

Date: September 15, 2021

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held electronically via webinar and in person, on the 15th day of September, 2021, the following members of the Agency were:

Present: Frederick C. Braun III, Chairman
Felix J. Grucci, Jr., Vice Chair
Martin Callahan, Treasurer
Ann-Marie Scheidt, Secretary
Gary Pollakusky, Asst. Secretary
Lenore Paprocky, Member

Recused:

Excused: Frank C. Trotta, Asst. Treasurer

Also Present: Lisa M. G. Mulligan, Chief Executive Officer
Lori LaPonte, Chief Financial Officer
James M. Tullo, Deputy Director
Jocelyn Linse, Executive Assistant
Terri Alkon, Administrative Assistant
Amy Illardo, Administrative Assistant
Annette Eaderesto, Esq., Counsel to the Agency
William F. Weir, Esq., Transaction Counsel
Howard R. Gross, Esq., Transaction Counsel

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to authorizing a refinancing of a certain industrial development facility more particularly described below (Brooks Partners LLC 2019 Facility) and the continued leasing of the facility to Brooks Partners LLC.

Voting Aye

Braun
Grucci
Callahan
Scheidt
Pollakusky
Paprocky

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING A
MORTGAGE REFINANCING AND THE EXECUTION AND
DELIVERY OF LOAN DOCUMENTS IN CONNECTION
THEREWITH FOR THE BROOKS PARTNERS LLC 2019
FACILITY AND APPROVING THE FORM, SUBSTANCE,
EXECUTION AND DELIVERY OF SUCH RELATED
DOCUMENTS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as the same may be amended from time to time (collectively, the “**Act**”), the Town of Brookhaven Industrial Development Agency (the “**Agency**”), was created with the authority and power among other things, to assist with certain industrial development projects as authorized by the Act; and

WHEREAS, the Agency previously assisted Brooks Partners LLC (the “**Company**”) in the acquisition of an approximately 1.14 acre parcel of land located at 440 Main Street, Port Jefferson, New York 11777 (SCTM# 0206-12.00-09.00-003.000) (the “**Land**”), the demolition of an approximately 16,836 square foot building located thereon, the construction of a three-story, approximately 65,300 square foot building thereon (excluding the approximately 2,700 square foot portion of the building consisting of approximately 1,500 square feet of take-out restaurant space, and approximately 1,200 square feet of retail and/or office space (the “**Excluded Premises**”)) (excluding the Excluded Premises, the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility is leased by the Agency to the Company and used as a mixed-use apartment complex containing approximately forty-four (44) one-bedroom units and two (2) two-bedroom units, a private fitness room, lobby, lounge, recreation area, storage space, an indoor garage, outdoor parking and a roof deck (the “**Project**”); and

WHEREAS, the Company leased the Land and the Improvements to the Agency pursuant to the terms of a certain Company Lease Agreement, dated as of September 1, 2019 (the “**Company Lease**”), by and between the Company and the Agency; and

WHEREAS, the Company transferred title to the Equipment to the Agency pursuant to a certain Bill of Sale, dated September 24, 2019 (the “**Bill of Sale**”); and

WHEREAS, the Agency subleased and leased the Facility to the Company, upon the terms and conditions set forth in a certain Lease and Project Agreement, dated as of September 1, 2019 (the “**Lease Agreement**”), by and between the Agency and the Company; and

WHEREAS, as security for a Loan (as such term is defined in the Lease Agreement), the Agency and the Company previously executed and delivered to BNB Bank, now known as Dime Community Bank (the “**2019 Lender**”), a certain Building Loan Mortgage, Security Agreement, and Fixture Filing, dated September 24, 2019 (the “**2019 Mortgage**”), from the

Agency and the Company to the 2019 Lender, securing the aggregate principal amount of \$12,200,000; and

WHEREAS, the Company has now requested the Agency's assistance in the permanent financing of the Facility with First National Bank of Long Island (the "**2021 Lender**") with respect to the Facility in the aggregate principal amount presently estimated to be \$14,462,500 but not to exceed \$15,000,000 (the "**2021 Loan**"), in order to refinance the 2019 Mortgage and to finance excessive project costs caused by increased tariffs, and construction delays and prices increases caused by the COVID-19 pandemic; and

WHEREAS, a portion of the proceeds of the 2021 Loan will be used to satisfy in full the balance of the 2019 Mortgage; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company consistent with the policies of the Agency, in the form of exemptions from mortgage recording taxes, to the fullest extent permitted by law, related to the aggregate principal amount of the difference from the 2019 Mortgage to the 2021 Mortgage, being presently estimated to be \$2,262,500 but not to exceed \$2,800,000, corresponding to an exemption from mortgage recording taxes in an amount presently estimated to be \$16,968.75, but not to exceed \$21,000.00, in connection with the financing or refinancing of the costs of the acquisition, renovation and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating and equipping the Facility; and

WHEREAS, as security for such 2021 Loan being made to the Company by the 2021 Lender, the Company has submitted a request to the Agency that it join with the Company in executing and delivering to the 2021 Lender one or more mortgages and such other loan documents, satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably requested by the 2021 Lender (the "**2021 Loan Documents**"); and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the financing or refinancing of the Facility and the continued leasing and subleasing of the Facility.

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

- (a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act.

- (b) The Facility continues to constitute a “project” as such term is defined in the Act.
- (c) The refinancing of the acquisition, construction and equipping of the Facility will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven, Suffolk County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act.
- (d) The refinancing of the acquisition, construction and equipping of the Facility as contemplated in this resolution is reasonably necessary to maintain the competitive position of the Company in its respective industries.
- (e) Based upon representations of the Company and counsel to the Company, the Facility continues to conform with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local land use plans for the area in which the Facility is located.
- (f) It is desirable and in the public interest for the Agency to assist in the refinancing of the acquisition, construction and equipping of the Facility.
- (g) The 2021 Loan Documents will be effective instruments whereby the Agency and the Company agree to secure the 2021 Loan and assign to the 2021 Lender their respective rights under the Lease Agreement and Company Lease Agreement (except the Agency’s Unassigned Rights as defined therein).

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) grant a mortgage or mortgages on and security interest in and to the Facility pursuant to certain mortgages and security agreements for the benefit of the 2021 Lender (the “**2021 Mortgage**”), (ii) execute, deliver and perform the 2021 Mortgage, and (iii) execute, deliver and perform the 2021 Loan Documents to which the Agency is a party, as may be necessary or appropriate to effect the 2021 Loan or any subsequent refinancing of the 2021 Mortgage.

Section 3. Subject to the provisions of this resolution and the Lease Agreement, the Agency hereby authorizes and approves the following economic benefits to be granted to the Company in the form of exemptions from mortgage recording taxes, to the fullest extent permitted by law related to the aggregate principal amount of the difference from the 2019 Mortgage to the 2021 Mortgage, being presently estimated to be \$2,262,500 but not to exceed \$2,800,000, corresponding to an exemption from mortgage recording taxes in an amount presently estimated to be \$16,968.75, but not to exceed \$21,000.00, in connection with the financing or refinancing the costs of the acquisition, renovation and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating and equipping the Facility.

Section 4. Subject to the provisions of this resolution and the Lease Agreement, the Agency is hereby authorized to do all things necessary or appropriate for the execution, delivery and performance of the 2021 Loan Documents and the 2021 Mortgage, and such

other related documents as may be necessary or appropriate to effect the 2021 Loan, or any subsequent refinancing of the 2021 Loan, and all acts heretofore taken by the Agency with respect to such financing or refinancing are hereby approved, ratified and confirmed. The Agency is hereby further authorized to execute and deliver any future documents in connection with any future refinancing or permanent financing of such costs of acquiring, constructing and equipping of the Facility without need for any further or future approvals of the Agency.

Section 5.

(a) Subject to the provisions of this resolution and the Lease Agreement; the Chairman, Chief Executive Officer and all other members of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the 2021 Mortgage and 2021 Loan Documents, together with such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, Chief Executive Officer or any member of the Agency shall constitute conclusive evidence of such approval; and

(b) The Chairman, Chief Executive Officer and any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives of the Agency.

Section 6. Subject to the provisions of this resolution and the Lease Agreement, the officers, employees and agents of the Agency are hereby authorized and directed 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 Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, 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, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 7. Any expenses incurred by the Agency with respect to the financing or refinancing of the Facility shall be paid by the Company. The Company has agreed to pay such expenses and have further agreed to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the financing or refinancing of the Facility.

Section 8. The provisions of this resolution shall continue to be effective for one year from the date hereof, whereupon the Agency may, at its option, terminate the effectiveness of this Resolution (except with respect to the matters contained in Section 7 hereof).

Section 9. This resolution shall take effect immediately.

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

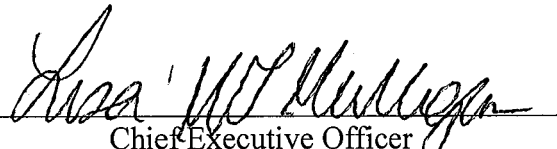
I, the undersigned Chief Executive Officer of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), including the resolutions contained therein, held on the 15th day of September, 2021, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that, the Agency’s Board Meeting on September 15, 2021, was held as a webinar as well as a public meeting open for the public to attend in person, and that all members of said Agency had due notice of said meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 15th day of September, 2021.

By: 
Chief Executive Officer

Date: July 17, 2019

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held on the 17th day of July, 2019, at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738, the following members of the Agency were:

Present: Frederick C. Braun, III
Martin Callahan
Felix J. Grucci, Jr.
Scott Middleton
Gary Pollakusky
Ann-Marie Scheidt
Frank C. Trotta

Recused:

Excused:

Also Present: Lisa M. G. Mulligan, Chief Executive Officer

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of a leasehold interest in and title to a certain industrial development facility more particularly described below (Brooks Partners LLC 2019 Facility) and the leasing of the facility to Brooks Partners LLC.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

Braun
Callahan
Grucci
Middleton
Pollakusky
Scheidt
Trotta

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE APPOINTMENT OF BROOKS PARTNERS LLC, A NEW YORK LIMITED LIABILITY COMPANY, ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF BROOKS PARTNERS LLC AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING AS AGENT OF THE AGENCY FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING AND EQUIPPING THE FACILITY, APPROVING THE DEMOLITION OF AN EXISTING STRUCTURE LOCATED ON THE LAND AND THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF SUCH INDUSTRIAL DEVELOPMENT FACILITY AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE FACILITY AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as amended from time to time (collectively, the “**Act**”), the Town of Brookhaven Industrial Development Agency (the “**Agency**”), was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, Brooks Partners LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of Brooks Partners LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with the acquisition of an approximately 1.14 acre parcel of land located at 440 Main Street, Port Jefferson, New York 11777 (SCTM# 0206-12.00-09.00-003.000) (the “**Land**”), the demolition of an approximately 16,836 square foot building located thereon, the construction of a three-story, approximately 65,300 square foot building thereon (excluding the approximately 2,700 square foot portion of the building consisting of approximately 1,500 square feet of take-out restaurant space, and approximately 1,200 square feet of retail and/or office space (the “**Excluded Premises**”)) (excluding the Excluded Premises, the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be leased by the Agency to the Company and used as a mixed-use apartment complex containing approximately forty-four (44) one-bedroom units and two (2) two-bedroom units, a private fitness room, lobby, lounge, recreation area, storage space, an indoor garage, outdoor parking and a roof deck (the “**Project**”); and

WHEREAS, the Agency will acquire a leasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of July 1, 2019 or such other date as the Chairman, the Chief Executive Officer of the Agency and counsel to

the Agency shall agree (the “**Company Lease**”), by and between the Company and the Agency; and

WHEREAS, the Agency will acquire title to the Equipment pursuant to a certain Bill of Sale, dated the Closing Date (as defined in the hereinafter defined Lease Agreement) (the “**Bill of Sale**”), from the Company to the Agency; and

WHEREAS, the Agency will sublease and lease the Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of July 1, 2019 or such other date as the Chairman, the Chief Executive Officer of the Agency and counsel to the Agency shall agree (the “**Lease Agreement**”), by and between the Agency and the Company; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of: (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$11,200,000 but not to exceed \$14,000,000 in connection with the financing of the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$495,000, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof); provided, however, the Agency shall not provide any financial assistance to the Company in connection with the Excluded Premises; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, as security for a loan or loans, the Agency and the Company will execute and deliver to a lender or lenders not yet determined (collectively, the “**Lender**”), a mortgage or mortgages, and such other loan documents satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably required by the Lender, to be dated a date to be determined, in connection with the financing, any refinancing or permanent financing of the costs of the acquisition, demolition, construction and equipping of the Facility (collectively, the “**Loan Documents**”); and

WHEREAS, a public hearing (the “**Hearing**”) was held on July 17, 2019 and notice of the Hearing was given and such notice (together with proof of publication) together with the minutes of the Hearing are in substantially in the form annexed hereto as Exhibits A and B respectively; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed Facility is either an inducement to the Company to maintain and expand the Facility in the Town of Brookhaven or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, the Agency required the Company to provide to the Agency a feasibility report, prepared by VHB Engineering, Surveying, Landscape Architecture and Geology, P.C. (“VHB”), dated May 2019, as supplemented by a report by VHB dated July 11, 2019 (the “**Feasibility Study**”), together with such letters or reports from interested parties and governmental agencies or officials (the “**Letters of Support**”; and together with the Feasibility Study, the “**Requisite Materials**”) to enable the Agency to make findings and determinations that the Facility qualifies as a “project” under the Act and that the Facility satisfies all other requirements of the Act, and such Requisite Materials are listed below and attached as Exhibit D hereof:

1. Proposed Mixed Use Development 440 Main Street, Village of Port Jefferson, Town of Brookhaven, Suffolk County, dated May 2019, prepared by VHB;
2. Supplemental Project and Benefits Information, dated July 11, 2019 by VHB;
3. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
4. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.; and

WHEREAS, the Agency’s Uniform Tax Exemption Policy (“**UTEP**”), which such UTEP is annexed hereto as Exhibit E, provides for the granting of financial assistance by the Agency for residential projects pursuant to Sections 3(A) and 7(D); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “**SEQR Act**” or “**SEQR**”), the Agency constitutes a “State Agency”; and

WHEREAS, the demolition of the existing structure located on the Land and the construction and operation of the Facility is an “Action” under SEQR; and

