

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY CONSENTING TO THE TRANSFER OF
OWNERSHIP OF TATE'S HOLDING COMPANY TO MONDELÉZ
GLOBAL LLC AND TO THE CONTINUED LEASING OF THE
FACILITY TO TATE'S WHOLESALE, LLC

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 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 the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the Agency previously provided assistance to Cookie Commissary LLC, a limited liability company organized and existing under the laws of the State of New York, by entering into a straight lease transaction in which the Agency (i) acquired approximately 4.8 acres of land located at 62 Pine Street, East Moriches, in the Town of Brookhaven, Suffolk County, New York (further identified as Suffolk County Tax Map Number District 0200 Section 794.00 Block 03.00 Lot 008.008) (the "**Land**"), (ii) acquired, renovated and equipped an existing approximately 23,500 square foot industrial building (the "**Industrial Building**") and acquired an existing approximately 3,200 square foot commercial building thereon (together with the Industrial Building, the "**Existing Buildings**"), and (iii) acquired, constructed and equipped an approximately 14,000 square foot addition to the existing 23,500 square foot building (the "**Addition**"; together with the Existing Buildings, the "**Improvements and Equipment**"; the Land and the Improvements and Equipment, collectively, the "**Facility**"), and leased the Facility to Cookie Commissary LLC for sublease by Cookie Commissary LLC to, and use by, Tate's Wholesale, LLC, a limited liability company organized and existing under the laws of the State of New York, for the manufacture and distribution of baked goods (the "**Project**"); and

WHEREAS, the Agency previously acquired title to the Land and Existing Buildings pursuant to a certain deed, dated November 30, 2012, from Cookie Commissary LLC to the Agency, which deed was to be recorded in the office of the Suffolk County Clerk, and leased the Land and Existing Buildings to Cookie Commissary LLC, and acquired, constructed and equipped the Addition and renovated the Industrial Building, pursuant to a certain Lease Agreement, dated as of November 1, 2012 (the "**Lease Agreement**"), between the Agency and Cookie Commissary LLC, a memorandum of which was to be recorded in the office of the Suffolk County Clerk, and the Facility was subleased by Cookie Commissary LLC to Tate's Wholesale, LLC; and

WHEREAS, in connection with Project, the Agency, Cookie Commissary LLC and Tate's Wholesale, LLC entered into a certain Payment-In-Lieu-of -Tax Agreement, dated as of November 1, 2012 (the "**PILOT Agreement**"), and a certain Recapture Agreement, dated as of November 1, 2012 (the "**Recapture Agreement**"); and

PRELIMINARY RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION TOWARD THE ISSUANCE OF TAX-EXEMPT INDUSTRIAL DEVELOPMENT BONDS OR TAXABLE INDUSTRIAL DEVELOPMENT BONDS OR A COMBINATION THEREOF (OR, IN THE ALTERNATIVE, ENTERING INTO A STRAIGHT LEASE TRANSACTION), IN AN AMOUNT SUFFICIENT TO FINANCE CERTAIN COSTS OF THE ENGEL BURMAN AT MT. SINAI, LLC FACILITY, AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE FACILITY AND REQUESTING THE SUPERVISOR OF THE TOWN OF BROOKHAVEN TO APPROVE THE ISSUANCE OF THE BONDS, IF BONDS ARE ISSUED.

