

Date: August 17, 2016

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 17th day of August, 2016, the following members of the Agency were:

Present: Frederick C. Braun, III
Martin Callahan
Michael Kelly
Gary Pollakusky
Ann-Marie Scheidt

Recused:

Absent: Felix J. Grucci, Jr.
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 and title to a certain industrial development facility more particularly described below (American Capital Energy-Manorville, LLC 2016 Facility) and the leasing of the facility to American Capital Energy-Manorville, LLC.

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

Voting Aye

Braun
Callahan
Kelly
Pollakusky
Scheidt

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE APPOINTMENT OF AMERICAN CAPITAL ENERGY-MANORVILLE, LLC, A DELAWARE LIMITED LIABILITY COMPANY, ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF AMERICAN CAPITAL ENERGY-MANORVILLE, 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 ACQUISITION, CONSTRUCTION AND EQUIPPING OF SUCH INDUSTRIAL DEVELOPMENT FACILITY 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, American Capital Energy, Inc. d/b/a American Capital Energy - New York, a New Jersey business corporation authorized to transact business in the State of New York, on behalf of itself and/or the principals of American Capital Energy, Inc. and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Original Company**”), previously applied to the Agency for assistance in connection with the acquisition of a long term leasehold interest in an approximately 33.0 acre parcel of land located at 2 Paper Mill Road, Manorville, New York 11950 (the “**Land**”) owned by the Town of Brookhaven (the “**Town**”), the construction of an approximately 5.0 acre solar array thereon (the “**Improvements**”), and the equipping thereof, including, but not limited to, approximately 3,850 ground-mounted 310-watt solar modules, racking systems supported by ballasted foundations, and two (2) 500 kilowatt inverters (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility is to be leased by the Agency to the Company (as defined below) and used by the Company as a solar electric generating facility (the “**Project**”); and

WHEREAS, the Agency by resolution duly adopted on November 18, 2015 (the “**Authorizing Resolution**”), authorized the acquisition, construction and equipping of the Facility and the execution and delivery of the Agency Documents (as defined therein); and

WHEREAS, the principals of the Original Company have formed American Capital Energy-Manorville, LLC, a Delaware limited liability company, authorized to transact business in the State of New York (the “**Company**”), for the purpose of acquiring, constructing and equipping the Facility; and

WHEREAS, the Agency will acquire a sub-leasehold interest in the Land and a leasehold interest in the Improvements pursuant to a certain Company Lease Agreement, dated as of August 1, 2016, or such other date as may be determined by the Chairman, Chief Executive Officer and counsel to the Agency (the "**Company Lease**"), by and between the Company and 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 August 1, 2016, or such other date as may be determined by the Chairman, Chief Executive Officer and counsel to the Agency (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 (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$1,800,000 but not to exceed \$2,000,000 in connection with the financing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing and equipping the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$207,000, in connection with the purchase or lease of equipment, building materials, services or other personal property, and (iii) exemption of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C to the Authorizing Resolution), consistent with the policies of the Agency; 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 (as such term is defined in the Lease Agreement), the Agency and the Company will execute and deliver to a lender or lenders not yet determined (the "**Lender**"), a mortgage 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, construction and equipping of the Facility (collectively, the "**Loan Documents**"); 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) It is desirable and in the public interest for the Agency to lease the Facility to the Company; and

(b) The Company Lease will be an effective instrument whereby the Agency will sublease the Land and lease the Improvements from the Company; and

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

(d) 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 2. The Agency has assessed all material information included in connection with the Company's request for financial assistance, including the cost benefit analysis prepared by the Agency and such information has provided the Agency of a reasonable basis for its decision to provide the financial assistance described herein to the Company.

Section 3. In consequence of the foregoing, the Agency hereby determines to: (i) sublease the Land and the Improvements from the Company pursuant to the Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) sub-lease and lease the Facility to the Company pursuant to the Lease Agreement, and (iv) execute, deliver and perform the Lease Agreement, (v) grant a mortgage on and security interests in and to the Facility pursuant to the Loan Documents, and (vi) execute and deliver the Loan Documents to which the Agency is a party.

Section 4. The Agency hereby ratifies and confirms all terms contemplated by the Authorizing Resolution, as amended by this Amended Authorizing Resolution, including the Agency Documents.

Section 5. This resolution shall take effect immediately.

ADOPTED: August 17, 2016

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 August, 2016, 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 August, 2016.

By: 
Secretary

Date: August 17, 2016

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 17th day of August, 2016, the following members of the Agency were:

Present: Frederick C. Braun, III
Martin Callahan
Michael Kelly
Gary Pollakusky
Ann-Marie Scheidt

Recused:

Absent: Felix J. Grucci, Jr.
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 and title to a certain industrial development facility more particularly described below (American Capital Energy-Holtsville, LLC 2016 Facility) and the leasing of the facility to American Capital Energy-Holtsville, LLC.