WHEREAS, the Planning Board of the Incorporated Village of Port Jefferson (the “**Planning Board**” and “**Lead Agency**”) reviewed the Facility as Lead Agency pursuant to the provisions of SEQR, and determined that the Action is an “Type I Action” for SEQR purposes, coordinated review with all potential Involved Agencies, and requested to act as Lead Agency for purposes of review of the Action under SEQR; and

WHEREAS, the Agency constitutes an “Involved Agency” (as defined in SEQR);

WHEREAS, no Involved Agency objected to the Planning Board acting as Lead Agency for purposes of review of the Facility under SEQR, and therefore, the Planning Board was the Lead Agency; and

WHEREAS, the Company submitted to the Lead Agency, Part I of the NYS DEC Environmental Assessment Form and other related environmental documents (collectively, the “**Requisite Environmental Materials**”), for the Action and the Lead Agency accepted such Requisite Environmental Materials; and

WHEREAS, the Lead Agency, following a coordinated review, adopted a positive declaration on December 4, 2018, requiring the completion of a Draft Environmental Impact Statement (the “**DEIS**”); and

WHEREAS, the Company submitted its DEIS, as prepared by VHB Engineering, Surveying, Landscape Architecture and Geology, P.C., to the Lead Agency and the Lead Agency determined the DEIS to be adequate on February 7, 2019; and

WHEREAS, on March 14, 2019, a public hearing was held on the DEIS, at which time all interested parties were given an opportunity to be heard; and

WHEREAS, on March 29, 2019, the public comment period on the DEIS ended; and

WHEREAS, on May 21, 2019, the Lead Agency accepted the Final Environmental Impact Statement (the “**FEIS**”); and

WHEREAS, the Lead Agency issued its Findings Statement on June 6, 2019 (the “**Findings Statement**”); and

WHEREAS, as an Involved Agency, the Agency must make its own findings under SEQR prior to funding, undertaking, or approving an Action; and

WHEREAS, the Agency has reviewed the Requisite Environmental Materials, the DEIS and the FEIS, the Findings Statement and the documents incorporated by reference therein, as well as such other documents as the Agency felt it necessary or appropriate to examine to adequately review the proposed Action; and

WHEREAS, the Agency finds that the Findings Statement attached hereto as Exhibit F accurately and adequately examines environmental issues presented by the Action; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company;

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(a) The Action is a Type I Action pursuant to SEQR.

(b) Based upon an independent review by the Agency of the DEIS, FEIS, and the Lead Agency’s Findings Statement, the Agency hereby concurs in the Lead Agency’s findings and decisions contained in the Findings Statement and hereby adopts the Findings Statement attached hereto as Exhibit F as its own Findings Statement under SEQR.

(c) Having considered the DEIS, FEIS, the Findings Statement, and such other documents as may be necessary or appropriate, the Agency certifies that:

(i) The requirements of 6 NYCRR Part 617 have been met;

(ii) Consistent with the social, economic and other essential considerations, from among the reasonable alternatives thereto, the Action is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including effects disclosed in the DEIS, FEIS, and the Findings Statement; and

(iii) Consistent with social, economic, and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the DEIS, FEIS, and the Findings Statement will be minimized or avoided by incorporating as conditions those mitigative measures which were identified as practicable.

(d) The basis for this decision is set forth in the Findings Statement attached as Exhibit F hereto and incorporated by reference herein, and thus all of the provisions of SEQR have been complied with.

Section 2. In connection with the demolition of the existing structure located on the Land and the acquisition, construction and equipping of the Facility the Agency hereby makes the following determinations and findings based upon the Agency's review of the information provided by the Company with respect to the Facility, including, the Company's Application, the Requisite Materials and other public information:

(a) There is a lack of affordable, safe, clean and modern rental housing in the Town of Brookhaven;

(b) Such lack of rental housing has resulted in individuals leaving the Town of Brookhaven and therefore adversely affecting employers, businesses, retailers, banks, financial institutions, insurance companies, health and legal services providers and other merchants in the Town of Brookhaven and otherwise adversely impacting the economic health and well-being of the residents of the Town of Brookhaven, employers, and the tax base of the Town of Brookhaven;

(c) The Facility, by providing such rental housing will enable persons to remain in the Town of Brookhaven 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 Town of Brookhaven which will increase the economic health and well-being of the residents of the Town of Brookhaven, help preserve and increase permanent private sector jobs in furtherance of the Agency's public purposes as set forth in the Act, and therefore the Agency finds and determines that the Facility is a commercial project within the meaning of Section 854(4) of the Act;

(d) The Facility will provide services, i.e., rental housing, which but for the Facility, would not otherwise be reasonably accessible to the residents of the Town of Brookhaven.

Section 3. The Agency hereby finds and determines:

(a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) The Facility constitutes a “project”, as such term is defined in the Act; and

(c) The demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility and the leasing of the Facility to the Company, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Town of Brookhaven, and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

(e) Based upon representations of the Company and counsel to the Company, the Facility conforms with the local zoning laws and planning regulations of the Town of Brookhaven, Suffolk County, and all regional and local land use plans for the area in which the Facility is located; and

(f) It is desirable and in the public interest for the Agency to lease the Facility to the Company; and

(g) The Company Lease will be an effective instrument whereby the Agency leases the Land and the Improvements from the Company; and

(h) The Lease Agreement will be an effective instrument whereby the Agency leases the Facility to the Company, the Agency and the Company set forth the terms and conditions of their agreement regarding payments-in-lieu of taxes, the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will describe the circumstances in which the Agency may recapture some or all of the benefits granted to the Company; and

(i) The Loan Documents to which the Agency is a party will be effective instruments whereby the Agency and the Company agree to secure the Loan made to the Company by the Lender.

Section 4. The Agency has assessed all material information included in connection with the Company’s application for financial assistance, including but not limited to, the cost-benefit analysis prepared by the Agency and such information has provided the

Agency a reasonable basis for its decision to provide the financial assistance described herein to the Company.

Section 5. In consequence of the foregoing, the Agency hereby determines to: (i) lease the Land and the Improvements from the Company pursuant to the Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) lease and sublease the Facility to the Company pursuant to the Lease Agreement, (iv) execute, deliver and perform the Lease Agreement, (v) grant a mortgage on and security interest in and to the Facility pursuant to the Loan Documents, and (vi) execute, deliver and perform the Loan Documents to which the Agency is a party.

Section 6. The Agency is hereby authorized to acquire the real property and personal property described in Exhibit A and Exhibit B, respectively, to the Lease Agreement, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 7. The Agency hereby authorizes and approves the following economic benefits to be granted to the Company in connection with the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility in the form of: (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$11,200,000 but not to exceed \$14,000,000 in connection with the financing of the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of the demolition of the existing structure located on the Land, the acquisition, construction and equipping of the Facility, (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$495,000, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof); provided, however, the Agency shall not provide any financial assistance to the Company in connection with the Excluded Premises.

Section 8. Subject to the provisions of this resolution, the Company is herewith and hereby appointed the agent of the Agency to acquire, demolish, construct and equip the Facility. The Company is hereby empowered to delegate its status as agent of the Agency to its agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to demolish the existing structure located on the Land, acquire, construct and equip the Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency solely for purposes of making sales or leases of goods, services and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agent of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. This agency appointment expressly excludes the purchase by the Company of any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The Company shall indemnify the

Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Agency. The aforesaid appointment of the Company as agent of the Agency to demolish the existing structure located on the Land, acquire, construct and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which the Company has received exemptions from sales and use taxes in an amount not to exceed \$495,000 in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time. The aforesaid appointment of the Company is subject to the completion of the transaction and the execution of the documents contemplated by this resolution.

Section 9. The Company is hereby notified that it will be required to comply with Section 875 of the Act. The Company shall be required to agree to the terms of Section 875 pursuant to the Lease Agreement. The Company is further notified that the tax exemptions and abatements provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this Authorizing Resolution are subject to termination and recapture of benefits pursuant to Sections 859-a and 875 of the Act and the recapture provisions of the Lease Agreement.

Section 10. The form and substance of the Company Lease, the Lease Agreement and the Loan Documents to which the Agency is a party (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 11.

(a) The Chairman, the Chief Executive Officer of the Agency or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Company Lease, the Lease Agreement and the Loan Documents to which the Agency is a party, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, the Chief Executive Officer of the Agency or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, the Chief Executive Officer of the Agency or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, the Chief Executive Officer of the Agency or any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 12. The officers, employees and agents of the Agency are hereby authorized and directed 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 Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, 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, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 13. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. The Company shall agree to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility.

Section 14. This resolution shall take effect immediately.

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

I, the undersigned Secretary of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the “**Agency**”), including the resolutions contained therein, held on the 17th day of July, 2019, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 17th day of July, 2019.

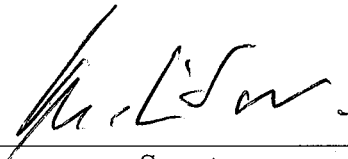
By:  _____
Secretary

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York State General Municipal Law will be held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on the 17th day of July, 2019, at 10:30 a.m. local time, at Port Jefferson Village Hall, 121 West Broadway, First Floor Conference Room, Port Jefferson, New York 11777, in connection with the following matters:

Brooks Partners LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of Brooks Partners LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of an approximately 1.14 acre parcel of land located at 440 Main Street, Port Jefferson, New York 11777 (SCTM# 0206-12.00-09.00-003.000) (the “**Land**”), the demolition of an approximately 16,836 square foot building located thereon, the construction of a three-story, approximately 65,300 square foot building thereon (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be leased by the Agency to the Company and used as a mixed-use apartment complex containing approximately forty-four (44) one-bedroom units and two (2) two-bedroom units, a private fitness room, lobby, lounge, recreation area, storage space, an indoor garage, outdoor parking and a roof deck (the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to or a leasehold interest in the Equipment and will sublease and lease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility, exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Agency.

A representative of the Agency will at the above-stated time and place hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the Facility. At the hearing, all persons will have the opportunity to review the application for financial assistance filed by the Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Dated: July 6, 2019

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON
JULY 17, 2019

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(BROOKS PARTNERS LLC 2019 FACILITY)

Section 1. James M. Tullo, Deputy Director of the Town of Brookhaven Industrial Development Agency (the “**Agency**”) called the hearing to order.

Section 2. James M. Tullo then appointed himself the hearing officer of the Agency, to record the minutes of the hearing.

Section 3. The hearing officer then described the proposed transfer of the real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility as follows:

Brooks Partners LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of Brooks Partners LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of an approximately 1.14 acre parcel of land located at 440 Main Street, Port Jefferson, New York 11777 (SCTM# 0206-12.00-09.00-003.000) (the “**Land**”), the demolition of an approximately 16,836 square foot building located thereon, the construction of a three-story, approximately 65,300 square foot building thereon (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be leased by the Agency to the Company and used as a mixed-use apartment complex containing approximately forty-four (44) one-bedroom units and two (2) two-bedroom units, a private fitness room, lobby, lounge, recreation area, storage space, an indoor garage, outdoor parking and a roof deck (the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to or a leasehold interest in the Equipment and will sublease and lease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording

taxes in connection with the financing or any subsequent refinancing of the Facility, exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Agency.

Section 4. The hearing officer then opened the hearing for comments from the floor for or against the proposed transfer of real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility. The following is a listing of the persons heard and a summary of their views:

Dr. Paul Casciano, Superintendent, Port Jefferson Union Free School District

Sean Leister, Deputy Superintendent, Port Jefferson Union Free School District

In response to the SEQR referral for 440 Main Street, Port Jefferson, NY, the Port Jefferson School District would like to submit the following concerns/comments:

1. There is a concern that construction would impact unrestricted access to the employee shared driveway. The driveway is one way and needed for arrival, parent meetings throughout the day, dismissal, after school activities, employee traffic between campuses and instant access for all emergency vehicles.
2. There is a concern that there might be potential dust/fumes/noise from the construction site that would impact the tennis courts and the athletic fields in the bowl area which are both also used for instructional purposes throughout the school day.
3. What will the estimated demographic impact be for potential students for the 44 1 bedroom apartments and 2 2 bedroom apartments?
4. Will there be any type of school tax abatement for the planned project?
5. How will the traffic to an already congested area of Port Jefferson Village, impact the daily operations of the High School/Middle School campus?

Section 5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at 11:00 a.m.

EXHIBIT C

Proposed PILOT Schedule

Schedule of PILOT Payments less any amounts payable by the Company in connection with any special ad valorem levies, special assessments or Special District Taxes and service charges levied against the Facility to the Town of Brookhaven, Village of Port Jefferson, Port Jefferson School District, Suffolk County and Appropriate Special Districts:

<u>Tax Year</u>	<u>Payment</u>
2021/2022	\$99,183
2022/2023	\$101,167
2023/2024	\$123,829
2024/2025	\$126,305
2025/2026	\$150,303
2026/2027	\$153,309
2027/2028	\$178,715
2028/2029	\$182,289
2029/2030	\$209,177
2030/2031	\$213,360
2031/2032 and thereafter	Full Taxation

EXHIBIT D

Requisite Materials

1. Proposed Mixed Use Development 440 Main Street, Village of Port Jefferson, Town of Brookhaven, Suffolk County, dated May 2019, prepared by VHB Engineering, Surveying, Landscape Architecture and Geology, P.C. (“**VHB**”).
2. Supplemental Project and Benefits Information, dated July 11, 2019 by VHB.
3. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.
4. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.

EXHIBIT D-1

Proposed Mixed Use Development 440 Main Street, Village of Port Jefferson,
Town of Brookhaven, Suffolk County

Proposed Mixed Use Development

440 Main Street, Village of Port Jefferson,
Town of Brookhaven, Suffolk County

PREPARED FOR

Brooks Partners, LLC
414 Main Street – Suite 202
Port Jefferson, NY 11777

PREPARED BY



**VHB Engineering, Surveying,
Landscape Architecture and
Geology, P.C.**
100 Motor Parkway, Suite 350
Hauppauge, New York 11788
631.787.3400

May 2019

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1

Introduction and Background

1.1 Project Overview

This report has been prepared at the request of Brooks Partners, LLC (the "Applicant"). The Applicant is seeking Town of Brookhaven Industrial Development Agency (IDA) benefits associated with its proposed redevelopment (the "Project") of the property located at 440 Main Street in the Village of Port Jefferson, Town of Brookhaven, Suffolk County (the "subject property") (see Figure 1). The subject property is known on the Suffolk County Tax Map as District 0206 – Section 012.00 – Block 09.00 – Lot 003.000. The subject property is currently improved with a one- and two-story, 16,836±-square-foot (SF) building containing various commercial and office uses, with associated gravel and paved-surface parking areas. The Project involves the demolition of existing structures and redevelopment of the subject property with a three-story, 65,300± SF mixed-use building, to include ground-floor commercial space with residential apartments above, and associated paved parking and landscaped areas. Specifically, the proposed building would include 46 residential apartments (approximately 44 one-bedroom and 2 two-bedroom) between the second and third story. The ground level of the proposed building would include 2,700± SF of commercial space divided among retail/office (1,200± SF) and take-out restaurant (1,500 ± SF) tenant spaces. Additional resident amenities, including a fitness room, lobby and lounge spaces, an indoor garage, and a private outdoor patio and lawn/garden area would also be located on the ground floor. Benefits are sought only for the residential rental housing component (and associated amenities); benefits are not sought in connection with the proposed commercial space.