WHEREAS, HSRE-EB Mount Sinai, LLC, a limited liability company organized and existing under the laws of the State of Delaware and authorized to transact business in the State of New York, on behalf of itself and/or the principals of HSRE-EB Mount Sinai, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), has requested the Town of Brookhaven Industrial Development Agency (the “**Issuer**”) to issue its tax-exempt Industrial Development Revenue Bonds pursuant to Section 142(a)(7) of the Code in an amount presently estimated to be approximately \$48,600,000, but not to exceed \$60,000,000 (the “**Tax-Exempt Bonds**”), or its taxable Industrial Development Revenue Bonds (the “**Taxable Bonds**”; and together with the Tax-Exempt Bonds, the “**Bonds**”), in an amount presently estimated to be approximately \$48,600,000, but not to exceed \$60,000,000 or a combination thereof (or, in the alternative, entering into a straight lease transaction), to finance certain costs of an industrial development facility consisting of the acquisition of an approximately 6.5 acre parcel of land (which is a part of an approximately 24.31 acre parcel of land to be subdivided) located on the south side of Route 25A near the intersection of Route 25A and Echo Avenue, Mount Sinai, Town of Brookhaven, New York (also known as Tax Map No. 0200-118.00-03.00-p/o 004.001) (the “**Land**”), and the construction, equipping and furnishing of an 120 unit assisted living facility, including approximately 138 beds, across approximately 2 buildings of 2-story height for use by the Company as a senior living residential facility, including common areas consisting of dining facilities, recreational areas, common meeting and reading areas, and other amenities catering to the needs of local seniors and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment, telephone systems, audio-visual equipment, security equipment and exercise equipment (collectively, the “**Equipment**” and “**Improvements**”), also including an approximately 1,200 square foot space to be leased by the Company to a tenant not yet determined (the “**Tenant**”) as a hair salon; and

WHEREAS, in addition, the Bonds will be issued to finance the construction of (a) drive aisles and parking for approximately 534 vehicles, (b) a new wastewater collection system to be connected to an existing sanitary manhole being part of the Suffolk County Sewer District #2 (Talmadge Woods sewage treatment plant), (c) storm-water drainage facilities in the forms of dry-well systems to manage storm-water from new impervious areas on-site, and (d) utility service connections including electrical, gas and water service (the

“**Related Improvements**”; and, together with the Land, the Equipment and the Improvements, the “**Facility**”); and

WHEREAS, the Issuer will acquire a leasehold interest in the Facility and the Improvements and title to the Equipment and will sublease and lease the Facility to the Company, all pursuant to 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**”); and

WHEREAS, the Act authorizes and empowers the Issuer to issue its bonds (or, in the alternative, to enter into straight lease transactions) 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, in addition to the issuance of the Bonds, if Bonds are issued, the Issuer contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility and exemptions from sales and use taxes in connection with the construction and equipping of the Facility and abatement of real property taxes, all consistent with the policies of the Issuer; and

WHEREAS, as of the date of this resolution, no determination for financial assistance has been made; and

WHEREAS, the Issuer has required the Company to provide to the Issuer a feasibility report (the “**Feasibility Study**”), together with such letters or reports from interested parties and governmental agencies or officials (the “**Letters of Support**”; and together with the Feasibility Study, the “**Requisite Materials**”), to enable the Issuer to make findings and determinations that the Facility qualifies as a “project” under the Act and that the Facility satisfies all other requirements of the Act; and

WHEREAS, prior to the date of the Hearing (defined below), the Issuer will have received the Requisite Materials and have prepared a cost benefit analysis which will determine the financial assistance; and

WHEREAS, subject to the provisions of this resolution, in connection with the issuance of the Bonds (or, in the alternative, prior to entering into the straight lease transaction) and the granting of any tax benefits, a public hearing (the “**Hearing**”), will be held so that all persons with views in favor of or opposed to either the financial assistance contemplated by the Issuer or the location or nature of the Facility can be heard; and

WHEREAS, subject to the provisions of this resolution, notice of the Hearing will be given prior to the issuance of the Bonds, or closing of the transaction described herein, and such notice (together with proof of publication) substantially in the form annexed hereto as Exhibit A; and

WHEREAS, the minutes of the Hearing are or will be annexed hereto as Exhibit B; and

WHEREAS, the Company reasonably expects that it will pay or incur certain capital expenditures in connection with the Facility prior to the issuance of the Bonds, if Bonds are issued, for the Facility; and

WHEREAS, the Company will use funds from sources other than Bond Proceeds which are or will be available on a short-term basis to pay for preliminary expenditures and the acquisition, construction, furnishing and equipping of the Facility; and

WHEREAS, the Company reasonably expect that it will reimburse themselves for the use of such funds with proceeds of indebtedness to be issued by the Issuer to finance the costs of the Facility; and

