Public Hearing or have reviewed the recording of the Public Hearing posted on the Agency’s website; and

WHEREAS, the members of the Agency received, reviewed and have considered the Report, all other correspondence and comments received by the Agency with respect to the Proposed Project and certain additional documents, studies and reports; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the “Regulations” and collectively with the SEQR Act, “SEQRA”), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to undertake an action; and

WHEREAS, the City of Glen Cove Planning Board (the “Planning Board”), acting as lead agency, conducted a coordinated environmental of the Proposed Project, resulting in the issuance of a Final Environmental Impact Statement (FEIS) with additional lead agency findings in 2011 and 2015; and

WHEREAS, in conjunction with the Company’s 2016 application to the Agency for Financial Assistance, the Agency thoroughly reviewed, considered, and deliberated upon the entire SEQRA record before the Planning Board and issued its own SEQRA Findings approving the Proposed Project; and

WHEREAS, the granting of the Additional Financial Assistance would not represent a deviation from the Agency’s uniform tax exemption policy; and

WHEREAS, the Agency now desires to make its determination to proceed with the Proposed Project and to grant the Additional Financial Assistance, subject to the terms hereof; and

WHEREAS, the Company and/or one (1) or more of its affiliates or related designees will (A) execute and deliver a certain Company Lease Agreement (the “Company Lease”), pursuant to which the Company and/or such affiliate(s) or related designee(s) will grant to the Agency a leasehold interest in the Block F Facility; (B) execute and deliver a certain Bill of Sale (the “Bill of Sale”), pursuant to which the Company and/or such affiliate(s) or related designee(s) will convey title to the Block F Equipment to the Agency; (C) execute and deliver a certain Agency Lease Agreement (Uniform Project Agreement) (the “Agency Lease”), pursuant to which the Agency will grant to the Company and/or such affiliate(s) or related designee(s) a subleasehold interest in the Block F Facility; and (D) execute and deliver certain other certificates, documents, instruments and agreements related to the Proposed Project (together with the Company Lease, the Bill of Sale and the Agency Lease, collectively, the “Transaction Documents”);

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

Section 1. This Resolution is adopted in full compliance with the SEQRA process for the Proposed Project as outlined in the Application consented to and approved herein constitutes “routine or continuing agency management, not including new programs ... that may affect the environment,” and, as such, is a Type II Action under SEQRA 6 N.Y.C.R.R. §617.5(c)(26) as this approval allows for the redevelopment of the Block F Facility in furtherance of the approved Covenants Agreement. Therefore, no findings or determination of significance are required under SEQRA. In addition, the Proposed Project as outlined in the Application, is consistent with the terms of the Covenants Agreement and the actions analyzed in the SEQRA process for the Proposed Project.

Section 2. In accordance with Section 859-a of the Act, the Agency has prepared or caused to be prepared a written cost-benefit analysis with respect to the Proposed Project and the granting of the Additional Financial Assistance (the “Analysis”). The Agency has reviewed the

Application, the Report and the Analysis, and, based upon the representations made by the Company to the Agency and information obtained by the Agency, the Agency has reviewed and assessed all material information necessary to afford a reasonable basis for the Agency to make a determination to approve the Additional Financial Assistance. In addition, the Agency hereby makes the following findings and determinations with respect to the Proposed Project:

(a) based on the proposed use of the Block F Facility as set forth in the Application, the economic effects of the Proposed Project on the area in which it is situated, and the employment reasonably expected to be created and/or maintained by the Proposed Project, and an analysis of how the Proposed Project contributes to the realization of the public purposes of promoting employment opportunities in the City of Glen Cove (the “City”) and the prevention of economic deterioration in the City, the Proposed Project will constitute a commercial facility with a significant impact on the area in which it is situated, and will advance the Agency’s purposes by promoting employment opportunities and preventing economic deterioration in the City. Therefore, the Proposed Project constitutes a “project” within the meaning of the Act;

(b) the granting by the Agency of the Additional Financial Assistance with respect to the Proposed Project will be an inducement to the Company to undertake the Proposed Project in the City;

(c) there is a likelihood that the Proposed Project would not be undertaken but for the granting of the Additional Financial Assistance by the Agency to the Company;

(d) the completion of the Block F Facility, the sublease thereof by the Agency to the Company and the operation thereof by the Company will not result in the removal of a facility or plant of the Company or any other occupant, tenant or user of the Block F Facility from one area of the State of New York (the “State”) to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other occupant, tenant or user located within the State (but outside of the City). Therefore, the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Additional Financial Assistance by the Agency to the Company;

(e) the Proposed Project will serve the public purposes of the Act by preserving permanent, private sector jobs, and increasing the overall number of permanent, private sector jobs in the State;

(f) no funds of the Agency shall be used in connection with the Proposed Project for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the Agency be given in connection with the Proposed Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State, nor shall any funds of the Agency be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media;

(g) the Block F Facility will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Proposed Project. Therefore, the Proposed Project does not violate the provisions of Section 862 of the Act. For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section 1101 of the New York Tax Law; or (ii) sales of a service to such customers;

(h) the granting of the Additional Financial Assistance by the Agency with respect to the Proposed Project will encourage and assist the Company in undertaking the Proposed Project in the City, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the City and the State and improve their standard of living, and thereby serve the public purposes of the Act;

(i) the Proposed Project will not result in the removal or abandonment of a plant or facility of the Company or any other occupant or user of the Block F Facility currently located within the City; and

(j) the Block F Facility, by providing affordable, safe, clean and modern rental housing will enable persons to remain in the City 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 City which will increase the economic health and well-being of the residents of the City and help preserve and increase permanent private sector jobs in furtherance of the Agency's public purposes as set forth in the Act.

