

Date: January 11, 2017

At a meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), held at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 on the 11th day of January, 2017, the following members of the Agency were:

Present: Frederick C. Braun, III
Martin Callahan
Michael Kelly
Scott Middleton
Gary Pollakusky

Recused:

Absent: Felix J. Grucci, Jr.
Ann-Marie Scheidt

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 the amendment and modification of documents and the extension of certain benefits with respect to the (Excel Holdings 6 LLC 2015 Facility) and approving the execution and delivery of related documents.

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

Voting Aye

Braun
Callahan
Kelly
Middleton
Pollakusky

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE MODIFICATION OF DOCUMENTS AND EXTENSION OF FINANCIAL BENEFITS WITH RESPECT TO THE EXCEL HOLDINGS 6 LLC 2015 FACILITY AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS

WHEREAS, by Title I 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 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 to issue its special revenue bonds for the purpose of, among other things, acquiring certain industrial development facilities as authorized by the Act; and

WHEREAS, the Agency, previously assisted Sayville Browning Properties, Inc., a New York business corporation (the "**Assignor**"), and Browning Extended Stay, LLC, a New York limited liability company (the "**Sublessee**"), in (a) the construction of an approximately 102,225 square foot building (the "**Improvements**"), on an 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**"), together with additional parking and various related site improvements and the acquisition of hotel related furniture, fixtures and equipment not part of the Equipment (as hereinafter defined) (the "**Facility Equipment**"; and together with the Land and the Improvements, the "**Company Facility**"), and (b) the acquisition and installation of certain equipment and personal property including hotel related furniture, fixtures and equipment (the "**Sublessee Equipment**"; and together with the Company Facility, the "**Facility**"), which Sublessee Equipment was leased to the Sublessee and which Facility was to be used 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 Assignor leased the Land to the Agency pursuant to certain Company Lease Agreement, dated as of November 1, 2014 (the "**Original Company Lease Agreement**"), between the Assignor, as lessor and the Agency, as lessee; and

WHEREAS, the Agency leased the Company Facility to the Assignor pursuant to a certain Lease Agreement, dated as of November 1, 2014 (the "**Sayville Lease Agreement**"), between the Agency as lessor, and the Assignor, as lessee; and

WHEREAS, the Assignor subleased the Facility to the Sublessee pursuant to a certain Sublease Agreement, dated November 19, 2014 (the "**Sublease Agreement**"); and

WHEREAS, the Agency leased the Sublessee Equipment to the Sublessee pursuant to the terms of a certain Equipment Lease Agreement, dated as of November 1, 2014 (the "**Equipment Lease Agreement**"; and together with the Sayville Lease Agreement, the "**Original Lease Agreement**") (the Sublessee Equipment, together with the Facility Equipment are collectively referred to herein as, the "**Equipment**"); and

WHEREAS, in connection with the leasing of the Facility, the Agency, the Assignor and the Sublessee, entered into a certain Payment-in-Lieu-of-Tax Agreement, dated as of November 1, 2014 (the "**Original PILOT Agreement**"), whereby the Assignor and the Sublessee agreed to make certain payments-in-lieu-of-taxes on the Facility to the Taxing Authorities (as defined therein); and

WHEREAS, in connection with the leasing of the Facility, the Agency, the Assignor and the Sublessee entered into a certain Environmental Compliance and Indemnification Agreement, dated as of November 1, 2014 (the "**Original Environmental Compliance and Indemnification Agreement**"), whereby, among other things, the Assignor and the Sublessee agreed to comply with all Environmental Laws (as defined in the Environmental Compliance and Indemnification Agreement) applicable to the Facility; and

WHEREAS, the Assignor and the Sublessee entered into a Recapture Agreement, dated as of November 1, 2014 (the "**Original Recapture Agreement**"), from the Assignor and the Sublessee to the Agency in order to reflect the repayment of certain obligations of the Assignor and the Sublessee upon the occurrence of a Recapture Event (as defined therein); and

WHEREAS, the Agency previously consented to the assignment of the Facility by the Assignor and the Sublessee to Excel Holdings 6 LLC, a Delaware limited liability company authorized to transact business in the State of New York (the "**Company**"), pursuant to a certain Assignment, Assumption and Amendment Agreement, dated as of December 1, 2015 (the "**Assignment, Assumption and Amendment Agreement**"), by and among the Agency, the Assignor, the Sublessee and the Company; and

WHEREAS, the Agency currently leases the Facility to the Company pursuant to a certain Amended and Restated Lease Agreement, dated as of December 1, 2015 (the "**Amended and Restated Lease Agreement**"; and together with the Original Lease Agreement and the Assignment, Assumption and Amendment Agreement, the "**Lease Agreement**"), between the Agency and the Company, a memorandum of which Lease Agreement was to be recorded in the Suffolk County Clerk's office; and

WHEREAS, the Original PILOT Agreement was amended and restated pursuant to and in accordance with a certain Amended and Restated Payment-In-Lieu-of-Tax Agreement, dated as of December 1, 2015 (the "**Amended and Restated PILOT Agreement**"; and together with the Original PILOT Agreement and the Assignment, Assumption and Amendment Agreement, the "**PILOT Agreement**"), by and between the Agency and the Company; and