WHEREAS, the Issuer has given due consideration to the application of the Company and to representations by the Company that the issuance of the Bonds (or, in the alternative, the entering into of a straight lease transaction) is an inducement to the Company to maintain the Facility in the Town of Brookhaven, New York, or an inducement to the Company to maintain and expand the Facility in the Town of Brookhaven, New York 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 “**SEQR**”), the Issuer constitutes a “**State Agency**” and is therefore and “Involved Agency” for the Facility; and

WHEREAS, to aid the Issuer in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Issuer an Environmental Assessment Form and related documents (the “**Questionnaire**”) with respect to the Facility and an adjacent facility known as the Engel Burman at Mt Sinai, LLC Facility (collectively, the “**Facilities**”) a copy of which is on file at the office of the Issuer; and

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

WHEREAS, the Issuer constitutes an “Involved Agency” (as defined in SEQR); and

WHEREAS, the construction and operation of the Facilities is an “Action” under SEQR; and

WHEREAS, the Town of Brookhaven Planning Board (the “**Planning Board**”), as an Involved Agency under SEQR, declared its intent to act as Lead Agency for purposes of review of the Action under SEQR; and

WHEREAS, on December 4, 2017, the Planning Board, determined that the Action to be an Unlisted Action as identified under SEQR and adopted a Negative Declaration for the Action; and

WHEREAS, the Planning Board reviewed the criteria for making a determination of significance comparing these criteria to identified impacts and made a determination that the Action will not result in significant adverse impacts to the environment; 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 Town of Brookhaven Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

Section 1. Based upon the Questionnaire prepared by the Company and reviewed by the Issuer, and other representations and information furnished regarding the Facility, the Issuer determines that the Action relating to the acquisition, construction, equipping and operation of the Facility in an “Unlisted” action, as that term is defined under SEQR. The Issuer also determines that the Facility 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 SEQR. Notice of this determination shall be filed to the extent required by the applicable regulations under SEQR or as may be deemed advisable by the Chairman or the Chief Executive Officer of the Issuer or counsel to the Issuer.

Section 2. (a) The acquisition, construction and equipping of the Facility and the financing thereof by the Issuer, through the issuance of the Bonds (or, in the alternative, through the entering into of the straight lease transaction) pursuant to the Act, and the provision of other financial assistance in connection therewith pursuant to the Act, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Town and the people of the State of New York and improve their standard of living, and thereby serve the public purposes of the Act, and the same is, therefore, approved; and

(b) Subject to receipt of the Requisite Materials and the preparation of a cost benefit analysis, the Issuer makes a preliminary determination that it is desirable and in the public interest for the Issuer to issue the Bonds (or, in the alternative to enter into the straight lease transaction), for the purpose of financing the costs of the acquisition, renovation and equipping of the Facility, together with necessary incidental expenses in connection therewith, as reflected in the Company's application to the Issuer, as amended from time to time prior to the issuance of the Bonds (or, the alternative, prior to the closing of the straight lease transaction). The currently estimated aggregate principal amount of the Bonds to be issued is approximately \$48,600,000, but not to exceed \$60,000,000.

Section 3. Subject to the receipt of the Requisite Materials, the preparation of the cost benefit analysis by the Issuer, and subject to approval of the issuance of the

Tax-Exempt Bonds by Supervisor, of the Town of Brookhaven, Suffolk County, and the compliance with any other applicable provisions of the Code, the Issuer shall (i) issue the Bonds (if Bonds are issued in lieu of a straight lease transaction) in an amount and with maturities, an interest rate, redemption terms and other terms and provisions to be determined by a further resolution of the Issuer, (ii) acquire, construct and equip the Facility, (iii) lease (with an obligation to purchase) the Facility to the Company pursuant to an agreement by and between the Issuer and the Company whereby the Company will be obligated, among other things, to make payments to or for the account of the Issuer in amounts and at times so that such payments will be adequate to pay the principal of, premium, if any, and interest on the Bonds (if Bonds are issued), and (iv) secure the Bonds (if Bonds are issued) in such manner as the Issuer, the Company and the purchaser(s) of the Bonds mutually deem appropriate. If the proceeds of the sale of the Bonds are insufficient to finance completion of the acquisition, construction and equipping of the Facility, the Issuer will, subject to the terms and conditions to be agreed upon by the Issuer and the Company, and upon the request of the Company, take such actions and execute such documents as may be necessary to effect the issuance from time to time of additional bonds, whether on a parity with the Bonds or otherwise, for the purpose of paying the costs of completing the Facility.