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

Voting Aye

Braun
Callahan
Kelly
Pollakusky
Scheidt

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE APPOINTMENT OF AMERICAN CAPITAL ENERGY-HOLTSVILLE, LLC, A DELAWARE LIMITED LIABILITY COMPANY, ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF AMERICAN CAPITAL ENERGY-HOLTSVILLE, 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 ACQUISITION, CONSTRUCTION AND EQUIPPING OF SUCH INDUSTRIAL DEVELOPMENT FACILITY 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, American Capital Energy, Inc. d/b/a American Capital Energy - New York, a New Jersey business corporation authorized to transact business in the State of New York, on behalf of itself and/or the principals of American Capital Energy, Inc. and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Original Company**”), previously applied to the Agency for assistance in connection with the acquisition of a long term leasehold interest in an approximately 6.0 acre parcel of land located at 249 Buckley Road, Holtsville, New York 11742 (the “**Land**”) owned by the Town of Brookhaven (the “**Town**”), the construction of an approximately 6.0 acre solar array thereon (the “**Improvements**”), and the equipping thereof, including, but not limited to, approximately 5,060 ground-mounted 310-watt solar modules, racking systems supported by ballasted foundations, and two (2) 500 kilowatt inverters and one (1) 250 kilowatt inverter (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility is to be leased by the Agency to the Company (as defined below) and used by the Company as a solar electric generating facility (the “**Project**”); and

WHEREAS, the Agency by resolution duly adopted on November 18, 2015 (the “**Authorizing Resolution**”), authorized the acquisition, construction and equipping of the Facility and the execution and delivery of the Agency Documents (as defined therein); and

WHEREAS, the principals of the Original Company have formed American Capital Energy-Holtsville, LLC, a Delaware limited liability company, authorized to transact business in the State of New York (the “**Company**”), for the purpose of acquiring, constructing and equipping the Facility; and

WHEREAS, the Agency will acquire a sub-leasehold interest in the Land and a leasehold interest in the Improvements pursuant to a certain Company Lease Agreement, dated as of August 1, 2016, or such other date as may be determined by the Chairman, Chief Executive Officer and counsel to the Agency (the "**Company Lease**"), by and between the Company and 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 August 1, 2016, or such other date as may be determined by the Chairman, Chief Executive Officer and counsel to the Agency (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 (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$1,800,000 but not to exceed \$2,000,000 in connection with the financing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing and equipping the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$207,000, in connection with the purchase or lease of equipment, building materials, services or other personal property, and (iii) exemption of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C to the Authorizing Resolution), consistent with the policies of the Agency; 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 (as such term is defined in the Lease Agreement), the Agency and the Company will execute and deliver to a lender or lenders not yet determined (the "**Lender**"), a mortgage 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, construction and equipping of the Facility (collectively, the "**Loan Documents**"); 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) It is desirable and in the public interest for the Agency to lease the Facility to the Company; and

(b) The Company Lease will be an effective instrument whereby the Agency will sublease the Land and lease the Improvements from the Company; and

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

(d) 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 2. The Agency has assessed all material information included in connection with the Company's request for financial assistance, including the cost benefit analysis prepared by the Agency and such information has provided the Agency of a reasonable basis for its decision to provide the financial assistance described herein to the Company.

Section 3. In consequence of the foregoing, the Agency hereby determines to: (i) sublease the Land and the Improvements from the Company pursuant to the Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) sub-lease and lease the Facility to the Company pursuant to the Lease Agreement, and (iv) execute, deliver and perform the Lease Agreement, (v) grant a mortgage on and security interests in and to the Facility pursuant to the Loan Documents, and (vi) execute and deliver the Loan Documents to which the Agency is a party.

Section 4. The Agency hereby ratifies and confirms all terms contemplated by the Authorizing Resolution, as amended by this Amended Authorizing Resolution, including the Agency Documents.

Section 5. This resolution shall take effect immediately.

ADOPTED: August 17, 2016

Date: August 17, 2016

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 18th day of February, 2015, the following members of the Agency were:

Present: Frederick C. Braun, III
Martin Callahan
Michael Kelly
Gary Pollakusky
Ann-Marie Scheidt

Recused:

Absent: Felix J. Grucci, Jr.
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 a proposed mortgage financing and the execution of related loan documents in connection with a certain industrial development facility more particularly described below (Rail Realty 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
Pollakusky
Scheidt

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING
MORTGAGE FINANCING AND THE EXECUTION AND
DELIVERY OF LOAN DOCUMENTS IN CONNECTION
THEREWITH FOR RAIL REALTY LLC 2015 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 has previously provided assistance to Rail Realty LLC, a limited liability company organized and existing under the laws of the State of New York (“Company”), to finance certain costs of an industrial development facility which will occur in two phases over the next three to five years as follows: (A) Phase I will consist of (i) the acquisition of five (5) parcels of land with seven (7) tax lots aggregating approximately 1.643 acres and having the following addresses: 14 and 18 Sheep Pasture Road, 103 Texaco Avenue, 28 Linden Place and a vacant parcel of land located at the corner of Texaco Avenue and Linden Place, all located in the Village of Port Jefferson, Town of Brookhaven, Suffolk County, New York (further identified as Tax Map Nos. Section 021.00 Block 04.00 Lots 11.000, 12.000, 19.100, 20.000, 22.100, 22.200 and 30.000) (collectively, the “Land”), together with existing structures located thereon, (ii) the demolition of existing structures located on the Land, and (iii) the construction and equipping of an approximately 54,829 square foot 3-story building over an underground parking garage, containing approximately 38 multi-family apartment units and known as Rail Realty Apartment Complex (collectively, the “Phase I Facility”), (B) Phase II will consist of the construction and equipping of an approximately 51,687 square foot 3-story building over an underground parking garage, containing approximately 36 multi-family apartment units (the “Phase II Facility”; and, together with the Phase I Facility, the “Facility”), all leased by the Agency to the Company and used by the Company as a market-rate residential apartment complex for residents of the Town of Brookhaven; and