The purpose of this report is to evaluate the Project with respect to the guidelines and standards applicable to Town of Brookhaven IDA approval of certain benefits (i.e., Sales Tax Exemption, Mortgage Recording Tax Exemption and Payment-in-lieu-of-Taxes [PILOT]). Specifically, the socioeconomic and community benefits and need for the Project, including economic activity during the construction and operating phases, are evaluated herein.

1.2 Comprehensive Planning Documents

The Project's consistency with relevant comprehensive planning documents is summarized below.

Village of Port Jefferson 2030 Comprehensive Plan Update

The Village of Port Jefferson 2030 Comprehensive Plan Update (the 2030 Plan) addresses the Village of Port Jefferson's (the Village) current and existing need for housing, transportation, parking, infrastructure, recreation, and others. Pertinent aspects of the *2030 Plan*, and the Project's consistency therewith, are outlined below.

Section 1.1.2 of the *2030 Plan* defines the Vision Statement for the comprehensive plan, which indicates, in pertinent part, the desires of the Village to "[c]reate a range of housing types and opportunities for different household incomes" and to "ensure that new growth and redevelopment enriches the aesthetics of and is in harmony with the existing fabric of the Village of Port Jefferson." The proposed action would diversify the Village's housing stock and provide a unique housing option, whereas 46 new apartments would be constructed, nearly all of which (approximately 44 units) are proposed to be one-bedroom units. This design would appeal to a segment of the Village's population and housing market in a way that single-family residences cannot, and will help meet the identified need of the Village for a broader range of housing options. Moreover, the design of the proposed building is such that it would improve the aesthetic and visual conditions of the subject property in a way that is complementary to, and enhances, the distinct character of the downtown neighborhood.

Section 2.4 of the *2030 Plan* discusses the residential market conditions of the Village at the time of the study, and confirms that the Village of Port Jefferson has the capacity to capture "at least 50 new housing units each year, or 250 housing units over five years, through new construction." This estimate is described within the *2030 Plan* as being a highly conservative estimate, adding that a greater level of development "could likely be supported and should be planned for over a medium-term period." The results presented in the *2030 Plan* support the proposed action, which – at 46 proposed apartment units – represents only a portion of the level of residential growth anticipated within the Village Comprehensive Plan.

This section of the *2030 Plan* further describes that the anticipated future residential apartment units "... can be developed above existing retail properties or on

apartments located on the first (ground) floor. There are lobby, lounge and fitness room amenities associated with the residential component of the mixed-use building which would occupy ground floor spaces. However, these uses are concentrated away from the Main Street road frontage, with the exception of the fitness room. The fitness room is envisioned as a residential amenity and not as a membership gym as might commonly occupy a retail space. However, the fitness room has been designed to resemble a traditional retail storefront such that the overall visual effect on the Main Street character will be equivalent to that of a typical first-floor retail space.

As demonstrated above, the Project is well aligned with the relevant goals and guidelines of the *Village of Port Jefferson 2030 Plan Comprehensive Plan Update*.

Town of Brookhaven Comprehensive Land Use Plan (Final 1996)

The *Town of Brookhaven Comprehensive Land Use Plan* (the *Brookhaven CLUP*) was prepared to address land use planning issues and serve as a guide for the future of the Town of Brookhaven. Although the proposed Project would be built within the Village of Port Jefferson, which is a separate municipality within the greater boundary of the Town, the demographic trends and needs of the population would be expected to generally apply within the Village as well. The plan proposed to control growth in such a way that maximizes environmental protection and enhances the community's quality of life, while providing for balanced economic growth and opportunity. The *Brookhaven CLUP* includes hamlet studies, goals, demographics data, and analyses of environmental resources, historic preservation, transportation and land use and zoning.

Section 4 of the *Brookhaven CLUP*, Demographics, details the projected changes in population, household size, age structure, density, and housing supply within the Town of Brookhaven. At the time the *Brookhaven CLUP* was created, the fully developed population was projected to be approximately 500,000 – 550,000 persons. To accommodate the increase of nearly 100,000 persons (from the 1990 population estimate of 407,871), the *Brookhaven CLUP* projected the construction of approximately 53,000 additional dwelling units. However, the *Brookhaven CLUP* acknowledged that the anticipated increase in population would be highly dependent on future development patterns, including the potential increase in subdivision approvals, multi family developments, and other variable factors. As such, the Town of Brookhaven could experience a greater increase in population than anticipated in the *Brookhaven CLUP*. According to the 2017 American Community Survey (ACS)¹, the Town of Brookhaven had a population of 487,731 and a total of 175,829 housing units as of 2017.

The Demographics section also outlines the decrease in household size seen throughout the Town. From 1980 to 1990, household size decreased to nearly 3.0 individuals per household. This trend towards 3.0 persons per household (or lower)

¹ U.S. Census Bureau, 2013–2017 American Community Survey 5-Year Estimates.

However, the plan acknowledges that this need is not being met. In response, the plan details how established communities are well suited for supporting multi-family and rental housing, and even cites Port Jefferson as an example of the success that can be achieved by promoting such housing options.

Consistent with the *Suffolk 2035 Plan's* recommendations, the Project includes the redevelopment of an underutilized property to provide 46 residential rental units of various sizes (approximately 44 one-bedroom and two two-bedroom units). The Project would thus increase the stock of rental units, specifically that of smaller, multi-family housing. In doing so, the Project will also build upon the successes already seen in Port Jefferson, as noted in the *Suffolk 2035 Plan*.

The *Suffolk 2035 Plan* also notes that while private sector employment has increased throughout the County, not all sectors of employment have experienced the same growth. Specifically, the *Suffolk 2035 Plan* states that "the County is losing high paying jobs and replacing them with lower skill and wage jobs." As described in *Anticipated Benefits of the Project*, below, implementation of the Project would create a total of approximately 129 jobs during construction and support approximately 10 jobs during operations, including jobs resulting from indirect and economic induced factors. Further, the Project would generate approximately \$7,424,293 in annual income during construction, with an average salary of approximately \$57,553, and approximately \$571,996 in annual income during operations, with an average salary of approximately \$56,417, according to the IMPLAN analysis presented herein. The subject site currently houses several commercial retail uses that directly employ a combined 6 workers; the Project would therefore generate an additional 4 jobs during the operational period (not including the proposed retail component, for which benefits are not sought). As further discussed below (see section entitled, *Anticipated Benefits of the Project*), the average operational salary generated by implementation of the Project would be greater than the median worker income in the Town of Brookhaven.

In addition, the Project includes measures that help achieve the goals related to environmental protection, such as an integrated stormwater management system. Details of the proposed stormwater system and other relevant environmental measures are provided in IDA Evaluation Criteria, below. Further, the Project will contribute to the growth of the Village's Main Street corridor, expanding the vibrant downtown community.

1.3 Rental Housing Trends and Data

The current need for rental housing on Long Island is well documented, as identified in the Comprehensive Planning Documents section, above. The need for rental housing is also underscored in the Regional Planning Association's (RPA) 2013 report, *Long Island's Rental Housing Crisis* (LI Rental Housing).² The LI Rental Housing

² Regional Plan Association, *Long Island's Rental Housing Crisis* (2013), (accessed May 2019) available online at <http://library.rpa.org/pdf/RPA-Long-Islands-Rental-Housing-Crisis.pdf>

vacancy in the Town of Brookhaven was 4.5 percent. If the vacancy rate in these areas have followed the national trend³, it is likely that there are even fewer available rental units today. In providing an additional 46 rental housing units, it is anticipated that the Project will provide a much-needed housing type.

1.4 Comparable Rental Developments

The Suffolk County Department of Economic Development and Planning (SCDEP) gathers information on apartment complexes with 10 or more units either existing or currently under construction in the County. According to SCDEP data,⁴ there are 100 apartment complexes with a total of 16,814 units (including those that were under construction at the time of publication) in the Town of Brookhaven. Of these apartment complexes, nine were in Port Jefferson, totaling 610 units. None of the apartment complexes within Port Jefferson are age-restricted nor include any element of affordable housing. In providing 46 rental apartments, the Project will increase the Village of Port Jefferson's rental stock by approximately 7.5%.

⁴ Suffolk County Department of Economic Development and Planning. *Apartment Complexes of 10 or More Units*. November 29, 2018, (accessed May 2019); available at <https://suffolkcountyny.gov/Portals/0/formsdocs/planning/Research/2018/AptS.pdf>

sought. Thus, the Project is eligible for a real property tax abatement pursuant to this guideline.

- b) *The extent to which the project will directly create or retain permanent private sector jobs as well as "temporary" jobs during the construction period. In addition, the level of secondary "multiplier" jobs that will be created or retained as a result of the project. Current policy is to rely on an in-depth cost benefit analysis of the project.*

VHB conducted an analysis of the jobs projected to be generated by the Project in the zip codes comprising the Town of Brookhaven using the IMPLAN software tool. This analysis was conducted for both the construction period and the operation of the Project. For the construction period, data inputs included the anticipated costs associated with construction of the Project (\$13,850,000) and the construction start year of 2019.⁶ Construction of the Project is expected to be completed in 2021, over an 18-month (approximate) construction period. Based on these inputs, the Project is estimated to generate approximately 129 jobs during the construction phase. These employment impacts for the construction phase are the sum effect of three different impact types – Direct Effect, Indirect Effect and Induced Effect. Direct Effect impacts are a series of (or single) production changes or expenditures made by producers/consumers as a result of an activity or policy. These initial changes are determined to be a result of an activity or policy (e.g., construction jobs directly related to on-site activity). Indirect Effect impacts are the impacts of local industries buying goods and services from other local industries (e.g., jobs created from construction-related spending). Induced Effect impacts are the response by an economy to an initial change (direct effect) that occurs through re-spending of income by a component of value added. Money is recirculated through the household spending patterns causing further local economic activity (e.g., jobs created through household spending of income from direct jobs). These jobs are broken down as follows:

⁶Construction costs are based on information provided by the Applicant in the Form Application for Financial Assistance Town of Brookhaven Industrial Development Agency dated March 28, 2019. These costs include construction of the entire building, with residential units on upper floors and retail on the first floor. Construction costs do not include land costs.

retention projects, and the possible failure to realize future economic benefits for attraction projects.

The IMPLAN analysis yields projections of the income from jobs that are anticipated to be created by the Project. This includes income from direct, indirect and induced jobs. The results of this analysis, for both the construction and operational phases of the Project are as follows:

Table 4 – Labor Income for Jobs Generated During Construction

Impact Type	Employment	Labor Income	Average Salary
Direct Effect	75	\$4,652,602	\$62,035
Indirect Effect	29	\$1,521,987	\$52,482
Induced Effect	25	\$1,249,703	\$49,988
Total Effect	129	\$7,424,293	\$57,553

Table 5 – Labor Income for Jobs Generated During Operation

Impact Type	Employment	Labor Income	Average Salary
Direct Effect	6	\$343,431	\$57,238
Indirect Effect	2	\$132,350	\$59,989
Induced Effect	2	\$96,215	\$49,790
Total Effect	10	\$571,996	\$56,417

As demonstrated in Table 4 and Table 5 above, the Project would generate approximately \$7,424,293 in labor (payroll) income for all jobs (direct, indirect and induced) during construction, with an average salary of approximately \$57,553. During Project operations, the Project would generate approximately \$571,996 in labor (payroll) income for all jobs (direct, indirect and induced), with an average salary of approximately \$56,417, according to the IMPLAN analysis.

The per capita income in the Town of Brookhaven is \$37,341 as per the 2013-2017 American Community Survey 5-Year Estimates, therefore, the jobs generated by the proposed Project would be greater than the current per capita income of the Town of Brookhaven. Additionally, the per capita income for Suffolk and Nassau Counties are \$40,277 and \$46,839, respectively. The jobs generated by the proposed Project would therefore be greater than the current per capita income for Long Island as well.

- d) *The total amount of capital investment and/or public benefit at the project will be a factor considered by the Board.*

The Proposed Project would provide capital investment of \$13,850,000 in construction costs, resulting in an overall economic output of approximately \$21

in the community. Existing natural vegetation, including a stand of maple trees along the western boundary of the subject property, would be retained. Additionally, extensive landscape plantings are proposed throughout the subject property, improving environmental conditions at the site.

The Project would be constructed in a manner similar to that of the Village's downtown, while simultaneously remaining compatible with the neighboring single-family residences. Accordingly, the aesthetic character of the Project would align with that of the overall surrounding community. Further, situated at the gateway to the Village's downtown, the Project would provide a more attractive and welcoming visual element to the Village's Main Street corridor than the current use.

Included in the Project is the construction of an integrated stormwater management system. As compared to the single drywell that currently exists at the property, the Project's stormwater management system, consisting of 145± shallow leaching chambers and four ponding areas, would improve stormwater management and reduce off-site runoff. As such, the system would minimize the amount of pollutants entering the soil and groundwater from runoff generated on site, and thereby improve environmental conditions at the site.

- i) *All other housing projects will be at the discretion of the IDA Board of Directors. In connection with such housing projects, the IDA may engage the services of a consultant to help the Agency determine appropriate PILOT levels based upon such relevant factors including, but not limited to the total project costs, projected rental income, unit size, number and configuration, and any age and/or income restrictions or qualifications with respect to the project.*

Total Project cost is anticipated to be \$13,850,000. The Project will create 46 rental housing units (approximately 44 one-bedroom units and two two-bedroom units). With 46 units comprising 45,900±SF of building area, units will average 1,000 SF of gross floor area per unit. Housing units are expected to be priced at market-rate and are not expected to include any age and/or income restrictions or qualifications.

