

STATE OF TEXAS

§

COUNTY OF JEFFERSON

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**ABATEMENT AGREEMENT FOR PROPERTY LOCATED IN THE  
DOW CHEMICAL COMPANY REINVESTMENT ZONE**

Pursuant to Section 312.402 of the Texas Tax Code, this Tax Abatement Agreement (hereinafter referred to as the "AGREEMENT") is made and entered into by and between Jefferson County (hereinafter sometimes referred to as "the COUNTY"), and The Dow Chemical Company (hereinafter sometimes referred to as "OWNER").

**1. RECITALS**

WHEREAS, OWNER possesses interests in taxable real property located within the Dow Chemical Reinvestment Zone, the designation of which was implemented by order of the Jefferson County Commissioners Court dated December 11, 2017 (hereinafter referred to as the "Reinvestment Zone."

WHEREAS, this AGREEMENT is limited to the project to be constructed by OWNER, on various parcels of land located within the Reinvestment Zone, which is described with particularity in Exhibit "A" attached hereto and which will involve construction of new Nitrobenzene Unit, Modernization of Aniline Process and New multi-purpose office building facilities and related improvements, hereinafter referred to as the "PROJECT"); and

WHEREAS the COUNTY wishes to encourage OWNER to select Jefferson County as the site for the PROJECT; and

WHEREAS, the REINVESTMENT ZONE is an area within Jefferson County, Texas, which has been designated by order of the Jefferson County Commissioners Court, the legal description for which is attached hereto as Exhibit "C."

NOW, THEREFORE, for the mutual consideration set forth below, the Parties hereto agree as follows:



## 2. AUTHORIZATION

**THIS AGREEMENT IS AUTHORIZED BY THE TEXAS PROPERTY REDEVELOPMENT AND TAX ABATEMENT ACT, TEX. TAX CODE CHAPTER 312, AS AMENDED, AND BY ORDER OF THE JEFFERSON COUNTY COMMISSIONERS COURT ESTABLISHING THE Dow Chemical REINVESTMENT**

## 3. DEFINITIONS

For purposes of this AGREEMENT, the following terms shall have the meanings set forth below:

“Abatement” means the full or partial exemption from ad valorem taxes of the value of certain property located in the REINVESTMENT ZONE designated for economic development purposes.

### Contents

“Affiliate” of any specified person or entity means any other person or entity which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such specified person or entity. For purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract or otherwise. ....2

“Base Year Value” means the taxable value of all industrial realty improvements owned by the property owner and/or its Affiliates within Jefferson County on January 1 preceding the execution of the abatement agreement. Owner will, in consultation with the Jefferson County Appraisal District, provide the County with a list of the Jefferson County Appraisal District account numbers identifying the industrial realty improvements owned by the property owner and/or its Affiliates and the taxable value thereof on January 1 preceding the execution of the abatement agreement for use in preparing the schedule to be attached as an exhibit to the abatement agreement before execution specifying the Base Year Value for all purposes of the AGREEMENT. ....2

“Affiliate” of any specified person or entity means any other person or entity which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such specified person or entity. For purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract or otherwise.

“Base Year Value” means the taxable value of all industrial realty improvements owned by the property owner and/or its Affiliates within Jefferson County on January 1 preceding the execution of the abatement agreement. Owner will, in consultation with the



Jefferson County Appraisal District, provide the County with a list of the Jefferson County Appraisal District account numbers identifying the industrial realty improvements owned by the property owner and/or its Affiliates and the taxable value thereof on January 1 preceding the execution of the abatement agreement for use in preparing the schedule to be attached as an exhibit to the abatement agreement before execution specifying the Base Year Value for all purposes of the AGREEMENT.

“Base year”, for the parties to this agreement, is defined as the calendar year in which this AGREEMENT is executed (signed) by all parties hereto.

“Ineligible Property” is fully taxable and ineligible for tax abatement and includes land, supplies, inventory, housing, vehicles, improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion; any improvements, including those to produce, store or distribute natural gas, fluids or gasses, which are not integral to the operation of the facility; deferred maintenance, property to be rented or leased, property which has a productive life of less than ten years, or any other property for which abatement is not allowed by state law.

