

SAYVILLE BROWNING PROPERTIES, INC.

and

BROWNING EXTENDED STAY, LLC

to

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(TOWN OF BROOKHAVEN, NEW YORK)

RECAPTURE AGREEMENT

Dated as of November 1, 2014

Town of Brookhaven Industrial Development Agency
(Sayville Browning Properties, Inc./Browning Extended Stay, LLC 2014 Facility)

Property Address: 65 Union Avenue, Ronkonkoma, Town of Brookhaven, Suffolk
County, New York

Section: 800.00

Block: 02.00

Lot: 024.000

Record and return to:
Nixon Peabody LLP
1300 Clinton Square
Rochester, New York 14604
Attention: William F. Weir, Esq.

RECAPTURE AGREEMENT

THIS RECAPTURE AGREEMENT, made and entered into as of November 1, 2014 (this "**Recapture Agreement**"), is from SAYVILLE BROWNING PROPERTIES, INC., a business corporation duly organized and validly existing under the laws of the State of New York, having its principal office at 5000 Express Drive South, Ronkonkoma, New York 11779 (the "**Company**"), and BROWNING EXTENDED STAY, LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having an office at 5000 Express Drive South, Ronkonkoma, New York 11779 (the "**Sublessee**"), to the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the "**Agency**").

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State of New York (the "**State**"); and

WHEREAS, the aforesaid act further authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, reconstruct, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvement, and all real and personal property, including but not limited to, machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act as amended, together with Chapter 358 of the Laws of 1970 of the State, as amended (collectively, the "**Act**"), the Agency was created and is empowered under the Act to undertake the providing, financing and leasing of the Facility defined below; and

WHEREAS, the Agency has agreed to assist in (a) the construction of an approximately 102,225 square foot building together with additional parking and various site related improvements (the "**Improvements**"), on the Company's approximately 2.45 acre parcel of land located at 65 Union Avenue, Ronkonkoma, Town of Brookhaven, Suffolk County, New York (more particularly known as S.C. Tax Map: District 0200, Section 800, Block 02, Lot 024) (the "**Land**"), and the acquisition and installation therein of certain equipment including but not limited to hotel related furniture, fixtures and equipment not part of the Equipment (as such term is defined herein) (the "**Facility Equipment**"; and, together with the Land and the Improvements, the "**Company Facility**"), which Company Facility is to be leased by the

Agency to the Company and subleased by the Company to the Sublessee and (b) the acquisition and installation of certain equipment and personal property including, but not limited to hotel related furniture, fixtures and equipment (the “**Equipment**”; and together with the Company Facility, the “**Facility**”), which Equipment is to be leased by the Agency to the Sublessee and which Facility is to be used by the Sublessee as an approximately 122 room hotel to provide a full range of services to the business and leisure traveler visiting the Town of Brookhaven; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency’s agent, to construct and equip the Company Facility in accordance with the Plans and Specifications; and

WHEREAS, the Company has agreed to lease the Land and the Improvements to the Agency pursuant to the terms of a Company Lease Agreement, dated as of November 1, 2014 (the “**Company Lease**”), by and between the Company, as lessor, and the Agency, as lessee; and

WHEREAS, the Company has agreed to transfer title to the Facility Equipment to the Agency pursuant to a Bill of Sale, dated the Closing Date (the “**Bill of Sale**”); and

WHEREAS, the Agency has agreed to lease and sublease the Company Facility to the Company pursuant to a certain Lease Agreement, dated November 1, 2014 (the “**Lease Agreement**”), by and between the Agency, as lessor, and the Company, as lessee; and

WHEREAS, the Company has agreed to sub-sublease the Company Facility to the Sublessee pursuant to a certain Sublease Agreement, dated November 19, 2014 (the “**Sublease Agreement**”), by and between the Company, as sublessor, and the Sublessee, as sublessee; and

WHEREAS, the Equipment will be leased by the Agency to the Sublessee pursuant to the terms of a certain Equipment Lease Agreement, dated as of November 1, 2014 (the “**Equipment Lease Agreement**”), by and between the Agency and the Sublessee; and

WHEREAS, in order to define the Company’s and Sublessee’s obligations regarding payments-in-lieu-of taxes with respect to the Facility, the Agency, the Company and the Sublessee have agreed to enter into a Payment-in-Lieu-of-Tax Agreement, dated as of November 1, 2014 (the “**PILOT Agreement**”), by and among the Agency, the Company and the Sublessee; and