2.2 Other Project Benefits

Currently, the 1.14± acre subject property is improved with a one- and two-story building containing several commercial retail uses. The building is dated in its appearance, and as such, is inconsistent with the more modern buildings immediately adjacent. Additionally, as a strictly commercial facility in a prominent downtown location, the subject property is underutilized. The Project will better utilize the subject property, establishing rental housing above ground-floor commercial retail uses. In doing so, the Project will invigorate the site in a manner that will enhance the character of the neighborhood and advance relevant goals of the Village's Comprehensive Plan. The Project would be especially beneficial in supporting the Comprehensive Plan's housing and development goals, as previously described.

3

Conclusions

For various reasons discussed above, there is currently a high demand for rental housing in the Town of Brookhaven and the Port Jefferson area. As demonstrated by Census data, rental options are not plentiful on Long Island. In fact, the availability of rental housing on Long Island lags behind other metropolitan counties, even as demographic shifts have led to a higher demand for diversified housing options.

The Project would be consistent with identified goals, objectives and priorities in *the 2030 Plan*, *the Brookhaven CLUP*, and *the Suffolk 2035 Plan*, which all identify the need for additional rental housing. The Project would add a type of housing (rental apartment) that is in high demand throughout the Town of Brookhaven and Long Island, as indicated by the low vacancy rates identified in Census Data. By providing 46 residential rental units, the Project will cater to residents seeking such housing and will encourage these individuals to remain in the region, rather than locate elsewhere.

An IMPLAN analysis was undertaken to evaluate the anticipated employment and economic benefits of the Project during construction and operation phases. This analysis indicates that the Project will generate a total of approximately 129 jobs (including direct, indirect and induced jobs) during the 18-month construction period, with a total labor (payroll) income of approximately \$7,424,293. Further, it is estimated that the operation phase of the Project upon completion of construction would potentially generate a total of approximately 10 jobs (including direct, indirect and induced jobs), with a total labor (payroll) income of approximately \$571,996. In addition, the Applicant estimates the total Project costs at \$13,850,000, which is a significant investment in the Village of Port Jefferson and the Town of Brookhaven.

EXHIBIT D-2

Supplemental Project and Benefits Information

EXHIBIT D-2

Supplemental Project and Benefits Information



July 11, 2019

Ref: 26692.00

Frederick C. Braun, III, Chairman,
Town of Brookhaven Industrial Development Agency
Town Hall
1 Independence Hill
Farmingville, New York 11738

Re: Supplemental Project and Benefits Information
Application of Brooks Partners LLC for Financial Assistance
Proposed Mixed-Use Development at 440 Main Street
Incorporated Village of Port Jefferson, Suffolk County, New York

Dear Chairman Braun and Members of the Board,

As requested by your legal counsel, William F. Weir, Esq., of Nixon Peabody LLP, please allow the following information to supplement the Benefits Analysis for the proposed mixed-use development at 440 Main Street in the Incorporated Village of Port Jefferson prepared by VHB Engineering, Surveying, Landscape Architecture and Geology, P.C. (VHB), dated May 2019 (hereinafter, the "Benefits Analysis"). This supplemental information and the Benefits Analysis are provided for your use and reference in considering the application by Brooks Partners LLC for financial assistance in connection with the above-referenced proposed project.

Proposed Unit Mix and Rental Rates

As described in the Benefits Analysis, the proposed project would include 44 one-bedroom apartment units and 2 two-bedroom units for a total of 46 residential rental apartments.

Monthly rental rates for the proposed one- and two-bedroom will vary with the market. The applicant expects monthly rents will range between \$2,300-\$2,650 for one-bedroom units and \$3,300-\$3,600 for two-bedroom units. Comparing these rates to those of other nearby existing developments, these rental rates would price the units somewhat higher than the older units in the Port Jefferson area (e.g., the adjacent Barnum House) and other newer units in upper Port Jefferson (e.g., The Hills at Port Jefferson), and lower than the new luxury units at The Shipyard. The proposed project does not include the set-aside of any units for affordable housing—all proposed apartment units would be offered as market-rate units.

Engineers | Scientists | Planners | Designers

100 Motor Parkway
Suite 350
Hauppauge, New York 11788
P 631.787.3400
F 631.813.2545



School-Aged Children Generation

As provided by the applicant, the proposed apartment units are designed to be marketable to singles, couples, retirees and empty nesters, rather than families. This is evident in the proposed unit mix, which is comprised almost entirely of one-bedroom units. The applicant anticipates that these units, at this location in the Village of Port Jefferson downtown, will be particularly attractive to young professionals employed at the nearby State University of New York at Stony Brook and the Stony Brook University Hospital, with easy access to that and other area employment centers as well as shopping, dining and entertainment options within the Village. As a result of the target market and design of the proposed development, the number of school-aged children that would be generated is expected to be extremely low. Moreover, as provided by the applicant (one of the Brooks Partners LLC partnership members has interests in other existing apartment buildings in the area), the adjacent Barnum House development currently has only one school-aged child within its 30 units, and The Hills at Port Jefferson development currently has zero school-aged children within its 74 units.

To estimate the number of school-aged children that may be expected to reside at the proposed development, VHB has referenced data and multipliers from the study by the Edward J. Bloustein School of Planning and Public Policy at Rutgers University entitled, *Residential Demographic Multipliers, Estimates of the Occupants of New Housing (Residents, School-Age Children, Public School-Age Children) by State, Housing Type, Housing Size and Housing Price* (June 2006) (hereinafter, the "Rutgers Study"), which remains the most comprehensive relevant study available and only the study of its kind that differentiates among housing types and rental prices for housing in New York State. Based on the Rutgers Study published factors for the proposed housing type, size and price (i.e., 0.07 children per each one-bedroom unit and 0.16 children per each two-bedroom unit), the proposed 46-unit development would be expected to generate only approximately four school-aged children.

Since the time of the Rutgers Study, an increasing number of other studies have analyzed the numbers of school-aged children residing in multifamily housing on Long Island. The most recent such study was published in April 2019 by the Real Estate Institute at Stony Brook entitled, *Market Rate Apartment School Aged Children Study* (hereinafter, the "REI Study"). This study found that among the several multifamily developments studied, which included over 4,000 apartment units constructed since 2003, on average there resides 0.09 school-aged children per unit in multifamily housing on Long Island. For the proposed 46-unit development, this factor suggests that only approximately four school-aged children would be generated, similar to the results of the Rutgers Study. It is expected that the estimate based on the average of all units analyzed in the REI study is a conservatively high estimate, as the proposed unit mix has an extraordinarily high proportion of one-bedroom units (i.e., 96 percent of the proposed units are one-bedroom units).

Overall, the proposed development is expected to generate an extremely low number of school-aged children. Accordingly, any potential burden on the local school district (i.e., the Port Jefferson Union Free School District [UFSD]) due to the costs to educate school-aged children residing at the subject property would be similarly negligible. Moreover, we respectfully note that the Port Jefferson UFSD has a K-12



enrollment of approximately 1,077 students (2017-18 school year),¹ which has declined by over 200 students since the recent historic peak enrollment of 1,287 students occurred in the 2008-09 school year.² This data suggests that the approximately four (or possibly fewer) school-aged children to be generated by the proposed development would represent an insignificant increase in enrollment as compared to existing conditions, i.e., less than a 0.4 percent increase. This data further suggests that, following an extended period of declining enrollment, the Port Jefferson UFSD is likely able to easily absorb this small potential enrollment increase.

Property Taxes and Proposed PILOT Agreement

Under existing conditions, the subject property, known on the Suffolk County Tax Map as District 0206 – Section 012.00 – Block 09.00 – Lot 003.000 currently generates tax revenues to the various taxing jurisdictions as indicated on the 2019 Town of Brookhaven and Village of Port Jefferson tax bills, respectively, as follows:

Table 1: Property Tax Summary (2019)

Village of Port Jefferson Tax Bill	
Village Property Taxes	\$ 3,894.71
Beach and Waterfront Restoration	\$ 64.52
Port Jefferson Ambulance	\$ 200.23
Business Improvement District	\$ 613.55
Total Village Taxes	\$ 4,773.01
Town of Brookhaven Tax Bill	
School Taxes	
School District	\$ 19,751.81
Library District	\$ 1,681.16
County Taxes	
Suffolk County	\$ 336.05
Suffolk County Police Department	\$ 5,324.80
Town Taxes	
Townwide Fund	\$ 677.56
Town Highway	\$ 196.30
Other Taxes	
Other Taxes	\$ 2,685.15
Total Town Taxes	\$ 30,652.83
Total Property Taxes	\$ 35,425.84

¹ New York State Education Department enrollment data available at <https://data.nysed.gov/enrollment.php?year=2018&instid=80000037638> , accessed July 11, 2019.

² New York State Education Department enrollment data available at <https://data.nysed.gov/files/reportcards/archive/2010-11/AOR-2011-580206020000.pdf> , accessed July 11, 2019.

Town of Brookhaven Industrial Development Agency
Application of Brooks Partners LLC
Ref: 26692.00
July 11, 2019
Page 4



The application by Brooks Partners LLC contained a proposed Payment in Lieu of Taxes (PILOT) payment schedule, which proposes a PILOT payment of \$99,183 in Year 1 of the PILOT. This proposed payment equates to a substantial 180 percent increase over the existing total property tax revenues and yields approximately \$63,757 in additional revenues to the taxing jurisdictions in the first year of the PILOT. It is noted that the non-residential project components (i.e., retail/office, restaurant) are not included in the application for financial assistance, which would therefore generate additional tax revenues pursuant to a standard assessment over and above the proposed Year 1 payment. The proposed PILOT payments would increase year over year until Year 10 of the agreement, at which time the payment would reach \$213,360, which is roughly six times the combined total Village and Town taxes generated by the subject property under existing conditions. Accordingly, the proposed project is expected to result in substantial benefits to the respective taxing jurisdictions.

We respectfully submit that the May 2019 Benefits Analysis and the supplemental information provided herein will assist in your review of the application by Brooks Partners LLC. Thank you for your consideration.

Sincerely,

VHB Engineering, Surveying, Landscape Architecture and Geology, P.C.

A handwritten signature in black ink, appearing to read "D. Wortman", with a large, sweeping flourish extending to the right.

David M. Wortman

Senior Environmental Manager
dwortman@vhb.com

CC: Lisa Mulligan, CEO, Brookhaven IDA
W. Weir, Esq., Nixon Peabody
E. Russo, Esq., Van Brunt Juzwiak & Russo
Brooks Partners LLC

EXHIBIT D-3

New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential
Developments for IDA Benefits

New York Law Journal

Real Estate Trends

WWW.NYLJ.COM

VOLUME 257—NO. 54

An ALM Publication

WEDNESDAY, MARCH 22, 2017

ZONING AND LAND USE PLANNING

Eligibility of Residential Developments for IDA Benefits

By
Anthony S.
Guardino



It has been nearly 50 years since the New York State Legislature enacted legislation authorizing industrial development agencies (IDAs) for the purpose of promoting economic development. Now, towns, cities, and counties throughout the state have created their own IDAs under General Municipal Law (GML) Article 18-A (the IDA Act) and use them to encourage—and to financially assist—a wide variety of real estate developments, often to great success.

In many instances, however, an IDA's efforts are met with objections, both in and out of court. Recently, for example, tax benefits afforded by a town's IDA to the Green Acres Mall on Long Island aroused community criticism, and led New York State Comptroller Thomas DiNapoli to announce that he would audit the IDA to determine its compliance with policies and procedures related to its approval of the project.

There also continues to be disputes over the scope of projects that may receive IDA benefits. Last August, the Supreme Court, Seneca County, rejected a challenge to a decision by the Seneca County IDA to provide tax benefits for a casino being built in the county. *Nearpass v. Seneca County Industrial Development Agency*, 53 Misc. 3d 737 (Sup.Ct. Seneca Co. 2016). The petitioners argued that the casino was not a project defined in the IDA Act and, therefore, that it was ineligible for IDA benefits. They pointed out, among other things, that when the IDA Act first was enacted, casinos were prohibited in New York, and after casinos were allowed by amendment to the New York Constitution, the IDA Act was not amended to include casinos as a project entitled to IDA benefits.

The court was not persuaded and decided, instead, that the casino facility was a commercial project under the IDA Act and, in particular, that it also was a recreation facility within the purview of GML Section 854(9).

Perhaps more surprising than a dispute over the eligibility of a casino to receive IDA benefits was a recent court case that asked whether a residential development could qualify for IDA benefits—an issue of statewide significance. In *Matter of Ryan v. Town of Hempstead Industrial Development Agency*, Index No. 5324/16 (Sup.Ct. Nassau Co. Jan. 27, 2017), the Supreme Court, Nassau County, held that a residential apartment building project fell within the definition of a project for which IDA benefits may be granted.

After first providing background on the IDA Act, this column will discuss the court's decision in *Matter of Ryan* and its implications.

The IDA Act

When the legislation governing the creation, organization, and powers of IDAs in New York State was enacted in 1969, it provided that its general purpose was "to promote the economic welfare of [the state's] inhabitants and to actively promote, attract,

ANTHONY S. GUARDINO is a partner with Farrell Fritz in the firm's Hauppauge office.

encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration." This intent was further evidenced by the original provision of GML Section 858, which provided that:

The purposes of the agency shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the state of New York and to improve their standard of living.

The decision by the Nassau County Supreme Court in *Matter of Ryan* provides confirmation that residential developments are eligible to receive industrial development agency benefits.

In approving the bill, then-Governor Nelson Rockefeller noted that "industrial development agencies provide one means for communities to attract new industry, encourage plant modernization and create new job opportunities." McKinney's 1969 Session Laws, Vol. 2, p. 2572.

The original legislation has been amended a number of times since 1969 to broaden the scope of permissible IDA activities. For example, the definition of project was expanded to specifically include construction of industrial pollution control facilities (L 1971, ch 978), winter recreation facilities and then recreation facilities generally (L 1974, ch 954; L 1977, ch 630), horse racing facilities (L 1977, ch 267), railroad facilities (L 1980, ch 803) and educational or cultural facilities (L 1982, ch 541).

As noted above, however, it has not been amended to specifically include casinos. And it also does not specifically include residential developments.

In 1985, however, the New York state comptroller's office was asked by the village attorney for the village of Port Chester whether construction of an apartment complex was a commercial purpose within the meaning of GML Section 854(4) and, thereby, whether it was a proper project for industrial development bond financing. In response, the Comptroller issued Opinion No. 85-51, 1985 N.Y. St. Comp. 70 (Aug. 16, 1985) (the "comptroller's opinion").