“Eligible Property” means the realty improvements, the on-site buildings, structures, fixed machinery and equipment, storage tanks, process units (including all integral components necessary for operations), site improvements, and infrastructure and the permanent office space and related fixed improvements, as defined by the Tax Code but does not include personal tangible property.

“New Eligible Property” means Eligible Property, the construction of which commences subsequent to the effective date of this AGREEMENT. During the construction phase of the New Eligible Property, the OWNER may make such change orders to the New Eligible Property as are reasonably necessary to accomplish its intended use. It is expressly understood that, notwithstanding anything to the contrary written herein, energy, electricity, manufacturing supplies (e.g., foreign manufactured catalysts), feedstocks, freight, and direct materials that physically become a part of the end product manufactured by the PROJECT) are not subject to the terms of this AGREEMENT.

“Taxable Value” for each taxing entity executing an abatement agreement is determined by deducting from the Market Value of all industrial realty improvements of a property owner and/or its affiliates the amount of any applicable exemptions and abatements granted for that Tax Year.

“Completion” as used herein, shall mean, the successful commissioning of the PROJECT and the attainment of reliable operations. OWNER shall certify in writing to the COUNTY when such Completion is attained.

“Full-time job”, as used herein, shall mean a permanent full-time position that: requires at least 1,600 hours or work per year, is not a transferred from another area of the state, is not created to replace a previous employee, and is covered by a group health benefit



plan, and pays at least 110% of the county average weekly wage for manufacturing jobs in Jefferson County.

#### **4. TERM OF ABATEMENT**

This AGREEMENT shall be effective and enforceable upon execution by both parties (which date is herein referred to as the "Effective Date"). The Term of the Abatement shall begin on January 1, 2020 and shall terminate on December 31, 2026 unless sooner terminated pursuant to other provisions of this AGREEMENT. Should OWNER not begin the construction of the PROJECT by December 31, 2019, this AGREEMENT shall be null and void.

#### **5. OWNER REPRESENTATIONS/OBLIGATIONS**

In order to receive a tax abatement with respect to a tax year listed on the Tax Abatement Schedule (EXHIBIT "A"), OWNER shall comply with the following:

a. As a result of the PROJECT, and upon its Completion (currently estimated to be not later than the first quarter of 2021, maintain a level of not less than 60 ("retained") full-time jobs, using headcount as of December 31, 2018 as the starting point, relating to the PROJECT during the remaining term of this AGREEMENT; provided, however that OWNER may reduce employment levels due to improved efficiencies or changing economic conditions during the term of this AGREEMENT as long as such employment levels do not fall below 60 full-time jobs for total on-site employment by owner during said term. In the event that such employment falls below 60 full-time jobs for total on-site employment, the Abatement shall be reduced proportionate to such employment decline beginning with the tax year in which the decline occurs and each tax year thereafter per the example calculation cited below where:

A1 = initial Abatement \$s  
A2 = revised Abatement \$s  
E1 = 60 full-time jobs  
E2 = revised employee count  
 $A2 = A1 \times (E2/E1)$

- b. Report and certify the requisite job levels to the COUNTY, annually during each tax year under this AGREEMENT;
- c. Construct the PROJECT with an estimated investment in excess of \$ 109,000,000;
- d. If, during the period of this AGREEMENT, any Federal or State law provides an additional tax exemption for the property that is already the subject of this AGREEMENT, Applicant agrees to decline that tax exemption during the period of this abatement. If Applicant is unable to decline that tax exemption, Applicant agrees to pay the taxes, or payment in lieu of taxes, on the reduction of property tax revenue



to the County that is the result of said exemption. Any payment in lieu of taxes shall be due on or before November 15 of the year in which payment is due.