WHEREAS, the Company is leasing the Land and the Improvements to the Agency pursuant to a certain Company Lease Agreement, dated as of February 1, 2015 (the “Company Lease”), by and between the Company and the Agency; and

WHEREAS, the Agency is leasing the Facility to the Company pursuant to a certain Lease Agreement, dated as of February 1, 2015 (the “Lease Agreement”), by and between the Agency, as lessor and the Company, as lessee; and

WHEREAS, as security for the Loan (as such term is defined in the Lease Agreement), the Agency and the Company executed and delivered to Bridgehampton National Bank (the “Lender”): (i) a certain Building Loan Mortgage, Assignment of Leases

and Rents and Security Agreement, dated March 23, 2015 (the "**Building Loan Mortgage**"), from the Agency and the Company to the Lender, securing a principal amount of \$13,600,000, which Building Loan Mortgage was recorded in the Suffolk County Clerk's office, and (ii) a certain Project Loan Mortgage, Assignment of Leases and Rents and Security Agreement, dated March 23, 2015 (the "**Project Loan Mortgage**"; and., together with the Building Loan Mortgage, the "**Mortgage**"), from the Agency and the Company to the Lender, securing a principal amount of \$1,400,000, which Project Loan Mortgage was recorded in the Suffolk County Clerk's office; and

WHEREAS, the Company has notified the Agency that the completion of the Phase I Facility included many upgrades and additional amenities that were not included in the original project budget and that the same upgrades and additional amenities will also be included in the completion of the Phase II Facility; and

WHEREAS, such upgrades and additional amenities will account for an approximate 5% increase in the original budget for the completion of the Facility;

WHEREAS, due to increase of the original budget the Company has entered into negotiations with the Lender for a loan modification to permit an increase in the financing of the Facility in an amount presently expected to be \$1,500,000; and

WHEREAS, the Company has now requested that the Agency consent to enter into an additional financing with the Lender with respect to the Facility in the aggregate principal amount presently expected to be \$1,500,000 but not to exceed \$3,000,000 (the "**2016 Loan**"); and

WHEREAS, the proceeds of the 2016 Loan will be used to reimburse the costs of the upgrades and additional amenities in the Facility; and

WHEREAS, as security for such 2016 Loan being made to the Company by the Lender, the Company has submitted a request to the Agency that it join with the Company in executing and delivering to the 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 Lender (the "**2016 Loan Documents**"); 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 securing the principal amount presently estimated to be \$1,500,000 but not to exceed \$3,000,000 in connection with the financing or refinancing of the acquisition, construction, renovation and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing, renovating and equipping the Facility; 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;

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 financing or refinancing of the acquisition, construction, renovation 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 financing or refinancing of the acquisition, construction, renovation and equipping of the Facility as contemplated in this resolution is reasonably necessary to maintain the competitive position of the Company in its industry.
- (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 financing of the acquisition, construction, renovation and equipping of the Facility.
- (g) The 2016 Loan Documents will be effective instruments whereby the Agency and the Company agree to secure the 2016 Loan and assign to the Lender their respective rights under the 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 on and security interest in and to the Facility pursuant to a certain mortgage and security agreement for the benefit of the Lender (the “**2016 Mortgage**”),
- (ii) execute, deliver and perform the 2016 Mortgage, and (iii) execute, deliver and perform the 2016 Loan Document to which the Agency is a party, as may be necessary or appropriate to effect the 2016 Loan or any subsequent refinancing of the 2016 Mortgage.

Section 3. 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 2016 Loan Documents and the 2016 Mortgage, and such other related documents as may be necessary or appropriate to effect the 2016 Loan, or any subsequent refinancing of the 2016 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, renovating and equipping of the Facility without need for any further or future approvals of the Agency.

Section 4.

(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 2016 Mortgage and 2016 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 5. 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 8. Any expenses incurred by the Agency with respect to the financing or refinancing of the Facility shall be paid by the Company. By acceptance hereof, the Company agrees 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 financing or refinancing of the Facility.

Section 9. This resolution shall take effect immediately.

ADOPTED: August 17, 2016

ACCEPTED: _____, 2016

RAIL REALTY LLC

By: _____

Name:

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 August 17, 2016, 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 is 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 August, 2016.

By: 
Secretary