In the comptroller's opinion, the comptroller's office explained that, at its inception, the IDA Act's primary thrust was to promote the development of commerce and industry as a means of increasing employment opportunities.

The comptroller's opinion then reasoned that for an apartment complex to qualify as an eligible project under Article 18-A, it had to promote employment opportunities and prevent economic deterioration in the area served by the IDA.

The comptroller's opinion added that the comptroller's office was "not in a position to render an opinion" as to whether a project that consisted of the construction of an apartment complex was a commercial activity within the meaning of Article 18-A. Rather, it continued, such a determination "must be made by local officials based upon all the facts relevant to the proposed project."

Any such determination, the comptroller's opinion concluded, had to take into account the stated purposes of the IDA Act: "the promotion of employment opportunities and the prevention of economic deterioration."

When this issue reached the court in *Triple S. Realty v. Village of Port Chester*, Index No. 22355/86 (Sup. Ct. Westchester Co. Aug. 19, 1987), the Westchester County Supreme Court held that residential construction may be eligible for industrial development agency benefits if such construction "would increase employment opportunities and prevent economic determination in the area served by the IDA."

The decision by the Nassau County Supreme Court in *Matter of Ryan* provides further confirmation that

residential developments certainly are eligible to receive IDA benefits.

'Matter of Ryan'

The case arose after the Town of Hempstead Industrial Development Agency (TOHIDA) granted financial and tax benefits and assistance to Renaissance Downtowns UrbanAmerica, with respect to the construction of a new 336-unit residential apartment complex in the village of Hempstead on Long Island. That was Phase 1 of a multi-phase revitalization project that was planned to include additional mixed-use buildings and parking facilities.

The financial benefits and assistance granted by the TOHIDA included:

- exemptions from mortgage recording taxes for one or more mortgages;
- securing the principal amount not to exceed \$70 million;
- a sales and use tax exemption up to \$3.45 million in connection with the purchase/lease of building materials, services, or other personal property for the project; and
- abatement of real property taxes for an initial term of 10 years pursuant to a payment in lieu of taxes (PILOT) agreement.

Six petitioners, including a trustee for the village of Hempstead, challenged the TOHIDA's resolution in an Article 78 proceeding, arguing that an IDA could not grant benefits

for a project that was residential, either in whole or in part, in nature.

For their part, the respondents contended that the development of a residential rental building fell within the ambit of the statutory definition of a project entitled to receive an IDA's financial assistance and benefits in that it promoted "employment opportunities" and prevented "economic deterioration" in the area served by the IDA.

The court agreed with the respondents and dismissed the petition.

In its decision, the court noted that the comptroller's opinion had observed that the determination of whether construction of an apartment complex was a commercial activity within the meaning of the IDA Act had to be made by local officials based on facts relevant to the proposed project.

The court then pointed out that the TOHIDA had approved Renaissance's application for assistance with respect to the first phase of the revitalization project based on the TOHIDA's findings, that, among other things:

- the town of Hempstead was in need of attractive multi-family housing to retain workers in the town and attract new business;
- a healthy residential environment located in the town was needed to further economic growth;
- there was a lack of affordable, safe, clean multi-family housing within the town; and

- the facility would provide the nucleus of a healthy residential environment, and would be instrumental and vital in the further growth of the town.

Moreover, the court continued, the TOHIDA also found that the development of the first phase of the facility would "promote and maintain the job opportunities, health, general prosperity and economic welfare" of the town's citizens and "improve their standard of living."

Given that the project promoted employment opportunities and served to combat economic deterioration in the area served by the TOHIDA, the court upheld the TOHIDA's decision as rationally based and not arbitrary or capricious, an abuse of discretion, or an error of law.

Conclusion

IDA benefits can play an important role in real estate development. For nearly five decades, they have benefited New Yorkers in numerous situations. As the comptroller's office and the courts have recognized, a project—including a residential project—that demonstrates that it promotes employment opportunities and prevents economic deterioration is eligible to receive IDA benefits.

EXHIBIT D-4

Ryan et al. v. Town of Hempstead Industrial Development Agency et al.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE

-----X TRIAL/IAS PART 13
In the Matter of DONALD L. RYAN, FLAVIA
IANNACCONI, JAMES DENON, JOHN M. WILLIAMS,
REGINAL LUCAS and ROBERT DeBREW, JR.,

INDEX # 5324/16

Petitioners,

Mot. Seq. 1
Mot. Date 9.13.16
Submit Date 11.17.16

For A Judgment Pursuant to Article 78 of the New York
Civil Practice and Rules,

XXX

-against-

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT
AGENCY, RENAISSANCE DOWNTOWNS
URBANAMERICA, LLC, and RDU A PARCEL 1 LLC,

Respondents.

-----X

The following papers were read on this motion:	Papers Numbered
Notice of Petition, Affidavits, Exhibits, Memorandum Annexed.....	1,2
Verified Answers.....	3,4,5
Opposing Affidavits.....	6,7,8,9,10,11,12
Reply Affidavits.....	13, 14
Sur-Reply Affidavit.....	15
Hearing Record (3 Vols.).....	16

Application by petitioners pursuant to Article 78 to invalidate as *ultra vires* and to void the May 18, 2016 resolution passed by the Town of Hempstead Industrial Development Agency (TOHIDA) is decided as hereinafter provided.

In this Article 78 proceeding, petitioners seek to invalidate the resolution passed by respondent TOHIDA on May 18, 2016, which granted financial and tax benefits and assistance to respondent Renaissance Downtowns UrbanAmerica, LLC (Renaissance) *vis-a-vis* construction of a new 336 unit residential apartment complex on the northwest corner of the intersection of Washington and Front Streets (Phase 1 of the multi-phase Village of Hempstead downtown revitalization project¹ which was planned to include additional mixed use buildings/parking facilities). The Phase I property was a tax exempt Village property for at least 50 years until December 15, 2015 when it was acquired by respondent Renaissance.

The financial benefits and assistance granted include:

exemptions from mortgage recording taxes for one or more mortgages securing the principal amount not to exceed \$70,000,000;

sales and use tax exemption up to \$3,450,000 in connection with the purchase/lease of building materials, services or other personal property for the project;

abatement of real property taxes for an initial term of ten years pursuant to Payment in Lieu of Taxes Agreement (PILOT).

Based on the theory that the resolution was affected by an error of law, i.e., that residential apartment buildings are not included in the type of project or facility that is eligible for financial assistance under the General Municipal Law Article 18-A (Industrial Development Act [the IDA or the Act]), petitioners seek to invalidate the subject resolution as *ultra vires*/void.

In opposition, respondents first seek dismissal of the petition based on its alleged multiple fatal flaws including petitioners' lack of standing; failure to raise the *ultra vires* issue in the administrative proceeding before respondent TOHIDA; and failure to serve the attorney general in accordance with CPLR 7804(e).

The alleged flaws are not fatal and do not provide a basis for dismissal. Petitioners have standing to maintain an action for equitable or declaratory relief under State Finance Law § 123-b *vis-a-vis* the issue of whether the project herein falls within the definition of a "project" for which IDA benefits may be granted (*see Nearpass v Seneca County Indus. Dev. Agency*, 52 Misc 3d 533 [Sup Ct, Seneca County 2016 Falvey, J.]; *Dudley v. Kerwick*, 52 NY2d 542 [1981]; *cf.*

¹The development as outlined in the Appraisal Report (Exhibit "2" to the Petition) was approved in a unanimous 5-0, bi-partisan vote by the Village of Hempstead Board. It includes the construction of, among other things: residential units, structured parking, retail space, medical office building, mixed used artist loft with grade and basement level supermarket, surface parking office space, senior independent living apartment building, hotel and restaurant space.

Kadish v. Roosevelt Raceway Assoc., 183 AD2d 874, 875 [2d Dept 1992] [no standing under State Finance Law § 123-b (1) to challenge financing and acquisition of property by TOHIDA through bond issuance because statute specifically excludes bond issuance by a public benefit corporation). Further, the *ultra vires* issue was, in fact, raised in the administrative proceeding before respondent TOHIDA (Record: Vol, 3 Tab 25, pp 113-114), and the Nassau County Regional Office of the New York State Attorney General rejected service of the petition on the ground that the office did not represent respondent TOHIDA.

In further support of its dismissal, movants argue that the petition fails to state a viable cause of action as it is based on the false premise that an Industrial Development Agency may not grant benefits for a commercial project that is residential, either in whole or in part, in nature.

For the reasons which follow, the petition must be dismissed.

Pursuant to General Municipal Law § 858, an Industrial Development Agency

“shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities . . . and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living.”

An Industrial Development Agency is thus a “governmental agenc[y] or instrumentalit[y] created for the purpose of preventing unemployment and economic deterioration (General Municipal Law § 852) and to “provide one means for communities to attract new industry, encourage plant modernization and create new job opportunities” (Governor’s Mem., 1969 McKinney’s Session Laws of N.Y. at 2572).

According to respondents, the development of a residential rental building falls within the ambit of the statutory definition of a project,² entitled to financial assistance and benefits, as set forth in § 854(4) of the General Municipal Law in that it “promotes employment opportunities and prevents economic deterioration in the area served by the industrial development agency” (Opns. St. Comp. No. 85-51 [N.Y.S. Cptr., 1985 WL 25843]).

In the opinion of the State Comptroller, the determination of whether construction of an apartment complex is a commercial activity within the meaning of the statute must be made by

²As set forth in § 854(4) the term “project” is broadly defined to include, in relevant part, “any land, any building or other improvement, and all real and personal properties located within the state of New York and within or outside or partially within and partially outside the municipality for whose benefit the agency was created. . . .”

local officials based upon facts relevant to the proposed project (*Id.* ["Local officials must determine, based upon all the relevant facts, whether construction of an apartment complex will promote employment opportunities and prevent economic deterioration. . . ."]). Respondents argue that TOHIDA acted within the scope of its authority in resolving to provide IDA assistance to the project since it would promote job creation and growth in a distressed area of the Village of Hempstead and serve as the first physical manifestation of the Village's Downtown Revitalization plan and a catalyst for future phases.

Here, the record establishes that a duly noticed public hearing was held regarding respondent Renaissance's application for TOHIDA assistance with respect to the first phase of the \$2.5 billion Hempstead Revitalization project for which site plan approval was already in place and a building permit issued. The resolution was granted based on respondent TOHIDA's findings, that, among other things:

- (a) The Town of Hempstead is in need of attractive multi-family housing to retain workers in the Town and attract new business;
- (b) a healthy residential environment located in the Town of Hempstead is needed in order to further economic growth;
- (c) there is a lack of affordable, safe, clean multi-family housing within the Town of Hempstead;
- (d) the facility will provide the nucleus of a healthy residential environment, and will be instrumental and vital in the further growth of the Town of Hempstead.

Respondent TOHIDA also found that:

the acquisition, construction and equipping of the Phase I Facility will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Hempstead and the State of New York and improve their standard of living and thereby serve the public purposes of the Act;

the project conformed with local zoning laws and planning regulations of the Town of Hempstead; and

the project will not have a significant effect on the environment as determined in accordance with Article 8 of the Environmental Conservation Law and regulations promulgated thereunder.

The allegations proffered in opposition to the resolution, regarding traffic congestion; additional garbage/sewage; additional burden of increased student population in an already overcrowded/underfunded school district; burden of increased financial costs of municipal services to support increased population, are speculative and lack merit in the face of reasoned evaluation of the project by respondent TOHIDA as set forth in the record. As stated in the affidavit of Wayne J. Hall, Sr., Mayor of the Incorporated Village of Hempstead and Chairman of the Village Community Development Agency:

“the IDA benefits awarded to Renaissance for this particular Phase I of the development are critically important to the revitalization of the Village of Hempstead’s downtown area, and are essential to the twin goals of preventing any further physical and economic deterioration of the area, as well as promoting employment opportunities to the Village.”

As stated in the Socio-Economic Impact of the Village of Hempstead’s Revitalization Plan report, dated March 31, 2016, (Exhibit “A” to the Affidavit of Donald Monti in Opposition to Petition):

“Upon completion, the overall revitalization of the Village of Hempstead will have generated an estimated \$4 billion in economic activity, comprised of economic activity during and after the construction period.

Nearly \$3 billion of primary and secondary economic activity will be generated from construction of the development encompassing 5 million square feet, comprising 2.8 million square feet of 3,500 residential units and 2.2 million square feet of mixed use, retail, hospitality, office and other commercial uses.

This will result in new socio-economic improvements to the Village of Hempstead that will provide much needed housing for Long Island’s young professionals and active adults, and create during the construction period as many as 22,000 temporary construction and secondary jobs generating nearly \$1.4 billion in wages.

When completed, the revitalization will create approximately 6,000 permanent and 4,500 secondary jobs generating \$498 million in wages of which 1,500 of the permanent jobs generating \$125 million in wages projected to be held by Village of Hempstead residents. Thus, in total, the construction activity and resulting permanent jobs and their related secondary economic impacts are expected to generate nearly \$4 billion in primary and secondary economic impact, and over the 20 year PILOT period \$142 million in new county, town, school and village property taxes, and \$43.5 million in new county sales taxes.”

In reviewing the actions of an administrative agency, courts must assess whether the determination was the result of an error of law or was arbitrary, capricious, or an abuse of discretion such that the actions at issue were taken without sound basis in reason and without regard to the facts (*Matter of County of Monroe v Kaladjian*, 83 NY2d 185, 189 [1994], citing *Matter of Pell v Bd. of Educ.*, 34 NY2d 222, 231 [1974]; *Akpan v Koch*, 75 NY2d 561, 570-71 [1990]; *Matter of Calvi v Zoning Bd. of Appeals of the City of Yonkers*, 238 AD2d 417, 418 [2d Dept 1997]). The agency's determination need only be supported by a rational basis (*Matter of County of Monroe v Kaladjian*, *supra*; *Matter of Jennings v Comm. N.Y. Dept. of Social Svcs.*, 71 AD3d 98, 108 [2d Dept 2010]). If the determination is rationally based, a reviewing court may not substitute its judgment for that of the agency even if the court might have decided the matter differently (*Matter of Savetsky v Zoning Bd. of Appeals of Southampton*, 5 AD3d 779, 780 [2d Dept 2004]; *Matter of Calvi v Zoning Bd. of Appeals of the City of Yonkers*, *supra*). It is not for the reviewing court to weigh the evidence or reject the choice made by the agency where the evidence conflicts and room for choice exists (*Matter of Calvi v Zoning Bd. of Appeals of the City of Yonkers*, *supra*, citing *Toys "R" Us v Silva*, 89 NY2d 411, 424 [1996]; *Akpan v Koch*, *supra*).