- e. Make available to the COUNTY information concerning the details of contractor bids, every quarter, during the construction phase of the PROJECT under the express understanding that COMPANY is providing the COUNTY such contractor bid information on a strictly confidential basis so as to maintain the integrity of the competitive bid process;
- f. Report and certify to the COUNTY the requisite cost of the PROJECT within 120 days after the completion of the PROJECT (or 120 days after the Effective Date, whichever is later);
- g. Ensure that qualified local labor, vendors, suppliers, and sub-contractors are given a timely opportunity to bid on contracts for the provision of supplies, goods and services (including engineering and construction services, *e.g.*, piping, electrical, civil, fabrication) in connection with construction of the PROJECT and any turnaround project which is undertaken as part of or in connection with the PROJECT during the term of the abatement period. Such consideration shall be made in good faith without discrimination. For purposes of the foregoing:
  - (i) "Local labor" is defined as those qualified laborers or craftsmen who are residents and domiciliaries of the nine-county region comprised of Jefferson, Orange, Hardin, Jasper, Newton, Liberty, Tyler and Chambers Counties, as well as the Bolivar Peninsula area of Galveston County. "Local vendors" and "local suppliers" shall include only those located or having a principal office in Jefferson County. "Local subcontractors" shall include only those located or having a principal office in Jefferson County.
  - (ii) OWNER agrees to give preference and priority to local manufacturers, suppliers, vendors, contractors and labor, except where not reasonably possible to do so without significant added expense, substantial inconvenience, or sacrifice in operating efficiency. For any such exception in cases involving purchases over \$1 million, a justification for such purchase shall be included in OWNER'S annual letter of compliance. OWNER further acknowledges that it is a contractual obligation, under this agreement, of persons receiving property tax abatements to favor local manufacturers, suppliers, contractors, and labor, all other factors being equal. In the event of a breach of this "buy local" provision, OWNER agrees that the percentage of abatement shall be proportionately reduced in an amount equal to the amount the disqualified contract bears to the total construction cost for the PROJECT.
  - iii) OWNER agrees to provide bidding information to local qualified contractors, vendors, manufacturers and labor to allow them to have sufficient information and time to submit their bids, and pre-bid meetings shall be held between OWNER and potential local bidders and suppliers of services and



materials. Owner agrees that it will provide sufficient notice and information regarding the project to qualified local contractors to enable them to submit bids for materials in the early procurement processes.

- h. Report and certify to the COUNTY, quarterly the total number of dollars spent on local labor, local subcontractors and local vendors/suppliers in connection with the PROJECT;
- i. Owner will invoice purchases locally to ensure that sales tax is credited to the benefit of Jefferson County, Texas.
- j. Not in any way discriminate against or treat disparately union contractors who choose to participate in the competitive bid process relating to work on the PROJECT, nor discriminate against or treat disparately union members who seek employment on the PROJECT; and
- k. Encourage and promote the utilization of Historically Underutilized Businesses (HUBs) (also known as Disadvantaged Business Enterprises, or DBEs) by the general contractor engaged by OWNER to construct the PROJECT and any turnaround project which is undertaken as part of or in connection with the PROJECT during the term of the abatement period by ensuring qualified HUB/DBE vendors and contractors are given a timely opportunity to bid on contracts for supplies and services. For purposes of the foregoing:
  - (i) A HUB/DBE is a business owned or controlled by Socially and Economically Disadvantaged Individuals as defined by all applicable federal or state laws and local policies, including Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian Indian Americans, women, and individuals with disabilities.
  - (ii) A HUB/DBE is one that is at least 51 percent owned or controlled by one or more women or Socially and Economically Disadvantaged Individuals or, in the case of a publicly-owned business, one that at least 51 percent of the stock of which is controlled by one or more women or Socially and Economically Disadvantaged Individuals.
  - (iii) A business that has been certified as a HUB/DBE by an agency of the federal government or the State of Texas is presumed to be a HUB/DBE for purposes of Agreement.
  - (iv) Only a HUB/DBE with its principal office in the State of Texas will be recognized as a HUB/DBE for purposes of this Agreement. A list of HUB/DBE vendors/suppliers is maintained in the COUNTY office and a list of same is attached hereto as Exhibit D. As to the use of qualified local and HUB/DBE vendors, suppliers and sub-contractors, OWNER will, at a minimum:



l. Consult with chambers of commerce, minority business associations, trade associations and other regional economic development organizations to identify local and HUB/DBE vendors, suppliers and sub-contractors;

m. Notify qualified local and HUB/DBE vendors, suppliers and sub-contractors, allowing sufficient time for effective preparation of bids for the planned work to be sub-contracted or materials, supplies or equipment to be purchased;

n. Provide qualified local and HUB/DBE vendors, suppliers and sub-contractors who are interested in bidding on a subcontract or contract for materials, supplies, equipment, or the provision of engineering and construction services and labor adequate information regarding the project as early as is practicable in the bidding process in order to allow the HUB/DBE vendors, suppliers and sub-contractors sufficient time to prepare a bid (*i.e.*, plans, specifications, scope of work, bonding and insurance requirements, and a point of contact within the general/prime contractor);

o. Negotiate in good faith with interested qualified local and HUB/DBE vendors, suppliers or sub-contractors, and award sub-contracts or contracts for materials, supplies equipment, or the provision of engineering and construction services and labor to local or HUB/DBE vendors, suppliers or sub-contractors when they are the lowest qualified responsive bidder who meets all of the applicable bid specifications; and

p. Include a provision in OWNER'S contract with the general/prime contractor on the PROJECT which requires the general/prime contractor to read and comply with the terms of this AGREEMENT relating to the use of union or non-union, local and HUB/DBE vendors, suppliers or sub- contractors.

## **6. VALUE OF ABATEMENT**

For each year under this Agreement, the abatement percentage received by OWNER under this AGREEMENT with respect to the value of New Eligible Property, is set forth on attached Exhibit: "Tax Abatement Schedule".

The Abatement during each tax year covered by this Agreement shall be the excess of the taxable value of the Project on January 1<sup>st</sup> of each tax year over the Base Year Value, multiplied by the abatement percentage for each year, as set forth on the Tax Abatement Schedule.

## **7. QUARTERLY MONITORING MEETINGS**

With respect to the quarterly monitoring meetings referenced in Section 5(e) above, the County Judge, County Commissioners, or their designee(s) shall be allowed to attend such quarterly monitoring meetings, on the express condition that they execute a confidentiality agreement prepared by OWNER so as to protect confidential information



which may be disclosed to them during or as a result of such monitoring meetings. OWNER agrees to reimburse the COUNTY in an amount not to exceed to \$4,000.00 annually for the costs or expenses actually incurred by the COUNTY in monitoring the status of the bidding process every quarter during the construction phase of the PROJECT.

## **8. TAXABILITY**

During the period that this AGREEMENT is effective, taxes shall be payable as follows:

- a. The value of Ineligible Property shall be fully taxable;
- b. The Taxable Value of existing Eligible Property as determined each year shall be fully taxable; and
- c. The value of New Eligible Property shall be abated as set forth in Section 6, hereinabove.



## **9. ADJUSTMENTS TO ABATEMENT FOR BASE YEAR VALUE DECLINE**

The Jefferson County Central Appraisal District will establish the certified values of Eligible Property as of January 1, 2017, (year abatement executed) as set forth on attached Exhibit "B", and such values shall be the values used to calculate the Base Year Value as herein defined. If on January 1st of any tax year listed on the "Tax Abatement Schedule" the Taxable Value is less than the Base Year Value, then the abatement of value otherwise available shall be reduced by one dollar for each dollar that the Taxable Value of realty improvements is less than the Base Year Value, except that no such reduction of Owner's abatement shall be made should any reduction to Taxable Value of Owner's Eligible Property result from a Force Majeure event.

In the event the Owner reduces its ad valorem taxes on personal property otherwise payable to the County by participating in a foreign trade zone, then the amount of abated value otherwise available shall be reduced by one dollar for each dollar of tax value reduction attributable to special treatment from trade zone participation. The parties hereto stipulate and agree that the certified appraisal value for this property, as calculated by the Jefferson Central Appraisal District shall apply.