Section 3. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Executive Director and the staff of the Agency with respect to the Application, the Analysis and the Public Hearing, including, without limitation, (a) those actions required to ensure full compliance with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Proposed Project, and (b) the appointment of the law firm of Phillips Lytle LLP as Counsel to the Agency with respect to all matters in connection with the Proposed Project.

Section 4. The Agency hereby determines that the Agency has fully complied with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Proposed Project.

Section 5. Having considered fully all comments received at the Public Hearing or otherwise in connection with the Proposed Project, including correspondence received subsequent to the Public Hearing, the Agency hereby further determines to proceed with the Proposed Project and the granting of the Additional Financial Assistance, subject to the terms hereof. The Agency hereby approves the granting of (A) an exemption from all New York State and local sales and use taxes for purchases and rental of qualifying personal property necessary for the completion of the Proposed Project and having a value not exceeding \$1,264,705, and (B)

an exemption from mortgage recording taxes (excluding the portion of the mortgage recording tax allocated to transportation districts referred to in Section 253(2)(a) of the Tax Law of the State of New York) with respect to the recording of the Bank Mortgage (as hereinafter defined) having a value not exceeding \$222,657. The Agency's closing administrative fee will be \$264,270.63.

Section 6. The Agency is hereby authorized to (a) acquire the interests contemplated by the Company Lease, the Bill of Sale to Agency and the other Transaction Documents, (b) grant a subleasehold interest in the Block F Facility pursuant to the Agency Lease and the other Transaction Documents, (c) grant the aforementioned Additional Financial Assistance, (d) execute one (1) or more fee and leasehold mortgage, assignment of rents and leases, and security agreements (collectively, the "Bank Mortgage") in favor of such bank, governmental agency or financial institution as the Company may determine (such bank, governmental agency or financial institution, the "Bank"), encumbering the Block F Facility, solely to subject to the lien thereof its interest in the Block F Facility, all to secure one (1) or more loans made by such Bank to the Company with respect to the Block F Facility, and (f) do all things necessary, convenient or appropriate for the accomplishment thereof. All acts heretofore taken by the Agency with respect to the foregoing are hereby approved, ratified and confirmed.

Section 7. The form and substance of the Transaction Documents, in the forms presented to the members of the Agency, together with such changes as the Chair, Vice Chair or Executive Director may hereafter deem necessary or appropriate, are hereby approved. The Chair, Vice Chair and Executive Director are hereby authorized, on behalf of the Agency, acting together or individually, to execute and deliver the Transaction Documents to which the Agency is a party and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The execution and delivery of each such document, instrument and agreement by such person(s) shall be conclusive evidence of such approval.

Section 8. The Chair, Vice Chair and Executive Director of the Agency are hereby further authorized, on behalf of the Agency, acting together or individually, to designate any additional Authorized Representatives (as defined in the Agency Lease) of the Agency.

Section 9. The officers, employees and agents of the Agency are hereby authorized and directed, acting individually or jointly, 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 Transaction Documents, to execute and deliver all such additional certificates, instruments, agreements and documents, to 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, convenient or appropriate to effect the purposes of this Resolution and to cause compliance with all of the terms, covenants and provisions of the Transaction Documents to which the Agency is a party or which are binding on the Agency.

Section 10. The Agency recognizes that due to the complexities of the proposed transaction it may become necessary that certain of the terms approved hereby may require modifications from time to time which will not affect the intent and substance of the

authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chair, Vice Chair and Executive Director of the Agency, acting individually or jointly, to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution, but may include adjustments to the Additional Financial Assistance granted hereunder. The approval of such modifications shall be evidenced by the certificate of determination of an Agency officer or the execution and delivery by some or all such Agency officers of relevant documents containing such modified terms.

Section 11. The members of the Agency acknowledge the terms and conditions of Section 875(3) of the Act and the duties and obligations of the Agency thereunder with respect to granting of State Sales and Use Taxes (as such term is defined in Section 875 of the Act) with respect to the Proposed Project. The members hereby direct the officers of the Agency to comply with such terms and conditions with respect to the Proposed Project and hereby direct Counsel to the Agency to include such terms and conditions in all relevant Transaction Documents.

Section 12. The Chair, Vice Chair and Executive Director of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 13. This Resolution shall take effect immediately.

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

	<u>VOTING</u>
Pamela D. Panzenbeck	AYE
Vincent C. Hartley	AYE
James J. Cappiello	AYE
Grady Farnan	AYE
David V. Jimenez	AYE
John Fielding	ABSENT
Tom Hopke	AYE

The foregoing Resolution was thereupon declared duly adopted.