The record at bar establishes that in adopting the challenged resolution following a public hearing, review of Renaissance's application, and the environmental effects, respondent TOHIDA did not act in excess of its jurisdiction or beyond the scope of its authority; i.e., *ultra vires*. Nor was TOHIDA's decision after review of all of the circumstances to adopt the resolution finding that the Phase I facility constituted a "project" under the IDA affected by an error of law as would warrant relief under Article 78.

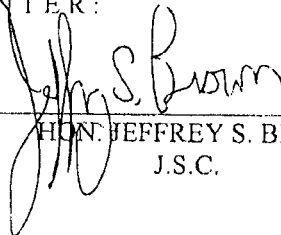
Where, as here, the project at issue promotes employment opportunities and serves to combat economic deterioration in an area served by an industrial development agency, a finding that the project falls within the ambit of the IDA is rationally based; neither arbitrary or capricious or an abuse of discretion, nor an error of law.

Accordingly, the petition is **denied** and the proceeding is hereby **dismissed**.

This constitutes the decision and order of this court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
January 25, 2017

ENTER:



HON. JEFFREY S. BROWN
J.S.C.

Attorney for Petitioner
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EXHIBIT E

Town of Brookhaven Industrial Development Agency Uniform Tax Exemption Policy

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
UNIFORM TAX EXEMPTION POLICY

SECTION 1. PURPOSE AND AUTHORITY. Pursuant to Section 874(4)(a) of Title One of Article 18-A of the General Municipal Law (the “Act”), Town of Brookhaven Industrial Development Agency (the “Agency”) is required to establish a uniform tax exemption policy applicable to the provision of any financial assistance of more than one hundred thousand dollars to any project. This uniform tax-exemption policy was adopted pursuant to a resolution enacted by the members of the Agency on June 20, 2012.

SECTION 2. DEFINITIONS. All words and terms used herein and defined in the Act shall have the meanings assigned to them in the Act, unless otherwise defined herein or unless the context or use indicates another meaning or intent. The following words and terms used herein shall have the respective meanings set forth below, unless the context or use indicates another meaning or intent:

(A) “Administrative Fee” shall mean a charge imposed by the Agency to an Applicant or project occupant for the administration of a project.

(B) “Affected Tax Jurisdiction” means, with respect to a particular project, Suffolk County, the Town, any Village or applicable School District, Fire Districts or other taxing jurisdictions in which such project is located which will fail to receive real property tax payments or other tax payments which would otherwise be due with respect to such project due to a Tax Exemption obtained by reason of the involvement of the Agency in such project, unless the Affected Tax Jurisdictions shall agree in writing to add or subtract additional governmental entities thereto.

(C) “Agency Fee” shall mean the normal charges imposed by the Agency on an Applicant or a project occupant to compensate the Agency for the Agency’s participation in a project. The term “Agency Fee” shall include not only the Agency’s normal application fee and the Agency’s normal Administrative Fee, but also may include (1) reimbursement of the Agency’s expenses, (2) rent imposed by the Agency for use of the property of the Agency and (3) other similar charges imposed by the Agency.

(D) “Applicant” shall mean an applicant for financial assistance.

(E) “Applicant Project” shall mean a project which is undertaken by the Agency for the benefit of an Applicant which either (1) has been or will be financed by the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect thereto or (2) is a straight lease transaction which the Agency has determined to undertake pursuant to the Lease Policy.

(F) “Town” shall mean the Town of Brookhaven.

(G) "Lease Period" shall mean the lease policy approved by resolution of the members of the Agency, pursuant to which the Agency set forth the circumstances under which the Agency will consider undertaking a straight-lease transaction.

(H) "Municipality" shall mean the town and each village located within the Town.

(I) "Non-Applicant Project" means a project which is undertaken by the Agency for the benefit of the Agency and shall not include an Applicant Project.

(J) "PILOT" or "Payment in Lieu of Tax" shall mean any payment made to the Agency or an Affected Tax Jurisdiction equal to all or a portion of the real property taxes or other taxes which would have been levied by or on behalf of an Affected Tax Jurisdiction with respect to a project but for Tax Exemption obtained by reason of the involvement of the Agency in such project, but such term shall not include Agency Fees.

(K) "School District" shall mean each school district located within the Town.

(L) "Tax Exemption" shall mean any financial assistance granted to a project which is based upon all or a portion of the taxes which would otherwise be levied and assessed against a project but for the involvement of the Agency in such project.

(M) "IDA" shall mean the Town of Brookhaven Industrial Development Agency AKA TOBIDA

(N) "Village" means any incorporated Village located within the Town.

SECTION 3. GENERAL PROVISIONS.

(A) General Policy. The general policy of the Agency is to grant Tax Exemptions as hereinafter set forth to (1) any Applicant Project and (2) any Non-Applicant Project.

(B) Exceptions. The Agency reserves the right to deviate from such policy in special circumstances. In determining whether special circumstances exist to justify such a deviation, the Agency may consider the magnitude of the deviation sought and the factors which might make the project unusual, which factors might include but not be limited to the following factors: (1) The magnitude and/or importance of any permanent private sector job creation and/or retention related to the proposed project in question; (2) whether the Affected Tax Jurisdictions will be reimbursed by the project occupant if such project does not fulfill the purposes for which Tax Exemption was granted; (3) the impact of such project on existing and proposed businesses and/or economic development projects; (4) the amount of private sector investment generated or likely to be generated by such project; (5) the estimated value of the Tax Exemptions requested; (6) the extent to which such project will provide needed services and/or revenues to the Affected Tax Jurisdictions; and (7) if the project is designated blighted as per the Blight 2 Light code. In addition, the Agency may consider the other factors outlined in Section 874(4)(a) of the Act.

(C) Application. No request for a Tax Exemption relating to an Applicant Project shall be considered by the Agency unless an application and environmental assessment form are filed with the Agency on the forms prescribed by the Agency pursuant to the rules and

regulations of the Agency. Such application shall contain the information requested by the Agency, including a description of the proposed project, the proposed financial assistance being sought with respect to the project, the estimated date of completion of the project, and whether such financial assistance is consistent with this part.

(D) Notice to Affected Tax Jurisdictions. No request for approval of an Applicant Project by the Agency which involves the issuance of bonds, notes or other evidences of indebtedness with respect thereto or any other application for Tax Exemptions or other financial assistance which may aggregate more than \$100,000 or which involves a proposed deviation from the provisions of this Uniform Tax Exemption Policy, shall be given final approval by the Agency unless and until (1) the Agency has sent written notice of said request to each Affected Tax Jurisdiction and (2) has given each Affected Tax Jurisdiction a reasonable opportunity, both in writing and in person, to be heard by the Agency with respect to the proposed request. With respect to Non-Applicant Projects, the Agency shall comply with the provisions of Section 859-a of the Act, to the extent applicable. In addition, the Agency shall comply with all other notice provisions contained in the Act relative thereto.

SECTION 4. SALES AND USE TAX EXEMPTION.

(A) General. State law provides that purchases of tangible personal property by the Agency or by an agent of the Agency, and purchases of tangible personal property by a contractor for incorporation into or improving, maintaining, servicing or repairing real property of the Agency, are exempt from sales and use taxes imposed pursuant to Article 28 of the Tax Law. The Agency has a general policy of abating sales and use taxes applicable (1) only to the initial acquisition, construction and/or equipping of an Applicant Project and (2) to any Non-Applicant Project. The Agency has no requirement for imposing a payment in lieu of tax arising from the exemption of an Applicant Project from sales and/or use taxes applicable to the initial acquisition, construction and/or equipping of such project, except (1) as described in subsection (E) below or (2) in the circumstance where (a) an Applicant Project is offered sales and use tax exemption on the condition that a certain event (such as the issuance of bonds by the Agency with respect to the project) occur by a certain date and (b) such event does not occur, in which case the Agency may require that the Applicant make payments in lieu of sales and use taxes equal to the amount of tax which otherwise may have been due to the New York State Department of Taxation and Finance.

(B) Period of Examination. Except as set forth in subsection (A) above, the period of time for which a sales and use tax exemption shall be effective (the "Tax Exemption Period") shall be determined as follows:

- (1) General. Unless otherwise determined by the Agency, the sales and use tax exemption for an Applicant Project shall be for the Tax Exemption Period commencing with the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect to such project, or the execution and delivery by the Agency of a lease agreement relating to such project pursuant to the Lease Policy, and ending on the date of completion of the project or specific date agreed upon by agency and

project. The Tax Exemption Period for a Non-Applicant Project shall extend for such period of time as the Agency shall determine.

- (2) Early Commencement. The Tax Exemption Period for an Applicant Project may, at the discretion of the Agency, commence earlier than the date of issuance by the Agency of the Agency's bonds, notes or other evidences of indebtedness relating to the project, provided that (a) the Agency has complied with the requirements of Section 859-a of the Act, (b) the Agency thereafter adopts a resolution determining to commence such period earlier, (c) the Applicant agrees to the conditions of such resolution and supplies to the Agency the materials required to be supplied to the Agency thereunder, and (d) the Chairperson or Executive Director of the Agency acknowledges satisfaction of all conditions to the granting of such Tax Exemption set forth in such resolution.
- (3) Normal Termination. The Tax Exemption Period for an Applicant Project will normally end upon the completion of the acquisition and construction of such project or the specific date agreed upon by the agency and the project. On construction projects, the Agency and the Applicant shall agree on the estimated date of completion of the project, and the sales and use tax exemption shall cease on the earlier of (a) the actual date of completion of such project or (b) the date which is six (6) months after the estimated date of completion of such project. On non-construction projects, the Agency and the Applicant shall agree on the estimated date of completion of the project, and the sales and use tax exemption shall cease on the earlier of (a) the actual date of completion of the project or (b) the date which is three (3) months after the estimated date of completion of the project. If the Agency and the Applicant shall fail to agree on a date for completion of the project, the Agency shall on notice to the Applicant make the determination on the basis of available evidence.
- (4) Later Termination. The Agency, for good cause shown, may adopt a resolution extending the period of completion of the project and/or extending the Tax Exemption Period.

(C) Items Exempted. The sales and use tax exemption granted by the Agency with respect to an Applicant Project shall normally extend only to the following items acquired during the Tax Exemption Period described in subsection (B) above:

- (1) Improvements to and items incorporated into the real property, including all building materials;
- (2) Tangible personal property, including furniture, furnishings and equipment used to initially equip the project or otherwise forming part of the project if purchased by the Applicant as agent of the Agency;

- (3) The rental of tools, equipment, and other items necessary for the construction and/or equipping of the project if rented by the Applicant as agent of the Agency; and
- (4) Office supplies, fuel, electricity, utilities, and similar items consumed in the process of acquiring, constructing and/or equipping the project if purchased by the Applicant as agent of the Agency.

(D) Items Not Exempted. A sales and use tax exemption with respect to an Applicant Project shall not be granted by the Agency for the following:

- (1) Purchases occurring beyond the Tax Exemption Period described in subsection (B) above;
- (2) Repairs, replacements or renovations of the project, unless such repairs, replacements or renovations constitute major capital-type expenses approved by the Agency as a separate project in the manner contemplated by the Act: or
- (3) Operating expenses, unless such operating expenses constitute major capital-type expenses approved by the Agency as a separate project in the manner contemplated by the Act.

(E) Percent of Exemption. Unless otherwise determined by resolution of the Agency, the sales and use tax exemption shall be equal to one hundred percent (100%) of the sales and/or use taxes that would have been levied if the project were not exempt by reason of the Agency's involvement in the project. If an exemption of less than one hundred percent (100%) is determined by the Agency to be applicable to a particular Applicant Project, then the Applicant shall be required to pay a PILOT to the Agency equal to the applicable percentage of sales and/or use tax liability not being abated. The Agency shall remit such PILOT, within thirty (30) days of receipt thereof by the Agency, to the Affected Tax Jurisdictions in accordance with Section 874(3) of the Act.

(F) Confirmation Letter. The final act of granting a sales and/or use tax exemption by the Agency shall be confirmed by the execution by an authorized officer of the Agency of a confirmation letter by the Agency. Such confirmation letter may either be in the form of a letter for the duration of the anticipated construction period relating to the project (where the sales and use tax exemption is permanent, because the Agency is satisfied that any conditions precedent to such sales and use tax exemption, such as the issuance of bonds or the execution of a lease agreement by the Agency, have been satisfied) or a letter having a shorter duration (where such sales and use tax exemption is tentative, because there remain conditions precedent to such sales and use tax exemption which have not been satisfied). Each such confirmation letter shall describe the scope and term of the sales and use tax exemption being granted.

(G) Required Filings. The New York State Department of Taxation and Finance requires that proper forms and supporting materials be filed with a vendor to establish a

purchaser's entitlement to a sales- and use tax-exemption. For example, TSB-M-87(7) outlines the materials that must be filed to establish entitlement to a sales- and use-tax exemption as an "agent" of the Agency including without limitations form ST-60. It is the responsibility of the Applicant and/or project occupant to ensure that the proper documentation is filed with each vendor to obtain any sales and use tax exemptions authorized by the Agency.

(H) Required Reports and Records. Pursuant to Section 874(B) of the Act, the Applicant and/or project occupant is required to annually file with the New York State Department of Taxation and Finance a statement of the value of all sales and use tax exemptions claimed under the Act by the Applicant and/or the project occupant and/or all agents, subcontractors and consultants thereof. The project documents shall require that (1) a copy of such statement will also be filed with the Agency and (2) that the project occupant shall maintain, for a period ending seven (7) years after the last purchase made under the sales and use tax exemption, and make available to the agency at the request of the Agency, detailed records which shall show the method of calculating the sales and use tax exemption benefit granted by the Agency.

SECTION 5. MORTGAGE RECORDING TAX EXEMPTION.

(A) General. State Law provides that mortgages recorded by the Agency are exempt from mortgage recording taxes imposed pursuant to Article 11 of the Tax Law. The Agency has a general policy of abating mortgage recording taxes for the initial financing or any subsequent financing for each project with respect to which the Agency grants a mortgage to secure the indebtedness issues by the Agency. In instances where the initial financing commitment provides for a construction financing of the Agency to be replaced by a permanent financing of the Agency immediately upon or shortly after the completion of the project, the Agency's general policy is to abate the mortgage recording tax on both the construction financing and the permanent financing.

