

Date: June 17, 2020

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held electronically via conference call on the 17th day of June, 2020, the following members of the Agency were:

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

Recused:

Excused: Scott Middleton

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 a certain industrial development facility more particularly described below (South Setauket ILU, LLC 2020 Facility) and the leasing of the facility to South Setauket ILU, LLC.

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

Voting Aye

Voting Nay

Braun  
Grucci  
Callahan  
Scheidt  
Pollakusky  
Trotta

RESOLUTION OF THE TOWN OF BROOKHAVEN  
INDUSTRIAL DEVELOPMENT AGENCY APPROVING  
THE ACQUISITION OF A CERTAIN 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, South Setauket ILU, 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 South Setauket ILU, LLC (the “**Company**”) has submitted its application, for financial assistance (the “**Application**”) to the Agency to enter into a transaction in which the Agency will assist the Company in the acquisition of a leasehold interest from Active Retirement Community, Inc., d/b/a Jefferson’s Ferry, a New York not-for-profit corporation (the “**Institution**”), of a portion of the Land (defined below) and 248 existing independent living units and the associated common areas (the “**Existing Independent Living Units**”) consisting of 220 apartments and 28 cottages located in approximately 365,417 square feet of existing buildings located on the Land and approximately 73 new independent living unit apartments and the associated common areas (when completed) to be constructed and located in approximately 113,664 square feet of new buildings and additions to existing buildings located on the Land (the “**New Independent Living Units**” and together with the Existing Independent Living Units, collectively, the “**Independent Living Units**”) located on a portion of an approximately 50.0 acre parcel of land (fronting on State Route 47 (Nesconset Highway) and Wireless Road in the Town of Brookhaven, New York, and having an address of One Jefferson Ferry Drive, South Setauket, New York (Tax Map Number 0200-308.00-03.00-001.004) (the “**Land**”). A portion of the Land together with the Independent Living Units (collectively, the “**Facility**”), will be leased by the Institution to the Company and the Facility will be subleased by the Company to the Agency, and sub-subleased by the Agency back to the Company to be used as a part of a continuing care retirement community pursuant to Article 46 of the New York Public Health Law (the “**Project**”); and

WHEREAS, the Company will acquire a leasehold interest in the Facility from the Institution pursuant to a certain Lease Agreement, or such other agreement (the “**Institution Lease**”), and will sublease the Facility to the Agency; and

WHEREAS, the Agency will acquire a subleasehold interest in the Facility pursuant to a certain Company Lease Agreement, dated as of June 1, 2020 or such other date as the Chairman or 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 sub-lease the Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of June 1, 2020 or such other date as the Chairman or 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 consistent with the policies of the Agency, in the form of abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof); 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, a public hearing (the “**Hearing**”) was held on June 17, 2020, so that all persons with views in favor of or opposed to either the financial assistance contemplated by the Agency or the location or nature of the Facility, could be heard; and

WHEREAS, notice of the Hearing was given on June 5, 2020 and such notice (together with proof of publication), was substantially in the form annexed hereto as Exhibit A; and

WHEREAS, the report of the Hearing is substantially in the form annexed hereto as Exhibit B; 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 the competitive position of the Company in its industry; 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, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form and related documents (the “**Questionnaire**”) with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, the Questionnaire has been reviewed by the Agency; and

WHEREAS, the Company has agreed to indemnify the Issuer 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 Issuer to the Company.

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

Section 1. Based upon the Environmental Assessment Form completed by the Company and reviewed by the Agency and other representations and information furnished by the Company regarding the Facility, the Agency determines that the action relating to the acquisition of the Facility is an “unlisted” action, as that term is defined in the SEQRA Act. The Agency also determines that the action will not have a “significant effect” on the environment, and, therefore, an environmental impact statement will not be prepared. This determination constitutes a negative declaration for purposes of SEQRA. Notice of this determination shall be filed to the extent required by the applicable regulations under SEQRA or as may be deemed advisable by the Chairman or Chief Executive Officer of the Agency or counsel to the Agency.