WHEREAS, the Agency has conferred on the Company and the Sublessee in connection with the acquisition, construction, equipping, financing and leasing of the Facility certain benefits, tax exemptions and other financial assistance more particularly described in Section 1(b) hereof, consisting of, among other things, sales and use tax exemptions on the acquisition, construction and equipping of the Facility and real property tax abatements (pursuant to the PILOT Agreement), and, if requested, mortgage recording tax exemptions; and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the PILOT Agreement, the Lease Agreement and the Equipment Lease Agreement, that the Company provide assurances with respect to the

recapture of certain benefits granted under the PILOT Agreement, the Lease Agreement, the Equipment Lease Agreement and the other Agency agreements on the terms herein set forth.

AGREEMENT

1. Recapture of Agency Benefits. (a) It is understood and agreed by the parties hereto that the Agency is entering into the Lease Agreement, the Equipment Lease Agreement and the PILOT Agreement in order to provide financial assistance to the Company and the Sublessee for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company and the Sublessee hereby agrees as follows:

- (i) If there shall occur a Recapture Event after November 19, 2014, but on or before December 31, 2018 the Company and/or the Sublessee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);
- (ii) If there shall occur a Recapture Event on or after January 1, 2019, but on or before December 31, 2021, the Company and/or the Sublessee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, seventy-five percent (75%) of the Recaptured Benefits;
- (iii) If there shall occur a Recapture Event on or after January 1, 2022 but on or before December 31, 2023, the Company and/or the Sublessee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, fifty percent (50%) of the Recaptured Benefits;
- (iv) If there shall occur a Recapture Event on or after January 1, 2024 but on or before December 31, 2025, the Company and/or the Sublessee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, twenty-five percent (25%) of the Recaptured Benefits; and
- (v) If there shall occur a Recapture Event after December 31, 2025, the Company and/or the Sublessee shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits; and

(b) The term "Recaptured Benefits" shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency's participation in the transaction contemplated by the PILOT Agreement, the Lease Agreement and the Equipment Lease Agreement including, but not limited to, the amount equal to 100% of:

(i) any exemption from any applicable mortgage recording tax with respect to the Facility on mortgages granted by the Agency on the Facility at the request of the Company (the “**Mortgage Recording Tax Exemption**”); and

(ii) (a) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent, pursuant to the Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Company Facility (the “**Company Sales Tax Savings**”); and

(b) Sales Tax Exemption savings realized by or for the benefit of the Sublessee, including any savings realized by any Agent, pursuant to the Equipment Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility (the “**Sublessee Sales Tax Savings**”); and

(iii) real property tax abatements granted under the PILOT Agreement (the “**Real Property Tax Abatements**”); and

(iv) any unpaid amounts then due and owing under the PILOT Agreement; and

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of Section 1(c) below and the declaration of a Recapture Event by notice from the Agency to the Company and Sublessee be payable directly to the Agency or the State of New York if so directed by the Agency.

(c) The term “**Recapture Event**” shall mean any of the following events:

(1) A default by the Company and/or the Sublessee under the PILOT Agreement (other than as described in clauses (d) or (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or

(2) The occurrence and continuation of an Event of Default under the Lease Agreement or the Equipment Lease Agreement (other than as described in clauses (d) or (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or

(3) The Facility shall cease to be a “project” within the meaning of the Act, as in effect on the Closing Date through the act or omission of the Company and/or the Sublessee; or

(4) The sale of the Facility (excluding any sale provided for in Section 9.3 of the Lease Agreement) or closure of the Facility and/or departure of the Company and/or the Sublessee from the Town of Brookhaven, except as due to casualty, condemnation or force majeure as provided below; or

(5) Failure of the Company or the Sublessee to create or cause to be maintained the number of full time equivalent (“FTE”) jobs at the Facility as defined in Section 8.13 of the Lease Agreement and Section 8.13 of the Equipment Lease Agreement, which failure is not reflective of the business conditions of the Company or the Sublessee or

the subtenants of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions. It is further provided that the Company may not actually provide the FTE jobs at the Facility, but rather shall sublease the Facility to the Sublessee, and that the Company's obligation with regard to creating or causing to be maintained FTE jobs includes (a) using all reasonable efforts to lease up the Facility, and (b) including provisions in all subleases requiring any tenants to comply with the provisions of the Lease Agreement applicable to them; or

(6) Any significant deviations from the information and data provided to the Agency in the Company's application for assistance which would constitute a significant diminution of the Company's activities in, or commitment to, the Town of Brookhaven, Suffolk County, New York; or

(7) Reserved.