WHEREAS, in connection with the foregoing the Agency and the Company previously entered into an Amended and Restated Recapture Agreement, dated as of December 1, 2015 (the "**Amended and Restated Recapture Agreement**"; and together with the Original Recapture Agreement, and the Assignment, Assumption and Amendment Agreement, the "**Recapture Agreement**"), in order to reflect the repayment of certain obligations of the Company upon the occurrence of a Recapture Event (as defined therein); and

WHEREAS, the Company has now submitted a request for the Agency's consent to an extension of the Lease Term, the Completion Date, the Sales Tax Exemption (as such terms are defined in the Lease Agreement) and payments-in-lieu-of-taxes benefits presently provided under the PILOT Agreement; and

WHEREAS, the Agency proposes to amend the Lease Agreement to: (a) extend the Completion Date for the acquisition, construction and equipping of the Facility to June 15, 2018; (b) extend the Sales Tax Exemption until June 15, 2018; (c) extend the Lease Term until November 30, 2029; and (d) extend the FTE (as defined in the Lease Agreement) employment requirement in connection with the extended Completion Date (the "**Project Extension**"); and

WHEREAS, the Agency proposes to provide financial assistance to the Company in the form of the extension of current abatements of real property taxes on the Facility (as set forth in the PILOT Schedule attached as Exhibit A hereof) to commence following the completion of the Facility, consistent with the policies of the Agency (the "**PILOT Extension**"); and

WHEREAS, the Agency and the Company will enter into a certain Second Amended and Restated Payment-in-Lieu-of-Tax Agreement, dated as of January 1, 2017 or such other date as may be determined by the Chairman, Chief Executive Officer and counsel to the Agency (the "**Second Amended and Restated PILOT Agreement**"), by and between the Agency and the Company; and

WHEREAS, the Lease Agreement shall be amended pursuant to a certain Amendment of Lease Agreement, dated as of January 1, 2017 or such other date as may be determined by the Chairman, Chief Executive Officer and counsel to the Agency (the "**Lease Amendment**"), by and among the Agency, the Company and the Sublessee; and

WHEREAS, the Agency and the Company will execute and deliver such other documents as may be required to effectuate the Project Extension and the PILOT Extension (the "**Amendment Documents**"); and

WHEREAS, the extension of the benefits under the Lease Amendment and the Second Amended and Restated PILOT Agreement is necessary to allow the Company to expand their operations in the Town of Brookhaven; 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 Agency has given due consideration to the request of the Company and to representations by the Company that the proposed financial assistance with respect to the Project Extension and the PILOT Extension is either an inducement to the Company to maintain and expand the Facility in the Town of Brookhaven, Suffolk County or is necessary to maintain the competitive position of the Company in its industry; 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 proposed Project Extension and PILOT Extension; and

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

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; and

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

(c) The acquisition, construction and equipping of the Facility, the continued leasing of the Facility to the Company and the provision of financial assistance, consistent with the policies of the Agency, pursuant to the Act, 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 proposed financial assistance with respect to the Project Extension and the PILOT Extension 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 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 grant the Project Extension and the PILOT Extension to the Company; and

(g) The Lease Amendment will be an effective instrument whereby the Agency and the Company set forth the terms and conditions of their agreement regarding the extension of the Lease Term, the Completion Date, the Sales Tax Exemption and the FTE requirements with respect to the Facility; and

(h) The Second Amended and Restated PILOT will be an effective instrument whereby the Agency and the Company set forth the terms and conditions of their agreement regarding the Company's payments in lieu of real property taxes and the PILOT Extension; and

(i) The Amendment Documents will be effective instruments whereby the Agency and the Company effectuate the Project Extension and the PILOT Extension.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) execute, deliver and perform the Second Amended and Restated PILOT Agreement, (ii) execute and deliver the Lease Amendment, (iii) execute and deliver the Amendment Documents, and (iv) execute and deliver any additional documents to which the Agency is a party, in connection with the Project Extension and the PILOT Extension.

Section 3. The form and substance of the Lease Amendment, the Second Amended and Restated PILOT Agreement and the Amendment Documents (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 4.

(a) The Chairman, Vice Chairman, Chief Executive Officer, or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Lease Amendment, the Second Amended and Restated PILOT Agreement and the Amendment Documents all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Chief Executive Officer, or any member of the Agency shall approve, and 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, Vice Chairman, Chief Executive Officer, or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, 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 Installment Sale Agreement, as amended).

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

Section 6. 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. This resolution shall take effect immediately.

STATE OF NEW YORK)

: SS.:

COUNTY OF SUFFOLK)

I, the undersigned Assistant 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 11th day of January, 2017, 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 all in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand this the 11th day of January, 2017.



Assistant Secretary

EXHIBIT A

PILOT Payments: 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), Suffolk County, Sachem Central School District and Appropriate Special Districts

Pilot Payment

<u>Year</u>	<u>Tax Year</u>	<u>Payment</u>
1.	2019/2020	\$8,810.00
2.	2020/2021	\$8,990.00
3.	2021/2022	\$9,170.00
4.	2022/2023	\$9,350.00
5.	2023/2024	\$9,540.00
6.	2024/2025	\$9,730.00
7.	2025/2026	\$9,930.00
8.	2026/2027	\$10,130.00
9.	2027/2028	\$10,330.00
10.	2028/2029	\$10,530.00
11.	2029/2030 and thereafter	Full Assessment