(B) Refinancing. In the event that the Agency retains title to a project, it is the general policy of the Agency to abate mortgage recording taxes on any debt issued by the Agency for the purpose of refinancing prior debt issued by the Agency, and on any modifications, extensions and renewals thereof, so long as the Agency Fees relating to same have been paid.

(C) Non-Agency Projects. In the event that the Agency does not hold title to a project, it is the policy of the Agency not to join in a mortgage relating to that project and not to abate any mortgage recording taxes relating to that project.

(D) Non-Agency Financings. Occasionally, a situation will arise where the Agency holds title to a project, the project occupant needs to borrow money for its own purposes (working capital, for example), and the lender will not make the loan to the project occupant without obtaining a fee mortgage as security. In such instances, the policy of the Agency is to consent to the granting of such mortgage and to join in such mortgage, so long as the following conditions are met:

- (1) The documents relating to such proposed mortgage make it clear that the Agency is not liable on the debt, and that any liability of the Agency on the mortgage is limited to the Agency's interest in the project;
- (2) the granting of the mortgage is permitted under any existing documents relating to the project, and any necessary consents relating thereto have been obtained by the project occupant; and
- (3) the payment of the Agency Fee relating to same.

(E) Exemption Affidavit. The act of granting a mortgage recording tax exemption by the Agency is confirmed by the execution by an authorized officer of the Agency of an exemption affidavit relating thereto.

(F) Mortgage Recording Tax Payments. If the Agency is a party to a mortgage that is not to be granted a mortgage recording tax exemption by the Agency (a "non-exempt mortgage"), then the Applicant and/or project occupant or other person recording same shall pay the same mortgage recording taxes with respect to same as would have been payable had the Agency not been a party to said mortgage (the "normal mortgage tax"). Such mortgage recording taxes are payable to the County Clerk of the County, who shall in turn distribute same in accordance with law. If for any reason a non-exempt mortgage is to be recorded and the Agency is aware that such non-exempt mortgage may for any reason be recorded without the payment of the normal mortgage tax, then the Agency shall prior to executing such non-exempt mortgage collect a payment equal to the normal mortgage tax and remit same within thirty (30) days of receipt by the Agency to the Affected Tax Jurisdictions in accordance with Section 874(3) of the Act.

SECTION 6. REAL ESTATE TRANSFER TAXES.

(A) Real Estate Transfer Tax. Article 31 of the Tax Law provides for the imposition of a tax upon certain real estate transfers. Section 1405(b)(2) of the Tax Law provides that transfers into the Agency are exempt from such tax, and the New York State Department of Taxation and Finance has ruled that transfers of property by the Agency back to the same entity which transferred such property to the Agency are exempt from such tax. The general policy of the Agency is to impose no payment in lieu of tax upon any real estate transfers to or from the Agency.

(B) Real Property Transfer Gains Tax. Article 31-B of the Tax Law provides for the imposition of a tax upon gains derived from the transfer of certain real estate in New York State. Certain transfers are exempt from such tax. It is the policy of the Agency to comply with the law, and to file the appropriate documentation with the New York State Department of Taxation and Finance to obtain preclearance by that department for any documents transferring real property to or from the Agency.

(C) Required Filings. It shall be the responsibility of the Applicant and/or project occupant to ensure that all documentation necessary relative to the real estate transfer tax and the real estate transfer gains tax are timely filed with the appropriate officials.

SECTION 7. REAL ESTATE TAX EXEMPTION.

(A) General. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, property owned by or under the jurisdiction or supervision or control of the Agency is exempt from general real estate taxes (but not exempt from special assessments and special ad valorem levies). However, it is the general policy of the Agency that, notwithstanding the foregoing, every non-governmental project will be required to enter into a payment in lieu of tax agreement (a "PILOT Agreement"), either separately or as part of the project documents. Such PILOT Agreement shall require payment of PILOT payments in accordance with the provisions set forth below.

(B) PILOT Requirement. Unless the Applicant and/or project occupant and the Agency shall have entered into a PILOT Agreement acceptable to the Agency, the project documents shall provide that the Agency will not file a New York State Department of Taxation and Finance, Division of Equalization and Assessment Form EA-412-a (an "Exemption Form") with respect to the project, and the project documents shall provide that the Applicant and/or the project occupant shall be required to make PILOT payments in such amounts as would result from taxes being levied on the project by the Affected Tax Jurisdictions if the project were not owned by or under the jurisdiction or supervision or control of the Agency. The project documents shall provide that, if the Agency and the Applicant and/or project occupant have entered into a PILOT Agreement, the terms of the PILOT Agreement shall control the amount of PILOT payments until the expiration or sooner termination of such PILOT Agreement. Except as otherwise provided by resolution of the Agency, all real estate PILOT payments are to be paid to the Town of Brookhaven Industrial Development Agency for distribution to the Affected Tax Jurisdictions. Upon expiration of the Initial Period as aforesaid, the assessment of the project shall revert to a normal assessment (i.e., the project will be assessed as if the project were owned by the Applicant and not by the Agency). Also, any addition to the project shall be assessed normally as aforesaid, unless such addition shall be approved by the Agency as a separate project following notice and a public hearing as described in Section 859-a of the Act. Other than fixing the Final Assessment for the Initial Period as aforesaid, the general policy of the Agency is to not provide the Applicant and/or project occupant with any abatement, other than abatements allowed under the Real Property Tax Law.

(C) Required Filings. As indicated in subsection (B) above, 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 each Affected Tax Jurisdiction. Once an Exemption Form with respect to a particular project is filed with a particular Affected Tax Jurisdiction, the real property tax exemption for such project does not take effect until (1) a tax status date for such Affected Tax Jurisdiction occurs subsequent to such filing, (2) an assessment roll for such Taxing Jurisdiction is finalized subsequent to such tax status date, (3) such assessment roll becomes the basis for the preparation

of a tax roll for such Affected Tax Jurisdiction, and (4) the tax year to which such tax roll relates commences.

(D) PILOT Agreement. Unless otherwise determined by resolution of the Agency, all PILOT Agreements shall satisfy the following general conditions:

- (1) Determination of Full Assessment: With respect to a project including new construction, the general policy of the Agency is to take title to (or a leasehold interest in) said project, and to file an Exemption Form providing that the appropriate officer or officers of the respective Affected Tax Jurisdictions in which such project is located (each, an "Assessor") will determine the interim assessments of such project as construction progresses thereon (each, an "Interim New Assessment") and a final assessment thereof (the "Final New Assessment") when construction is completed. With respect to a project including existing buildings, the general policy of the Agency is to either avoid taking title to (or a leasehold interest in) such existing buildings, or, if such is not possible, to include the existing assessment on such buildings (the "Existing Assessment", and collectively with the Interim New Assessment, the "Full Assessment", and collectively with the Final New Assessment, the "Final Full Assessment). Once the Final Full Assessment is fixed, the Final Full Assessment shall be frozen and used as the basis of taxation of the project for the initial period (the "Initial Period") applicable to the project pursuant to paragraph (2) below. During the Initial Period, the applicant shall pay real estate PILOT payments determined in each tax year as follows: (i) First, determine the assessment of the new construction portion of the project for such tax year (the "Current New Assessment"), which assessment shall be a percentage of the Final New Assessment determined by subtracting the percentage of abatement applicable to such year (as determined pursuant to paragraph (2) below) from 100%; (ii) next, determine the assessment of the project for such tax year (the "Current PILOT Assessment") by adding the Current New Assessment to the Existing Assessment; and (iii) finally, determine the PILOT payment payable to with respect to the project to each Affected Tax Jurisdiction by multiplying the Current PILOT Assessment by the applicable tax rate of the such Affected Tax Jurisdiction. Once the Initial Period has ended, the Applicant will pay real estate PILOT payments determined in each tax year as follows: Multiply the Final Full Assessment by the applicable tax rate of the such Affected Tax Jurisdiction.
- (2) Real Property Tax Abatement TOBIDA provides real property tax abatements in the form of reduction of existing taxes and/or freezing existing taxes and/or abating the increased taxes (value added) as the result of the project. The standard real property tax abatement provided by TOBIDA is based on the total increased assessment for a project over a ten (10) year period, however, the Agency in it's sole discretion may grant

a fifteen (15) year PILOT agreement or grant a five (5) year extension of a ten (10) year PILOT agreement without such fifteen (15) year term being considered a deviation. As a general rule, the real property tax abatement is applied uniformly to all taxing jurisdictions. Each project abatement is based on a cost benefit analysis to determine if it is eligible for the standard exemption. In cases where a project does not meet Agency guidelines for the standard exemption, a reduced abatement in terms of percent and/or duration may be extended to the applicant, the amount of such reduced abatement to be dependent on the facts and circumstances of each particular case. The guidelines to determine eligibility for the standard exemption are as follows:

- (a) Industrial, manufacturing, research and development, warehousing, retail, rental residential and corporate office facilities are all eligible for the standard exemption. Speculative office projects are generally not eligible for the standard exemption, unless they provide extraordinary economic benefits in terms of jobs and in stimulating a locally depressed area. Electrical power generating facilities and co-generation facilities are eligible for PILOTs for a term of up to twenty-five (25) years following the completion of the construction, acquisition, and equipping of the project with fixed PILOT payments subject to periodic escalation.
- (b) The extent to which the project will directly create or retain permanent private sector jobs as well as “temporary” jobs during the construction period. In addition, the level of secondary “multiplier” jobs that will be created or retained as a result of the project. Current policy is to rely on an in-depth cost benefit analysis of the project.
- (c) The level of direct annual payroll that results from the project as well as secondary “multiplier” payroll during the initial construction period. Generally, new jobs created or existing jobs retained by the project should have projected average annual salaries in line with the median per capita income levels in the Town of Brookhaven at the time of application. Further, labor intensive industries with one or more employees per 750 square feet of new building space are viewed favorably.
- (d) The likelihood that a desirable project will locate in another municipality/region/state, resulting in subsequent real economic losses for retention projects, and the possible failure to realize future economic benefits for attraction projects.
- (e) The extent to which a project will further local planning efforts by upgrading blighted areas, create jobs in areas of high unemployment,

assist institutions of higher education, provide the opportunity for advanced high-tech growth or diversify the Town's economic base.

(f) The impact of the project upon the environment.

- (3) Reduction for Failure to Achieve Goals: If the Agency's approval of a particular project is predicated upon achievement by the project of certain minimum goals (such as creating and maintaining certain minimum employment levels), the PILOT Agreement may provide for the benefits provided thereby to the project to be reduced or eliminated if, in the sole judgment of the Agency, the project has failed to fulfill such minimum goals. Except as otherwise provided by resolution of the Agency, all real estate PILOT payments are to be paid to the Town of Brookhaven Industrial Development Agency for distribution to the Affected Tax Jurisdictions. Upon expiration of the Initial Period as aforesaid, the assessment of the project shall revert to a normal assessment (i.e., the project will be assessed as if the project were owned by the Applicant and not by the Agency). Also, any addition to the project shall be assessed normally as aforesaid, unless such addition shall be approved by the Agency as a separate project following notice and a public hearing as described in Section 859-a of the Act. Other than fixing the Final Assessment for the Initial Period as aforesaid, the general policy of the Agency is to not provide the Applicant and/or project occupant with any abatement, other than abatements allowed under the Real Property Tax Law.
- (4) Special District Taxes: As indicated above, the Agency is not exempt from special assessments and special ad valorem levies; and accordingly, these amounts are not subject to abatement by reason of ownership of the project by the Agency. The PILOT Agreement shall make this clear and shall require that all such amounts be directly paid by the Applicant and/or project occupant. However, Applicants and project occupants should be aware that the courts have ruled that an Agency-sponsored project is also eligible to apply for an exemption from special district taxes pursuant to Section 485-b of the Real Property Tax Law. If an applicant or project occupant desires to obtain an exemption from special district taxes pursuant to said Section 485-b, it is the responsibility of the Applicant and/or project occupant to apply for same at its sole cost and expense.
- (5) Payee: Unless otherwise determined by resolution of the Agency, all PILOT payments payable to an Affected Tax Jurisdiction shall be assessed, billed and collected by the Town of Brookhaven Industrial Development Agency. Pursuant to Section 874(3) of the Act, such PILOT payments shall be remitted to each Affected Tax Jurisdiction within thirty (30) days of receipt.

- (6) Enforcement: An Affected Tax Jurisdiction which has not received a PILOT payment due to it under a PILOT Agreement may exercise its remedies under Section 874(6) of the Act. In addition, such Affected Tax Jurisdiction may petition the Agency to exercise whatever remedies that the Agency may have under the project documents to enforce payment; and if such Affected Tax Jurisdiction indemnifies the Agency and agrees to pay the Agency's costs incurred in connection therewith, the Agency may take action to enforce the PILOT Agreement.

(E) Real Property Appraisals. Since the policy of the Agency stated in subsection (C)(1) is to base the value of a project for payment in lieu of tax purposes on a valuation of such project performed by the respective Assessors, normally a separate real property appraisal is not required. However, the Agency may require the submission of a real property appraisal if (1) the Assessor of any particular Affected Tax Jurisdiction requires one or (2) if the valuation of the project for payment in lieu of tax purposes is based on a value determined by the Applicant or by someone acting on behalf of the Applicant, rather than by an Assessor of an Affected Tax Jurisdiction or by the Agency. In lieu of an appraisal, the Agency may require that an Applicant submit to the Agency and each Assessor a certified enumeration of all project costs. If the Agency requires the submission of a real property appraisal, such appraisal shall be prepared by an independent MAI certified appraiser acceptable to the Agency.

SECTION 8. PROCEDURES FOR DEVIATION.

(A) General. In the case where the Agency may determine to deviate from the provisions of this Uniform Tax Exemption Policy pursuant to the provisions of Section 3(B) hereof, the Agency may deviate from the provisions hereof, provided that:

- (1) The agency adopts a resolution (a) setting forth, with respect to the proposed deviation, the amount of the proposed Tax Exemption, the amount and nature of the proposed PILOT, the duration of the proposed Tax Exemption and of the proposed PILOT and whether or not a Tax Exemption of any kind shall be granted, (b) indicating the reasons for the proposed deviation, and (c) imposing such terms and conditions thereof as the Agency shall deem just and proper; and
- (2) As provided in Section 3(C) hereof, the Agency shall give prior written notice of the proposed deviation from this Uniform Tax Exemption Policy to each Affected Tax Jurisdiction, setting forth therein a general description of the proposed deviation and the reasons therefore. Whenever possible, the Agency shall give such notice to each Affected Tax Jurisdiction at least thirty (30) days prior to the consideration by the Agency of the final resolution determining to proceed with such proposed deviation from this Uniform Tax Exemption Policy.