Section 4. Nothing herein shall be construed as committing the Issuer to approve the acquisition, construction, equipping and financing of the Facility until such time as the Issuer has received the Requisite Materials with respect to the Facility which enable the Agency to make findings and determinations that the Facility qualifies as a “project” under the Act.

Section 5. To the extent the Company has paid or incurred or will pay or incur preliminary expenditures or hard costs in connection with the Facility with its current funds, it reasonably expects to reimburse itself with proceeds from the Bonds, if Bonds are issued. This Resolution is intended to be a declaration of official intent pursuant to Section 1.150-2 of the Treasury Regulations to reimburse prior expenditures made by the Company for the Facility with proceeds of the Bonds, if Bonds are issued.

Section 6. The law firm of Nixon Peabody LLP is hereby appointed Bond Counsel to the Issuer in connection with the issuance of the Bonds (or, in the alternative, Transaction Counsel to the Issuer in connection with any straight lease transaction).

Section 7. Counsel to the Issuer and Bond Counsel (or, in the alternative, Transaction Counsel) are hereby authorized to work with counsel to the Company and others to prepare, for submission to the Issuer, all documents necessary to effect the authorization, issuance and sale of the Bonds (or, in the alternative, to effect the straight lease transaction).

- Section 8. The Chairman, the Chief Executive Officer, counsel to the Issuer and all members of the Issuer 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 9. The adoption of a final authorizing resolution for the Facility and the issuance of the Bonds (or in the alternative entering into a straight lease transaction) and the granting of the benefits described herein, are subject to the Company obtaining, prior to the date of the public hearing, all necessary state, county, town and other governmental approvals and permits, including all required site plan and zoning approvals or variances, necessary to acquire, construct, equip and operate the Facility
- Section 10. Any expenses incurred by the Issuer with respect to the Facility, including the expenses of Bond Counsel to the Issuer in connection with the issuance of the Bonds (or, in the alternative, Transaction Counsel to the Issuer in connection with any straight lease transaction), shall be paid by the Company. The Company agrees to pay such expenses and further agree to indemnify the Issuer, its members, directors, employees and agents and hold the Issuer 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 Issuer in good faith with respect to the Facility.
- Section 11. This resolution shall take effect immediately.

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 foregoing copy of a resolution of the Town of Brookhaven Industrial Development Agency (the “**Issuer**”), with the original thereof on file in the office of the Issuer, and that the same is a true and correct copy of such resolution and of the proceedings of the Issuer in connection with such matter.

Such resolution was passed at a meeting of the Issuer duly convened in public session on June 5, 2018 at the Town of Brookhaven Department of Economic Development, 1 Independence Hill, 3rd Floor, Farmingville, New York at which the following members were:

Present: Frederick C. Braun, III
 Felix J. Grucci, Jr.
 Scott Middleton
 Ann-Marie Scheidt

Recused:

Absent: Martin Callahan
 Michael Kelly
 Gary Pollakusky

Also Present: Lisa M. G. Mulligan, Chief Executive Officer

The question of the adoption of the foregoing resolution was duly put to vote on roll call, which resulted as follows:

<u>Voting Aye</u>	<u>Voting Nay</u>	<u>Abstain</u>
Braun		
Grucci		
Middleton		
Scheidt		

and, therefore, the resolution was declared duly adopted.

The Agreement and the Application are in substantially the form presented to and approved at such meeting.

I FURTHER CERTIFY that (i) all members of the Issuer 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 103a and 104, (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 as of June 5, 2018.