It is specifically understood and agreed by the owner that, if at any time during the effective dates of an agreement relating to abatement, the owner files or prosecutes an action to contest the appraised value of any property of the owner or owner's affiliates within Jefferson County for unequal appraisal or revision thereof pursuant to Sec. 42.26, Texas Tax Code, any and all abatements granted by County to Owner or its affiliates shall become null and void and cancelled. Nothing in this agreement shall limit Owner's right to appeal or contest the fair market value appraisal of any property of the owner or owner's affiliates.

## **10. POLLUTION CONTROL EXEMPTION**

The COUNTY understands that OWNER plans (i) to request from the TCEQ a determination under Section 11.31 of the Texas Tax Code that certain property included in the New Eligible Property is pollution control property, and (ii) to apply for an exemption from ad valorem taxes under Section 11.31 of the Texas Tax Code with respect to all or a portion of such property determined by the TCEQ to be pollution control property. OWNER represents that the exempt value of such pollution control property will not exceed fifteen percent (15%) of the value of the Project in any year of Abatement under this AGREEMENT. OWNER agrees that in the event the exempt value of such pollution control property exceeds fifteen percent (15%) of the value of the Project in any year of Abatement under this AGREEMENT, the abated value will be reduced accordingly. It is understood and agreed that owner will not seek a tax exemption for any equipment or portion of the facility which merely reduces the pollution characteristics of the finished product produced by the facility and that an exemption will only be sought for equipment and technology utilized to reduce pollution at or around the facility.



## **11. EVENT OF DEFAULT**

If either party should default in performing any obligation under this AGREEMENT, the other party shall provide such defaulting party written notice of default and provide the defaulting party with a minimum period of sixty (60) days to cure such default prior to instituting an action for breach or pursuing any other remedy for default, provided however, that, if the default is of such a nature that it cannot, with the exercise of reasonable diligence, be cured within sixty (60) days, then such party shall not be in default so long as such party has commenced such cure within sixty (60) days after receiving written notice of such default and is diligently prosecuting such cure to completion. Subject to providing such notice of default and the aforesaid opportunity to cure same, the party aggrieved by default shall have the right to terminate this AGREEMENT and to pursue any remedy available at law or in equity, for breach hereof. In addition, if a party (the "Affected Party") shall become unable to timely perform any of its obligations under this AGREEMENT, other than any obligation to pay money, as a consequence of a Force Majeure Event, the Affected Party shall be relieved of such obligation (and such failure to timely perform such obligation shall not constitute a default) to the extent that and for so long as (but only to the extent that and only for so long as) it is unable to timely perform such obligation as a consequence of such Force Majeure Event. A "Force Majeure Event" means any of the following: (a) acts of God, earthquakes, tidal waves, lightning, floods, and storms; (b) explosions and fires; (c) strikes and lockouts; (d) wars, riots, acts of the public enemy, civil disturbances, hostilities, sabotage, blockades, insurrections, terrorism, and epidemics; (e) acts of expropriation, confiscation, nationalization, requisitioning, or other taking; and (f) any other event, condition, or circumstance beyond the reasonable control of the party claiming relief as a consequence thereof; provided, however, that "Force Majeure Event" does not include the inability to make payment or financial distress.

## **12. ASSIGNMENT**

OWNER may assign this AGREEMENT, in whole or in part, to a new owner or lessee of the same PROJECT, or a portion thereof, or to an Affiliate of OWNER upon written approval by resolution of the COMMISSIONERS COURT of such assignment, and approval shall not be unreasonably withheld or delayed. It shall not be unreasonable for the COURT to withhold approval if OWNER or the proposed assignee is liable to the COUNTY for outstanding taxes or other obligations.

## **13. ENTIRE AGREEMENT**

The Parties agree that this AGREEMENT contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the parties and others relating hereto are superseded by the AGREEMENT.