(8) The Company receives Sales Tax Savings in connection with the acquisition, construction and equipping of the Facility in excess of the Maximum Company Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to the Company Sales Tax Savings in excess of the Maximum Company Sales Tax Savings Amount only; provided further, that failure to repay the Company Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recapture Benefits; or

(9) The Sublessee receives Sales Tax Savings in connection with the acquisition, construction and equipping of the Facility in excess of the Maximum Sublessee Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to the Sublessee Sales Tax Savings in excess of the Maximum Sublessee Sales Tax Savings Amount only; provided further, that failure to repay the Sublessee Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recapture Benefits.

(d) Provided, however, except as provided in clause 1(c)(5) above, if a Recapture Event has occurred due solely to the failure of the Sublessee and/or the Company to create or cause to be maintained the number of FTEs at the Facility as provided in Section 8.13 of the Lease Agreement in any Tax Year but the Sublessee and/or the Company has created or caused to be maintained at least 90% of such required number of FTEs for such Tax Year, then in lieu of recovering the Recaptured Benefits provided above, the Agency may, in its sole discretion, adjust the payments due under the PILOT Agreement on a pro rata basis so that the amount payable under the PILOT Agreement will be adjusted upward retroactively for such Tax Year by the same percentage as the percentage of FTEs that are below the required FTE level for such Tax Year. Such adjustments to the payments due under the PILOT Agreement may be made each Tax Year until such time as the Sublessee and/or the Company has complied with the required number of FTEs pursuant to Section 8.13 of the Lease Agreement.

(e) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a "force

majeure” event (as more particularly defined in the Lease Agreement), (ii) a taking or condemnation by governmental authority of all or part of the Facility, or (iii) the inability or failure of the Company and/or the Sublessee after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a “Loss Event”) to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in good faith on the part of the Company and/or the Sublessee or any of their respective affiliates so long as the Company and/or the Sublessee or any of their respective affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof.

(f) The Company and the Sublessee covenant and agree to furnish the Agency with written notification (i) within sixty (60) days of the end of each Tax Year of the number of FTEs located at the Facility for such Tax Year, and (ii) within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company and the Sublessee of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(g) In the event any payment owing by the Company and the Sublessee under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company and/or the Sublessee shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(h) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred in connection with the recovery of all amounts due under this Recapture Agreement, from amounts received by the Agency pursuant to this Recapture Agreement.

2. Obligations Unconditional.

(a) The obligations of the Company and the Sublessee under this Recapture Agreement shall be absolute and unconditional and shall remain in full force and effect until the PILOT Agreement and the Lease Agreement have expired or been terminated and such obligations shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event, whether or not with notice to or the consent of the Company or the Sublessee.

(b) It is hereby expressly agreed that the Company’s and the Sublessee’s respective obligations under this Recapture Agreement are not limited in any manner, and the Company and the Sublessee shall be liable for the payment of all recapture amounts with respect to the entire Facility.

(c) Reserved.

(d) The Company, the Sublessee and the Agency hereby agree that the obligations and liabilities of the Company and the Sublessee hereunder are the absolute and unconditional obligations and liabilities of the Company and the Sublessee.

3. Condition to Reconveyance of Facility. The parties hereto agree that the Agency shall have no obligation to surrender its leasehold interest in the Company Facility to the Company pursuant to the Lease Agreement until all payments to the Agency and the Town of Brookhaven under Sections 5.3, 11.2 and 11.3 of the Lease Agreement, under the PILOT Agreement and hereunder have been paid in full. If such payments are not paid in full by the Company within sixty (60) days of the date when due and owing, then the Agency shall offer its interest in the Company Facility for sale pursuant to the Agency's Real Property Disposition Policy adopted pursuant to the Public Authorities Accountability Act, as amended.

4. Recordation of Recapture Agreement. The parties hereto agree that this Recapture Agreement shall be recorded as a lien against the Facility and as a covenant and restriction running with the Land until this Recapture Agreement has been discharged by the Agency.

5. Terms Defined. All of the capitalized terms used in this Recapture Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Lease Agreement as Schedule A.

6. Directly or Indirectly. Where any provision in this Recapture Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

7. Survival. All warranties, representations, and covenants made by the Company and the Sublessee herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Recapture Agreement to the Agency regardless of any investigation made by the Agency.

