

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE FACILITY AND TAKING OFFICIAL ACTION AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF AGREEMENTS AND TAKING OF CERTAIN OTHER ACTION PERTAINING TO THE FACILITY FOR **JENNA GRACE PROPERTIES LLC** (THE “LESSEE”), AND/OR **SUFFOLK TRANSPORTATION CORP.** and **SUFFOLK BUS CORP.** (EACH, A “SUBLESSEE”) AND/OR ANY OF THE PRINCIPALS OF ANY OF THE LESSEE OR SUBLESSEES AND/OR OTHER ENTITY TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING (COLLECTIVELY, THE “COMPANY”), INCLUDING APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING AND EQUIPPING A COMMERCIAL FACILITY.

WHEREAS, the Town of Brookhaven Industrial Development Agency (the “Agency”) was created by 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 (collectively, the “Act”), with the authority and power to, among other things, acquire, construct and equip a project, provide financial assistance, and mortgage, lease, grant options with respect to and dispose of property; and

WHEREAS, the Company has applied to the Town of Brookhaven Industrial Development Agency (the “Agency”) to enter into a transaction in which the Agency will acquire from the Lessee an approximately 7.0 acre parcel of land with improvements thereon, including a 2,500 square foot building and a 5,000 square foot building (the “Existing Buildings”), located at 1162/1163 Old Town Road (a/k/a 1 Old Middle Country Road), on the southwest sides of Old Town Road and Route 112, and the north side of Old Middle Country Road, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map Nos. 0200-450-1-5, 9.1 and 10.1), demolish the Existing Buildings, and construct and equip on the land an approximately 20,000 square foot building and related site improvements, to be used for the parking, dispatching, training, and maintenance of buses and vans, and to be leased by the Agency to the Lessee and subleased by the Lessee to, and used by, the Sublessees (the “Facility”), including the following as they relate to the appointment of the Company as agent of the Agency as hereinafter provided with respect to the acquisition, construction and equipping of the Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of the Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with such acquisition, construction and equipping, and (ii) all purchases, rentals, uses and/or consumption of supplies, materials and services of every kind and description used in connection with such acquisition, construction and equipping, and (iii) all equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under the Facility, all pursuant to the Act; and

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

WHEREAS, the Agency will provide financial assistance to the Facility, consistent with the policies of the Agency, by allowing and assisting in the creation of mortgage liens on, and securing interests in, the Facility and in the form of abatement of real property taxes consistent with the Agency's uniform tax exemption policy, exemption from sales and use taxes on materials and or equipment used or incorporated in the Facility and exemption from mortgage recording tax; and

WHEREAS, a public hearing (the "Hearing") was held on November 16, 2012, 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 more than ten days prior thereto, such notice (together with proof of publication) having been filed with the records of this Agency; and

WHEREAS, the minutes of the Hearing having been filed with the records of this Agency; and

WHEREAS, the Agency has given due consideration to the application of the Company and to the representations by the Company that the proposed transfer of real estate is either an inducement to the Company to maintain or expand the Facility in the Town of Brookhaven or is necessary 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 "SEQRA"), 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 and 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.

NOW, THEREFORE, BE IT RESOLVED by the Town of Brookhaven Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

Section 1. Based upon the Environmental Assessment Form completed by the Company and reviewed by the Agency and the Town of Brookhaven Planning Board (the "Lead

Agency”) and other representations and information furnished by the Company regarding the Facility, the Agency determines that action relating to the acquisition, construction, equipping and operation of the Facility is a “Unlisted” action, as that term is defined in the State Environmental Quality Review Act (“SEQRA”) (Article 8 of the Environmental Conservation Law). An environmental review of the Facility pursuant to SEQRA was conducted by the Lead Agency and, on December 19, 2011, a negative declaration for purposes of SEQRA was adopted by the Lead Agency. The Agency concurs with the findings of the Lead Agency and, as of the date of this resolution, determines that the action will not have a “significant effect” on the environment and, therefore, an environmental impact statement will not be required. This determination constitutes a negative declaration for the purposes of SEQRA. Notice of this determination shall be filed to the extent required by the applicable regulations under that Act or as may be deemed advisable by the Chairman, 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 as defined in the Act; and

c. The acquisition, construction and equipping of the Facility, the leasing of the Facility to the Company, with an obligation to purchase, the providing of financial assistance to the Company within the meaning of the Act, and the granting of mortgages on, and security interests in, the Facility, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the 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 Agency approves the location of the site of the Facility; and

e. Based upon the representations of the Company, the Facility conforms with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local use plans for the area in which the Facility is located; and

f. The Facility and the operations conducted therein will not cause or result in the violation of the health, labor or other laws of the United States of America, the State of New York, or the Town of Brookhaven; and

g. The financial assistance of the Agency shall not result in the removal of a facility or plant of the Company from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the Company located within the State except, as set forth in the Company’s application, for the purpose of discouraging the

Company from removing such other plant or facility to a location outside the State or to preserve the competitive position of the Company in its industry; and

h. The Facility shall not be used for retail sales; and

i. The transactions contemplated hereby are reasonably necessary to induce the Company to maintain and expand its operations within the State of New York, and to preserve the competitive position of the Company.