Section 2. 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 Facility preserves the public purposes of the Act by preserving or increasing the number of permanent private sector jobs in the Town of Brookhaven. The Company has represented to the Agency that they expect to maintain approximately two hundred seventy-six (276) jobs within two (2) years of completion of the acquisition of the Facility; and

(d) The acquisition of the Facility and the sub-subleasing 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

(e) The acquisition of the Facility is reasonably necessary to induce the Company to expand its business operations in the State of New York; and

(f) Based upon the representations of the Company, the Project and the related financial assistance is reasonably necessary to discourage the Facility occupant(s) from removing a facility or plant of the Facility occupant(s) located within the State to a location outside of the State; and

(g) 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

(h) The Facility and the operations conducted therein do not have a significant effect on the environment, as determined in accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder; and

(i) It is desirable and in the public interest for the Agency to sub-sublease the Facility to the Company; and

(j) The Company Lease will be an effective instrument whereby the Agency leases the Facility from the Company; and

(k) The Lease Agreement will be an effective instrument whereby the Agency leases and subleases 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 Agreement may recapture some or all of the benefits granted to the Company; and

Section 3. 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 4. In consequence of the foregoing, the Agency hereby determines to: (i) sublease the Facility from the Company pursuant to the Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) sub-sublease the Facility to the Company pursuant to the Lease Agreement, and (iv) execute, deliver and perform the Lease Agreement.

Section 5. The Agency is hereby authorized to acquire the Facility described in Exhibit A 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 6. The Agency hereby authorizes and approves the following economic benefits to be granted to the Company in connection with the acquisition of the Facility in the form of abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof), consistent with the policies of the Agency.

Section 7. 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 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 8. The form and substance of the Company Lease and the Lease Agreement (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 9.

(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 and the Lease Agreement, 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, Vice Chair, Chief Executive Officer 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 10. 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 11. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. The Company agrees to pay expenses and 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 12. 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 17th day of June, 2020, 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, due to the Novel Coronavirus (COVID-19) Emergency State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo’s Executive Order 202.1 issued on March 12, 2020, as amended and extended to date, permitting local governments to hold public hearings by telephone and video conference and/or similar device, the Agency’s Board Meeting on June 16, 2020 (the “**Board Meeting**”), was held electronically via conference call instead of a public meeting open for the public to attend in person. Members of the public were advised, via the Agency’s website, to listen to the Board Meeting by calling (712) 770-5505 and entering access code 884-124, and were further advised that the Minutes of the Board Meeting would be transcribed and posted on the Agency’s website, 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 17th day of June, 2020.

By  \_\_\_\_\_  
  Chief Executive Officer

## EXHIBIT A

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### NOTICE OF PUBLIC HEARING

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NOTICE IS HEREBY GIVEN due to the Novel Coronavirus (COVID-19) Emergency State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as amended by Executive Order 202.14, issued on April 7, 2020, suspending the Open Meetings Law, and Executive Order 202.15 issued on April 9, 2020, as extended by Executive Order 202.28 issued on May 7, 2020 permitting local governments to hold public hearings by telephone and video conference and/or similar device, the Public Hearing scheduled for June 17, 2020, at 10:00 a.m., local time, to be held by the Town of Brookhaven Industrial Development Agency (the "**Agency**"), in accordance with the provisions of Article 18-A of the New York General Municipal Law will be held electronically via conference call instead of a public hearing open for the public to attend. Members of the public may listen to the Public Hearing, and comment on the Project (defined below) during the Public Hearing, by calling (712) 770-5505 and entering access code 884-124. Comments may also be submitted to the Agency in writing or electronically. Minutes of the Public Hearing will be transcribed and posted on the Agency's website, all in connection with the following matters:

South Setauket ILU, 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 South Setauket ILU, LLC (the "**Company**") has submitted its application, for financial assistance (the "**Application**") to the Agency to enter into a transaction in which the Agency will assist the Company in the acquisition of a leasehold interest from Active Retirement Community, Inc., d/b/a Jefferson's Ferry, a New York not-for-profit corporation (the "**Institution**"), of a portion of the Land (defined below) and 248 existing independent living units and the associated common areas (the "**Existing Independent Living Units**") consisting of 220 apartments and 28 cottages located in approximately 365,417 square feet of existing buildings located on the Land and approximately 73 new independent living unit apartments and the associated common areas (when completed) to be constructed and located in approximately 113,664 square feet of new buildings and additions to existing buildings located on the Land (the "**New Independent Living Units**" and together with the Existing Independent Living Units, collectively, the "**Independent Living Units**") located on a portion of an approximately 50.0 acre parcel of land (fronting on State Route 47 (Nesconset Highway) and Wireless Road in the Town of Brookhaven, New York, and having an address of One Jefferson Ferry Drive, South Setauket, New York (Tax Map Number 0200-308.00-03.00-001.004) (the "**Land**"). A portion of the Land together with the Independent Living Units (collectively, the "**Facility**"), will be leased by the Institution to the Company and the Facility will be subleased by the Company to the Agency, and sub-subleased by the Agency back to the Company to be used as a part of a continuing care retirement community pursuant to Article 46 of the New York Public Health Law (the "**Project**") which is owned and/or operated by the Institution.

The Agency will acquire a subleasehold interest in the Facility and will sub-sublease and the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of abatement of real property taxes on the Facility, all consistent with the policies of the Agency.

A representative of the Agency will at the above-stated time and place hear and accept written or oral 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. Written comments may be sent to the Agency at the following address: Town of Brookhaven Industrial Development Agency,



Brookhaven Town Hall, One Independence Hill, 2nd Floor, Farmingville, New York 11738, Attention: Chief Executive Officer or electronically to the following email address: brookhavenida@brookhavenny.gov. Prior to the hearing, all persons will have the opportunity to review on the Agency's website (<https://brookhavenida.org/>), the application for financial assistance filed by the Company with the Agency and an analysis of the costs and benefits of the Facility.

Dated: June 5, 2020

TOWN OF BROOKHAVEN  
INDUSTRIAL DEVELOPMENT  
AGENCY

By: Lisa MG Mulligan  
Title: Chief Executive Officer

EXHIBIT B

FORM OF MINUTES OF PUBLIC HEARING HELD ON  
JUNE 17, 2020

EXHIBIT C

Proposed PILOT Schedule

Schedule of payments-in-lieu-of-taxes: Town of Brookhaven, (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Three Village School District, Suffolk County and Appropriate Special Districts

<u>Year</u>	<u>Tax Year</u>	<u>PILOT Payment</u>
1.	2021/2022	\$773,854
2.	2022/2023	\$773,854
3.	2023/2024	\$773,854
4.	2024/2025	\$789,331
5.	2025/2026	\$819,101
6.	2026/2027	\$835,483
7.	2027/2028	\$852,193
8.	2028/2029	\$869,237
9.	2029/2030	\$886,622
10.	2030/2031	\$904,354
11.	2031/2032	\$922,441
12.	2032/2033	\$940,890
13.	2033/2034	\$959,708
14.	2034/2035	\$978,902
15.	2035/2036	\$998,480
16.	2036/2037	\$1,018,450
17.	2037/2038	\$1,038,819
18.	2038/2039	\$1,059,595
19.	2039/2040	\$1,080,787
20.	2040/2041	\$1,102,403
21.	2041/2042	\$1,124,451
22.	2042/2043	\$1,146,940
23.	2043/2044	\$1,169,878
24.	2044/2045	\$1,193,276
25.	2045/2046	\$1,217,141
26.	2046/2047	\$1,241,484
27.	2047/2048	\$1,266,314
28.	2048/2049	\$1,291,640
29.	2049/2050	\$1,317,473
30.	and thereafter	100% of full taxes and assessments on the Facility