Secretary

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the “**Code**”), and Article 18-A of the New York State General Municipal Law will be held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on the ____ day of June, 2018, at _____ a.m. local time, at Town of Brookhaven Division of Economic Development, 2nd Floor, One Independence Hill, Farmingville, New York 11738, in connection with the following matters:

HSRE-EB Mount Sinai, LLC, a limited liability company organized and existing under the laws of the State of Delaware and authorized to transact business in the State of New York, on behalf of itself and/or the principals of HSRE-EB Mount Sinai, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), has requested the Town of Brookhaven Industrial Development Agency (the “**Issuer**”) to issue its tax-exempt Industrial Development Revenue Bonds pursuant to Section 142(a)(7) of the Code in an amount presently estimated to be approximately \$48,600,000, but not to exceed \$60,000,000 (the “**Tax-Exempt Bonds**”), or its taxable Industrial Development Revenue Bonds (the “**Taxable Bonds**”; and together with the Tax-Exempt Bonds, the “**Bonds**”), in an amount presently estimated to be approximately \$48,600,000, but not to exceed \$60,000,000 or a combination thereof (or, in the alternative, entering into a straight lease transaction), to finance certain costs of an industrial development facility consisting of the acquisition of an approximately 6.5 acre parcel of land (which is a part of an approximately 24.31 acre parcel of land to be subdivided) located on the south side of Route 25A near the intersection of Route 25A and Echo Avenue, Mount Sinai, Town of Brookhaven, New York (also known as Tax Map No. 0200-118.00-03.00-p/o 004.001) (the “**Land**”), and the construction, equipping and furnishing of an 120 unit assisted living facility, including approximately 138 beds, across approximately 2 buildings of 2-story height for use by the Company as a senior living residential facility, including common areas consisting of dining facilities, recreational areas, common meeting and reading areas, and other amenities catering to the needs of local seniors and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment, telephone systems, audio-visual equipment, security equipment and exercise equipment (collectively, the “**Equipment**” and “**Improvements**”), also including an approximately 1,200 square foot space to be leased by the Company to a tenant not yet determined (the “**Tenant**”) as a hair salon.

In addition, the Bonds will be issued to finance the construction of (a) drive aisles and parking for approximately 534 vehicles, (b) a new wastewater collection system to be connected to an existing sanitary manhole being part of the Suffolk County Sewer District #2 (Talmadge Woods sewage treatment plant), (c) storm-water drainage facilities in the forms of dry-well systems to manage storm-water from new impervious areas on-site, and (d) utility service connections including electrical, gas and water service (the “**Related Improvements**”; and, together with the Land, the Equipment and the Improvements, the “**Facility**”).

The Issuer will acquire a leasehold interest to the Facility and will lease and sublease the Facility to the Company. The Facility will initially be owned, operated and/or managed by the Company.

In addition to the issuance of the Bonds, if Bonds are issued, the Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility and exemptions from sales and use taxes in connection with the construction and equipping of the Facility and abatement of real property taxes, all consistent with the policies of the Agency.

The Bonds, if issued, will be a special obligation of the Agency payable solely from proceeds of the lease or sale of the facility to the Company and other amounts payable to the Agency and certain other assets of the Company pledged to the repayment of the Bonds. The Bonds shall not be a debt of the State of New York or any political subdivision thereof, including the Town of Brookhaven and neither the State of New York nor any political subdivision thereof, including the Town of Brookhaven, shall be liable thereon.

A representative of the Agency will, at the above-stated time and place, hear and accept written comments from all persons with views in favor of or opposed to either the issuance of the Bonds, the granting of other financial assistance contemplated by the Agency or the location or nature of the Facility. At the hearing, all persons will have the opportunity to review the application for financial assistance filed by the Company with the Agency, and an analysis of the costs and benefits of the proposed Facility.

Minutes of the hearing will be made available to the Supervisor of the Town of Brookhaven. Approval of the issuance of the Tax-Exempt Bonds, if issued, by the Supervisor of the Town of Brookhaven is necessary in order for the interest on the Tax-Exempt Bonds, if issued, to be excluded from gross income for federal income tax purposes.

Dated: June __, 2018

TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT
AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

AFFIDAVIT OF PUBLICATION

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

_____, being duly sworn, says that he/she is an officer of _____, the publisher of a newspaper circulated generally throughout Town of Brookhaven, Suffolk County, New York, and that the notice annexed hereto was published in said paper on the _____ day of June, 2018.

Officer

Copy of
Legal
Notice

Sworn to before me this _____
day of June, 2018.

