

# MEMORANDUM

March 21, 2016

TO: Paul A. Johnson, Acting Executive Director and Theresa B. Mazzullo,  
Chairwoman

FROM: Rachel Baranello Endress

RE: I-Square, LLC - Titus Avenue and Cooper Road, Town of Irondequoit

Dear Paul and Theresa,

We have reviewed the transaction documents in connection with the above referenced project and specifically the Payment-In-Lieu-of-Tax Agreement, dated as of June 1, 2013 (the "PILOT Agreement"). The PILOT Agreement has job creation and capital investment milestone measured from the commencement date of July 1, 2014.

The first investment milestone was December 31, 2014 and required a capital investment of \$2.4 million. We have documentary evidence showing slightly in excess of \$2.5 million in connection with the first milestone.

The next investment milestone is December 31, 2017, at which time I-Square, LLC must demonstrate a capital investment of at least \$5.5 million. Further, the construction of the second building must be completed by December 31, 2015.

An article featuring I-Square appeared in the *Democrat and Chronicle*, on October 8, 2015, in which it was reported that one (1) new building stood on the site and that this building was the first "[...] in what would eventually be a multi-building town center[...]". The article made no mention of the construction or existence of a second building.

In addition, each January, COMIDA representatives undertake a comprehensive review of each project to ensure compliance with project documents, namely, payment-in-lieu-of-tax agreements. As part of this review, COMIDA representatives determined that I-Square, LLC had not completed construction of the second building as contemplated in I-Square, LLC's application to COMIDA, the site plan submitted to COMIDA and the project description/milestones included in the PILOT Agreement. The Assessor for the Town of Irondequoit confirmed COMIDA representatives' finding that construction of the second building had not yet commenced. Further, a COMIDA representative visited the site at 7:00 PM on March 20, 2016. This representative confirmed the information received from the assessor - construction of the second building is not complete. A small, unidentifiable building, currently sits on the parcel where the second building should have been constructed.

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In another article, appearing in the *Democrat and Chronicle*, on March 20, 2016, Mr. Nolan was quoted, stating that “[...] a second building – a facility that will be used for laundry services, waste management, recycling and storage – had indeed been constructed.” This “recycling center” is not a component of the project as contemplated in I-Sqaure, LLC’s application to COMIDA, the site plan submitted to COMIDA and the project description/milestones included in the PILOT Agreement, and, therefore, does not satisfy the second building requirement. According to the site plan, the second building should be a 15,000 square foot 3-story building. The 1-story “recycling center” does not meet the foregoing specifications and is not located on the second building parcel and was not before COMIDA when the milestones were established.

Under the terms of the PILOT Agreement, the failure to construct the second building constitutes an Event of Default. Upon the occurrence and continuance of an Event of Default, COMIDA may take any one or more of the following remedial steps: (a) declare immediately due and payable all unpaid PILOT Payments due under the PILOT Agreement; (b) take any other action it deems necessary to cure any such Event of Default; (c) take any other action at law or in equity which may appear necessary or desirable to collect the PILOT Payments due under the PILOT Agreement; and/or (d) terminate the PILOT Agreement.

In addition, COMIDA has the right to recapture 100% of real property tax abatements provided under the PILOT Agreement.

Of note, the PILOT Agreement is a custom PILOT Agreement under the COMIDA Uniform Tax Exemption Policy which was entered into at the behest of and with support from the Irondequoit Town Board. The Town Board's resolution in support of the project and PILOT Agreement expressly calls for benchmarks and "... penalties if the specific benchmarks are not met." COMIDA is within its rights to declare this PILOT Agreement in default and to pursue any or all remedies at its discretion.