Section 3. The Agency shall, in furtherance of the purposes of the Act,

a. acquire, construct, equip, repair and maintain the Facility;
and

b. lease the Facility to the Company with an obligation of the Company to purchase the Facility, with the term of such lease to be approximately ten (10) years; and

c. provide “financial assistance” within the meaning of the Act to the Company, including straight leases, exemptions from taxation in accordance with Section 874 of the Act.

Section 4. The Chairman, Chief Executive Officer, Deputy Chief Executive Officer and/or any other member of the Agency are hereby authorized and directed to, on behalf of and in the name of the Agency,

a. accept a deed and other instruments of title to the Facility,

b. execute, deliver and perform a lease agreement (a “straight lease”) between the Agency and the Company, with an obligation of the Company to purchase, for a term of approximately ten (10) years, in such form and containing such additional terms, conditions and provisions as the person executing same on behalf of the Agency shall deem necessary or desirable, and shall approve, such necessity, desirability, and approval, to be conclusively evidenced by his or her execution and delivery thereof,

c. execute, deliver and perform a mortgage and security agreement or agreements granting to a lender or lenders for the Company a mortgage or mortgages on, and/or a security interest or security interests in, the Facility, including replacements, substitutions, extensions and additions to such mortgages and security interests thereto, with a limitation of the Agency’s liability, in such form and containing such additional terms, conditions and provisions as the person executing same on behalf of the Agency shall deem necessary or desirable, and shall approve, such necessity, desirability, and approval, to be conclusively evidenced by his or her execution and delivery thereof,

d. execute, deliver and perform a payment in lieu of taxes agreement between the Agency and the Company, setting forth the assessed value of the Facility

at the current assessed value of the Facility and providing for the Agency's standard real property tax payment on the value of the new construction and equipping of the Facility, in such form and containing such additional terms, conditions and provisions as the person executing same on behalf of the Agency shall deem necessary or desirable, and shall approve, such necessity, desirability, and approval, to be conclusively evidenced by his or her execution and delivery thereof,

e. execute, deliver and perform, on behalf of and in the name of the Agency, such other agreements, leases, mortgages, security agreements, deeds, payment in lieu of taxes agreements, notices, and any and all documents or instruments, in such form and containing such additional terms, conditions and provisions as, and take such further actions, as the person executing same on behalf of the Agency shall deem necessary or desirable, and shall approve, such necessity, desirability, and approval, to be conclusively evidenced by his or her execution and delivery thereof.

Section 5. Subject to, and conditioned upon, the execution and delivery by the Company of the Authorizing Agreement, the Company is hereby appointed the true and lawful agent of the Agency to acquire, construct and equip the Facility on behalf of the Agency, with the authority to delegate its status as agent of the Agency to the Company's agents, subagents, contractors, subcontractors, suppliers, vendors and other parties as the Company may choose. The terms and conditions for the appointment of the Company as agent of the Agency for the purposes described in this Section 5 are set forth in the form of the attached letter addressed to the Company, marked as Exhibit A to this resolution, which is incorporated herein by reference (the "Sales Tax Letter"). The appointment described above includes the following activities as they relate to the acquiring, constructing and equipping of the Facility, whether or not the materials, services or supplies described below are incorporated into or become an integral part of the Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquiring, constructing and equipping the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with acquiring, constructing and equipping the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under the Facility, including all repairs and replacements of such property. This Agency appointment includes the power to make, execute, acknowledge and deliver any contracts, orders receipts writings and instructions, as the stated agents for the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and with the same validity as the Agency could do if acting on its own behalf. The appointment hereunder shall expire upon the earlier of (a) two (2) years after the date of the adoption of this resolution, and (b) completion of the initial construction and equipping of the Facility. The appointment hereunder shall be null and void from its inception if the execution and delivery of the instruments contemplated at Section 4 above does not occur within six (6) months after the date of the adoption of this resolution, unless such time period shall be extended by resolution of the Agency. The Chief Executive Officer of the Agency is hereby authorized to execute and deliver to the Company a Sales Tax Letter (in the form customarily utilized by this Agency) on behalf of, and in the name of the Agency, with such changes thereto as the Chief Executive Officer may deem appropriate, and, notwithstanding the foregoing provisions of this Section 5,

the appointment of the Company herein shall not be effective unless and until the Chief Executive Officer shall issue the Sales Tax Letter to the Company.

Section 6. Counsel to the Agency is authorized and directed to work with Transaction Counsel (Weinberg, Gross & Pergament LLP), to prepare, for submission to the Agency, all documents necessary to effect the transaction described in the foregoing resolution.

Section 7. Any and all acts, instruments, and other writings heretofore or hereafter performed and/or executed and delivered by any one or more of the Chairman, Chief Executive Officer or any member of the Agency, pursuant to the several foregoing resolutions, for and on behalf of and in the name of the Agency, in connection with the transactions contemplated thereby, be and the same hereby are, in all respects ratified, confirmed and approved.

Section 8. The documents, including the proposed lease agreement, mortgage and/or security agreement and payment in lieu of taxes agreement, immediately following the execution, and delivery thereof, be identified by any of the Chairman, Chief Executive Officer or any member of the Agency by his or her endorsement thereon and when so identified be filed with the official records of the Agency.

Section 9. The Chairman, Chief Executive Officer, Counsel to the Agency or any member of the Agency are hereby authorized and directed (i) to distribute copies of this resolution to the Company and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 10. This resolution shall take effect immediately.