Notary Public

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON June __, 2018

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY (Engel Burman at Mt Sinai, LLC Facility)

1. Lisa MG Mulligan, Chief Executive Officer of the Town of Brookhaven Industrial Development Agency (the “Issuer”), called the hearing to order.
2. The Chief Executive Officer then appointed, Jocelyn Brinka of the Issuer, to record the minutes of the hearing.
3. The Chief Executive Officer then described the proposed issuance of the Bonds and the location and nature of the Facility to be financed as follows:

HSRE-EB Mount Sinai, LLC, a limited liability company organized and existing under the laws of the State of Delaware and authorized to transact business in the State of New York, on behalf of itself and/or the principals of HSRE-EB Mount Sinai, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), has requested the Town of Brookhaven Industrial Development Agency (the “**Issuer**”) to issue its tax-exempt Industrial Development Revenue Bonds pursuant to Section 142(a)(7) of the Code in an amount presently estimated to be approximately \$48,600,000, but not to exceed \$60,000,000 (the “**Tax-Exempt Bonds**”), or its taxable Industrial Development Revenue Bonds (the “**Taxable Bonds**”); and together with the Tax-Exempt Bonds, the “**Bonds**”), in an amount presently estimated to be approximately \$48,600,000, but not to exceed \$60,000,000 or a combination thereof (or, in the alternative, entering into a straight lease transaction), to finance certain costs of an industrial development facility consisting of the acquisition of an approximately 6.5 acre parcel of land (which is a part of an approximately 24.31 acre parcel of land to be subdivided) located on the south side of Route 25A near the intersection of Route 25A and Echo Avenue, Mount Sinai, Town of Brookhaven, New York (also known as Tax Map No. 0200-118.00-03.00-p/o 004.001) (the “**Land**”), and the construction, equipping and furnishing of an 120 unit assisted living facility, including approximately 138 beds, across 2 buildings of 2-story height for use by the Company as a senior living residential facility, including common areas consisting of dining facilities, recreational areas, common meeting and reading areas, and other amenities catering to the needs of local seniors and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment, telephone systems, audio-visual equipment, security equipment and exercise equipment (collectively, the “**Equipment**” and “**Improvements**”), also including an approximately 1,200 square foot space to be leased by the Company to a tenant not yet determined (the “**Tenant**”) as a hair salon.

In addition, the Bonds will be issued to finance the construction of (a) drive aisles and parking for approximately 534 vehicles, (b) a new wastewater collection system to be connected to an existing sanitary manhole being part of the Suffolk County Sewer District #2 (Talmadge Woods sewage treatment plant), (c) storm-water drainage facilities in the forms of dry-well systems to manage storm-water from new impervious areas on-site, and (d) utility service connections including electrical, gas and water service (the “**Related Improvements**”; and, together with the Land, the Equipment and the Improvements, the “**Facility**”).

The Issuer will acquire a leasehold interest to the Facility and will lease and sublease the Facility to the Company. The Facility will initially be owned, operated and/or managed by the Company.

4. The Chief Executive Officer then opened up the hearing for comments from the floor for or against the proposed issuance of the Bonds and the location and nature of the Facility. The following is a listing of the persons heard and a summary of their views:

5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at _____ .m.

Secretary

PRELIMINARY RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION TOWARD THE ISSUANCE OF TAX-EXEMPT INDUSTRIAL DEVELOPMENT BONDS OR TAXABLE INDUSTRIAL DEVELOPMENT BONDS OR A COMBINATION THEREOF (OR, IN THE ALTERNATIVE, ENTERING INTO A STRAIGHT LEASE TRANSACTION), IN AN AMOUNT SUFFICIENT TO FINANCE CERTAIN COSTS OF THE ENGEL BURMAN AT MT. SINAI, LLC FACILITY, AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE FACILITY AND REQUESTING THE SUPERVISOR OF THE TOWN OF BROOKHAVEN TO APPROVE THE ISSUANCE OF THE BONDS, IF BONDS ARE ISSUED.