## **14. SUCCESSORS AND ASSIGNS**



This AGREEMENT shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

## 15. NOTICE

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

COMPANY:

The Dow Chemical Company  
Tax Department, TXINN APB  
332 SH 332 E  
Lake Jackson, TX 77566

Or:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a  
Copy to

The Dow Chemical Company  
Attn: Site Leader  
P.O. Box 4950  
Beaumont, TX 77704

COUNTY: Hon. Jeff R. Branick, County Judge  
Jefferson County Texas  
P.O. Box 4025  
Beaumont, Texas 77704  
(409) 835-8466  
(409) 839-2311 (facsimile)

With a copy to: Ms. Kathleen Kennedy, Chief Civil Attorney  
Criminal District Attorney  
1149 Pearl Street, 3<sup>rd</sup> Floor  
Beaumont, Texas 77701  
(409) 835-8550  
(409) 835-8573 (facsimile)

Mr. Fred L. Jackson,  
First Assistant: Staff Attorney  
Jefferson County Courthouse



P. O. Box 4025,  
Beaumont, Texas 77704  
(409) 835-8466  
(409) 839-2311 (facsimile)

#### **16. MERGER**

The Parties agree that this AGREEMENT contains all of the terms and conditions of the understanding of the parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the parties and others relating hereto are superseded by this AGREEMENT.

#### **17. INTERPRETATION**

The Parties acknowledge that both have been represented by counsel of their choosing in the negotiation and preparation of the AGREEMENT. Regardless of which party prepared the initial draft of this AGREEMENT, this AGREEMENT shall, in the event of any dispute over its meaning or application, be interpreted without reference to the principle of construction favoring the party who did not draft the AGREEMENT under construction.

#### **18. APPLICABLE LAW AND VENUE**

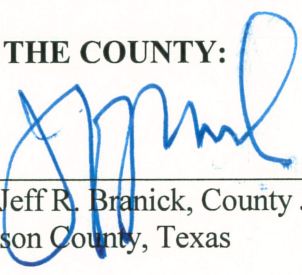
This AGREEMENT is made, and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Jefferson County, Texas.

#### **19. SEVERABILITY**

In the event any provision of this AGREEMENT is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this AGREEMENT shall not be affected thereby, and it is also the intention of the Parties to this AGREEMENT that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable, a provision be added to this AGREEMENT which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

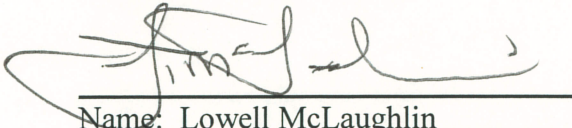
Executed in duplicate this the 11<sup>th</sup> day of Dec, 2017.

**FOR THE COUNTY:**

  
\_\_\_\_\_  
Hon. Jeff R. Branick, County Judge  
Jefferson County, Texas



**FOR THE COMPANY:**

A handwritten signature in black ink, appearing to read 'Lowell McLaughlin', is written over a horizontal line.

Name: Lowell McLaughlin

Title: State and Local Tax Director



## **EXHIBIT A “Description of Project”**

The proposed project will encompass construction of new Nitrobenzene Unit, Modernization Aniline Process and New multi-purpose office building facilities with an investment of \$ 109,000,000 and Retention of 60 permanent employees.

### **“Tax Abatement Schedule”**

<b>Tax Year</b>	<b>Abatement Percentage</b>
1. 2020	90 %
2. 2021	80 %
3. 2022	70 %
4. 2023	65%
5. 2024	55 %
6. 2025	30%



**EXHIBIT B “Base Year Property”**

This base year taxable value as certified will be attached, by consent of the parties, when same is calculated and adopted by the Jefferson County Central Appraisal District.



## **EXHIBIT C – “Reinvestment Zone”**

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**EXHIBIT D – “List of HUB/ DBE Companies”**



Exhibit "E"

Jefferson County Abatement Policy

It is understood and agreed that all abatement agreements granted herein shall conform to this abatement policy and to the Texas Tax Code.



**EXHIBIT "F" - AFFILIATES OF OWNER**  
**(Owner is to verify that affiliates are known to the Jefferson Central Appraisal District)**