8. Binding Effect. This Recapture Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties.

9. Notices. All notices, certificates and other communications under this Recapture Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or delivered by any national overnight express delivery service (in each case, postage or delivery charges paid by the party giving such communication) addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Brookhaven Industrial Development Agency
1 Independence Hill, 3rd Floor
Farmingville, New York 11738
Attention: Chief Executive Officer

With a copy to:

Brookhaven Town Attorney's Office
1 Independence Hill, 2nd Floor
Farmingville, New York 11738
Attention: Town Attorney

To the Company and Sublessee:

Sayville Browning Properties, Inc.
Browning Extended Stay, LLC
5000 Express Drive South
Ronkonkoma, New York 11779
Attention: Lee Browning Sr., President

With a copy to:

Certilman Balin Adler & Hyman LLP
90 Merrick Avenue, 9th Floor
East Meadow, New York 11554
Attention: Brendan J. DeRiggi, Esq.

10. Entire Understanding; Counterparts. This Recapture Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. Amendments. No amendment, change, modification, alteration or termination of this Recapture Agreement shall be made except in writing upon the written consent of the Company, the Sublessee and the Agency.

12. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Recapture Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Recapture Agreement or any part thereof.

13. Governing Law. This Recapture Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard or reference to its conflict of laws principles.

14. Section Headings. The headings of the several Sections in this Recapture Agreement have been prepared for convenience of reference only and shall not control, or affect the meaning of or be taken as an interpretation of any provision of this Recapture Agreement.


15. Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or

conditions of the Recapture Agreement or any matters whatsoever arising out of or in any way connected with the Recapture Agreement.


(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the Company and the Sublessee have caused this Recapture Agreement to be duly executed and delivered as of the day and year first above written.

**SAYVILLE BROWNING PROPERTIES,
INC.**

By: 
Name: Lee Browning Sr.
Title: President

BROWNING EXTENDED STAY, LLC

By: 
Name: Lee Browning, Sr.
Title: Managing Member

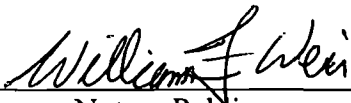
ACCEPTED:

**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Lisa MG Mulligan
Title: Chief Executive Officer

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


On the 19th of November in the year 2014, before me, the undersigned, personally appeared **Lee Browning Sr.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Notary Public
WILLIAM F. WEIR
Notary Public, State of New York
Registration #02WE4991594
Qualified in Monroe County
Certificate Filed in Monroe County
Commission Expires: 02/03/18

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


On the 19th of November in the year 2014, before me, the undersigned, personally appeared **Lee Browning Sr.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Notary Public
WILLIAM F. WEIR
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Commission Expires: 02/03/18

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

On the 19th day of November in the year 2014, before me, the undersigned, personally appeared **Lisa MG Mulligan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Notary Public
WILLIAM F. WEIR
Notary Public, State of New York
Registration #02WE4991594
Qualified in Monroe County
Certificate Filed in Monroe County
Commission Expires: 02/03/18

EXHIBIT A

REAL PROPERTY DESCRIPTION



SCHEDULE A

ALL that certain plot, piece or parcel of land, situate, lying and being in Ronkonkoma, Town of Brookhaven, County of Suffolk and State of New York, being bounded and described as follows:

BEGINNING at the intersection of the Northerly line of Union Avenue and the Northwesterly line of Mill Road, as widened;

RUNNING THENCE along the Northerly line of Union Avenue, North 86 degrees 31 minutes 50 seconds West, 314.14 feet to land now or formerly of Charles Beck, Jr.;

THENCE along said lands of Charles Beck, Jr., North 02 degrees 15 minutes 45 seconds East, 265.00 feet to land now or formerly of Town of Brookhaven Industrial Development Agency;

THENCE along said lands of Town of Brookhaven Industrial Development Agency, South 86 degrees 31 minutes 50 seconds East, 496.43 feet to the Northwesterly line of Mill Road, as widened;

THENCE along the Northwesterly line of Mill Road, as widened, the following two (2) courses and distances:

1. South 41 degrees 17 minutes 40 seconds West, 208.94 feet;
2. South 29 degrees 23 minutes 45 seconds West, 111.08 feet to the Northerly side of Union Avenue, at the point or place of BEGINNING.

FOR
CONVEYANCING
ONLY

The policy to be issued under this report will insure the title to such buildings and improvements erected on the premises which by law constitute real property.

TOGETHER with all the right, title and interest of the party of the first part, of, in and to the land lying in the street in front of and adjoining said premises.

TITLE # 14-CS-48328