(B) Agency-Owned Projects. Where a project (1) constitutes a Non-Applicant Project, (2) is otherwise owned and operated by the Agency or (3) has been acquired by the

Agency for its own account after a failure of a project occupant, such project may at the option of the Agency be exempted by the Agency from all taxes, to the extent provided in Section 874(1) and (2) of the Act.

(C) Unusual Projects. Where a project is unusual in nature and requires special considerations related to its successful operations as demonstrated by appropriate evidence presented to the Agency, the Agency may consider the granting of a deviation from the established exemption policy in accordance with the procedures provided in Section 3(B) and Section 8(A) hereof. The Agency may authorize a minimum payment in lieu of tax or such other arrangement as may be appropriate.

EXHIBIT F

SEQR Findings Statement



**INCORPORATED
VILLAGE OF PORT JEFFERSON**

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SEQR FINDINGS STATEMENT

SITE DEVELOPMENT PLAN AND CONDITIONAL USE APPLICATION

for

440 MAIN STREET

**Village of Port Jefferson, Town of Brookhaven
Suffolk County, New York**

Prepared By: Lead Agency- the Planning Board of the Incorporated Village of Port Jefferson
c/o Jennifer Sigler- Site Plan Reviewer
88 North Country Road Port Jefferson, NY 11777
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Action: Application No. 0537-18
Site Development Plan and Conditional Use Application
440 Main Street, Port Jefferson, NY 11777
SCTM# 206-12-9-3

Project Sponsor: Brooks Partners, LLC
414 Main Street- Suite 202
Port Jefferson, NY 11777
Contact: Eric Russo, Esq. of Van Brunt, Juzwiak & Russo, P.C.
140 Main Street Sayville, NY 11782
Ph. 631-589-5000 or eric@vbjr.com

Date: 6 June 2019

Project Description

- The action proposes the construction of a 65,300sf, three-story building containing 46 apartment units, 1,500sf of restaurant space, 1,200sf of retail space, 750sf fitness room restricted to tenant use and on-site garage and surface parking on a 1.14+/- acre lot in the Central Commercial C-1 District. The site is currently improved with a mixed-use retail establishment with an apartment above and with an automotive repair shop and outdoor boat storage yard, which will all be demolished and removed. The proposed use is an as-of-right, VPJ Code compliant application in that the use is conditionally permitted in the Central Commercial C-1 District, all resident parking is provided in dedicated parking stalls on-site and parking for the ground-level retail/office space is partially provided on-site and through PILOP (Payment In Lieu Of Parking) per VPJ Code §250-27B(1)(a). The action meets the criteria for classification as a Type I Action pursuant to Village of Port Jefferson Code Chapter 129 "Environmental Quality Review (VEQR) Section 129-2B(5) and B(6)(c). The Planning Board identified the need to



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evaluate potential adverse impacts associated with traffic, visual impact, neighborhood character, parklands, recreation and open space, on-site soil conditions, site drainage, flooding and sea level rise, noise, dust, vibration, energy efficiency and cumulative impacts in the area.

SEQR REVIEW TIMELINE

- 1/25/2018 Site development plan, conditional use application and Long Environmental Assessment Form (LEAF) submitted.
- 9/13/2018 Revised LEAF submitted; Planning Board declared Lead Agency.
- 10/26/2018 SEQR referral letters sent to interested and involved agencies.
- 11/01/2018 Lead Agency (Planning Board) completed Part II of the LEAF
- 12/04/2018 Planning Board adopted a Positive Declaration of Significance and moved to **not** require scoping with the Draft Environmental Impact Statement (DEIS).
- 2/7/2019 Planning Board accepted the DEIS as prepared by VHB Engineering, Surveying, Landscape Architecture and Geology, P.C. as adequate.
- 3/14/2019 SEQR Public Hearing held, public comments heard; SEQR portion of the Public Hearing closed, Conditional Use portion left open; SEQR public comment period extended to 15 days.
- 3/29/2019 DEIS public comment period ended.
- 5/21/2019 review and approval of the Final Environmental Impact Statement (FEIS) as prepared by VHB Engineering.
- 5/22/2019 Notice of completion prepared, filed and published per §617.12; copies of the FEIS distributed per §617.12.

PROJECT DESCRIPTION

As mentioned at the outset, the proposed action is an as-of-right proposal in the Central Commercial C-1 District- it satisfies the bulk and area requirements outlined in the VPJ Code *250 Attachment 2* and requires no variances. Furthermore, the action considers parameters of concern contained in SEQR as well as those pertinent to the responsibilities of the Planning Board, namely consideration of "the public health, safety, and welfare, the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular ..."

The proposed building reflects a design strategy that incorporates scale, façade articulation, and massing sympathetic to the more desirable and humanly-scaled areas of the existing downtown streetscape. The length of the building is broken down into smaller components with alternating materials, recessed entries, and a distinctive wraparound corner that adds visual interest and a clearly defined entrance and destination point for southbound pedestrian and vehicular traffic. Consistent awning styles and signage as well as "Dickens" street lighting unify the project's length and complement the adjacent buildings to the north and south. The Applicant proposes to add evergreen plantings where appropriate to screen the parking area from the residential districts and the structure itself is sited to be as far away from the closest single family residence to the north on Barnum Avenue. The apartment units are generously sized -795sf average for 1-bedroom where 500sf is the minimum. Its density (40 units per acre) is consistent with that of other similar projects and the building contains several indoor and outdoor tenant amenities that will enhance its desirability.



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The project is consistent with recommendations and action items in the 2030 Comprehensive Plan Update for the Village of Port Jefferson. It proposes to replace underutilized development to provide high-quality housing opportunities for young professionals, faculty and staff from Stony Brook University and well as employees at the area's three hospitals. Mixed-use, downtown apartment living in a walkable community is desirable for a number of population segments and it promotes safety and enlivens the area by providing "eyes on the street" on evenings and weekends. Its location at the southern end of the downtown retail node will likely extend Main Street to the south, relieving some of the congestion closer to the harbor front and bringing more foot traffic to the Theater Three area. The 2030 Comprehensive Plan specifically encourages residential housing units over retail as an important factor in sustaining the downtown commercial district's viability and vibrancy. And, the overall economic benefits to the Village include increases in property tax, some employment opportunities and the purchasing power of 46 households in the immediate area.

FEIS

On behalf of the Applicant, VHB Engineering, Surveying, Landscape Architecture and Geology, P.C. prepared a Draft Environmental Impact Statement (DEIS) which was accepted by the Planning Board as complete and adequate for public review on 2/7/2019. A DEIS public hearing was held on 3/14/2019 and the public comment period was held open for an additional 15 days. VHB prepared the Final Environmental Impact Statement (FEIS) which includes the draft EIS by reference, all comments (written and verbal from the public hearing), responses to all substantive comments and minor revisions and/or additions requested by the Lead Agency (the Planning Board). It also includes a copy of the 3/14/2019 public hearing transcript (Appendix B) comments from the NYS DOT (Appendix C), Grading and Drainage Plan Review by the Lead Agency's consultant (Appendix D), the Roof Deck Floor Plan (Appendix E), and comments from Suffolk County Planning Commission (SCPC) in Appendix F.

STATEMENT OF FINDINGS

Based on the SEQR review of the proposed action, the Lead Agency hereby certifies that the requirements of 6 NYCRR Part 617 have been met. The Lead Agency further certifies that, consistent with social and economic considerations, from among reasonable alternatives available, the proposed action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures that were identified as practicable as further described herein.

SUMMARY OF POTENTIAL IMPACTS AND PROPOSED MITIGATION

- 1. Aesthetics, Visual Resources and Neighborhood Character:** the project description outlines the measures taken to propose a structure that reflects the best qualities of the commercial corridor while respecting the adjacent residential areas. The DEIS contains photo simulations depicting existing and proposed elevations as seen from Barnum Ave and from Main Street. An elevation change on Barnum Avenue obscures a large portion of the north façade from view from the residential district along Barnum Avenue. The Main Street photo simulation confirms the proposed structure's integration into the existing fabric of the commercial side of Main Street and notably compatibility with the existing buildings to the north and south. Additionally, the Architectural Review Committee contributed favorable comments on the project.



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2. **Traffic and Parking:** The project provides the required 70 dedicated tenant spaces for the apartment units situated under the structure and concentrated to the rear/Barnum Avenue side of the site, reserving the remaining 8 of the required 12 spaces for commercial use closer to the Main Street entrance. Four (4) spaces will use PILOP (Payment In Lieu Of Parking) to satisfy the parking space deficit. A traffic assessment conducted by VHB under peak traffic conditions (Saturday, mid-summer) concluded that:
 - i) The action will generate only a modest number of new trips during the weekday a.m., p.m. and Saturday midday peak periods.
 - ii) The highest level of peak hour site traffic is expected to occur during the Saturday midday period.
 - iii) The capacity analysis at the site access points and at the intersection of Main Street and Barnum Avenue operate well in the Build condition.
 - iv) Cumulative traffic impacts that include two larger residential developments (one built, one proposed) toward the northern section of Barnum Avenue are not expected to be significant.
 - v) The proposed internal circulation on the site is expected to work well.
 - vi) As proposed, the action will not result in significant negative impacts to traffic conditions in the area.
 - vii) **As per comments from the NYS Department of Transportation (DOT), the Applicant proposes to remove one parking spot on either side of the proposed driveway for better sight distance.** Though two public parking spaces will be lost, the Lead Agency determined that, as it is a DOT requirement as opposed to the applicant's initiative, the applicant has no obligation to provide payment or additional on-site parking as compensation for the loss.
3. **Parkland, Recreation and Open Space:** The proposed action cannot accommodate any public recreational areas to offset the pressure that the projected increase of approximately 92 new residents (two persons per renter-occupied unit) may bring to the Village's existing open space resources. **To offset this pressure, the Lead Agency will require, per VPJ Code §250-52D(4)(k), "a sum of money in lieu thereof to be established by the Village Board of Trustees." A per unit cost of \$1,500.00 constitutes the most recent fee structure set by the Board of Trustees.**
4. **Subsurface Conditions:** Results of a Phase I Environmental Site Assessment (Phase I ESA) and a Phase II ESA in 2017 revealed **no** adverse subsurface conditions.
5. **Stormwater Management:** As proposed, the site development will likely improve stormwater management as compared to existing conditions due to the following measures and controls:
 - i) **As the proposed action involves soil disturbance of one or more acres, per VPJ Code §213, a Stormwater Pollution Prevention Plan (SWPPP) will be required during construction.** The plan provides oversight of construction activities from the date of initiation to final stabilization to ensure that stormwater runoff from land development activities is minimized to avoid flooding, soil erosion and nonpoint source pollution.
 - ii) The Village of Port Jefferson retained J.R. Holzmacher P.E., LLC as a consultant to prepare a review of the stormwater drainage plans for the action. In a 28 February 2019 letter, J.R. Holzmacher concluded that the proposed drainage system for collection and recharge of stormwater runoff



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conforms to reference standards described in VPJ Code 213 and New York State Department of Environmental Conservation (NYSDEC) Stormwater Design Manual and requires no modifications.

- 6. Flooding and Sea Level Rise:** Though no significant adverse flooding events are anticipated, the action proposes that all livable space and mechanical equipment will be located above the first floor and on the roof.
- 7. Noise, dust and vibration:** Temporary increases during construction will be addressed as follows-
- To mitigate noise generation, construction equipment will have properly functioning muffler systems. And, the hours of construction will comply with VPJ Code §173-4B, limiting construction activities to M-F, 7:00a.m. to 6:00p.m. and Saturdays, 8:00a.m. to 5:00p.m.
 - Dust generation during construction will be controlled by limiting vehicular speeds to 5 m.p.h. and by intermittent wetting of exposed earth and access ways as required.
 - During construction pile drivers, most notably, in addition to jackhammers, cranes, vibratory rollers, etc. will generate vibration. The Applicant has indicated that neighboring property owners will be notified in advance so that precautions may be taken, including photo-documentation of existing conditions.

Upon completion no significant adverse impacts from dust and vibration are anticipated. However, during the public hearing, considerable discussion focused on the potential noise generation from activities taking place on the proposed roof deck as well as sound/noise generated by roof-mounted HVAC equipment. Section 3.6 of the FEIS addressed these concerns as follows-

- A sound transmission analysis by VHB concluded that sound/noise generated by HVAC equipment would decrease to approximately 33 dBA at the nearest residence to the property- a level substantially below existing ambient noise levels and below 50dBA, the nighttime limit per VPJ Code §173-4A and B.
 - Per VHB analysis, sound levels generated by people speaking on the roof deck would decrease to even lower levels. **The Applicant will impose restrictions for roof deck use which will preclude excessive noise generation. The measures are:**
 - Hours of use will be limited to Sunday – Thursday, 9:00a.m. to 10:00p.m., Friday and Saturday, 9:00a.m. to 11:00p.m.**
 - Formal parties, private receptions and the use of musical instruments, amplified music and loud noise will be prohibited.**
 - Resident use only. Guests and children must be accompanied by adult residents.**
 - Pets will not be permitted.**
- 8. Unavoidable Adverse Impacts:** The Planning Board as Lead Agency acknowledges the inevitability of short term adverse impacts associated with construction activities in the center of the Village. An 18-month time frame is projected for demolition to completion in a single phase of construction. As noted earlier, to the extent possible, efforts to mitigate construction-related impacts will be implemented. However, the public at large and the neighboring properties in particular can expect increases in noise levels, traffic impacts associated with construction vehicles, utility installations, etc., some dust generation and erosion and rerouting of pedestrian foot traffic along Main Street and Barnum Avenue. The SEQR review in conjunction with site plan development review endeavored to anticipate moderate



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to significant adverse environmental impacts as an integral part of the evolution of the proposed action. As such, the Planning Board (Lead Agency) does not anticipate any long-term adverse environmental impacts associated with the proposed action. Indeed, as proposed the Planning Board expects the action to have a long-term positive impact in the Village.