WHEREAS, Engel Burman at Mt. Sinai, 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 Engel Burman at Mt. Sinai, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), has requested the Town of Brookhaven Industrial Development Agency (the “**Issuer**”) to issue its tax-exempt Industrial Development Revenue Bonds pursuant to Section 142(a)(7) of the Code in an amount presently estimated to be approximately \$71,000,000, but not to exceed \$85,000,000 (the “**Tax-Exempt Bonds**”), or its taxable Industrial Development Revenue Bonds (the “**Taxable Bonds**”; and together with the Tax-Exempt Bonds, the “**Bonds**”), in an amount presently estimated to be approximately \$71,000,000, but not to exceed \$85,000,000 or a combination thereof (or, in the alternative, entering into a straight lease transaction), to finance certain costs of an industrial development facility consisting of the acquisition of an approximately 17.81 acre parcel of land (which is a part of an approximately 24.31 acre parcel of land to be subdivided) located on the south side of Route 25A near the intersection of Route 25A and Echo Avenue, Mount Sinai, Town of Brookhaven, New York (also known as Tax Map No. 0200-118.00-03.00-p/o 004.001) (the “**Land**”), and the construction, equipping and furnishing of approximately 225 new senior independent residential rental units across approximately thirty (30) buildings of one (1) and two (2) story heights for use by the Company as a senior living residential facility, including, a clubhouse, community building and swimming pool (collectively, the “**Equipment**” and “**Improvements**”); and

WHEREAS, in addition, the Bonds will be issued to finance the construction of (a) drive aisles and parking for approximately 534 vehicles, (b) a new wastewater collection system to be connected to an existing sanitary manhole being part of the Suffolk County Sewer District #2 (Talmadge Woods sewage treatment plant), (c) storm-water drainage facilities in the forms of dry-well systems to manage storm-water from new impervious areas on-site, and (d) utility service connections including electrical, gas and water service (the “**Related Improvements**”; and, together with the Land, the Equipment and the Improvements, the “**Facility**”); and

WHEREAS, the Issuer will acquire a leasehold interest in the Facility and the Improvements and title to the Equipment and will sublease and lease the Facility to the Company, all pursuant to 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**”); and

WHEREAS, the Act authorizes and empowers the Issuer to issue its bonds (or, in the alternative, to enter into straight lease transactions) 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, in addition to the issuance of the Bonds, if Bonds are issued, the Issuer contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility and exemptions from sales and use taxes in connection with the construction and equipping of the Facility and abatement of real property taxes, all consistent with the policies of the Issuer; and

WHEREAS, as of the date of this resolution, no determination for financial assistance has been made; and

WHEREAS, the Issuer has required the Company to provide to the Issuer a feasibility report (the “**Feasibility Study**”), together with such letters or reports from interested parties and governmental agencies or officials (the “**Letters of Support**”; and together with the Feasibility Study, the “**Requisite Materials**”), to enable the Issuer to make findings and determinations that the Facility qualifies as a “project” under the Act and that the Facility satisfies all other requirements of the Act; and

WHEREAS, prior to the date of the Hearing (defined below), the Issuer will have received the Requisite Materials and have prepared a cost benefit analysis which will determine the financial assistance; and

WHEREAS, subject to the provisions of this resolution, in connection with the issuance of the Bonds (or, in the alternative, prior to entering into the straight lease transaction) and the granting of any tax benefits, a public hearing (the “**Hearing**”), will be held so that all persons with views in favor of or opposed to either the financial assistance contemplated by the Issuer or the location or nature of the Facility can be heard; and

WHEREAS, subject to the provisions of this resolution, notice of the Hearing will be given prior to the issuance of the Bonds, or closing of the transaction described herein, and such notice (together with proof of publication) substantially in the form annexed hereto as Exhibit A; and

WHEREAS, the minutes of the Hearing are or will be annexed hereto as Exhibit B; and

WHEREAS, the Company reasonably expects that it will pay or incur certain capital expenditures in connection with the Facility prior to the issuance of the Bonds, if Bonds are issued, for the Facility; and

WHEREAS, the Company will use funds from sources other than Bond Proceeds which are or will be available on a short-term basis to pay for preliminary expenditures and the acquisition, construction, furnishing and equipping of the Facility; and

WHEREAS, the Company reasonably expect that it will reimburse themselves for the use of such funds with proceeds of indebtedness to be issued by the Issuer to finance the costs of the Facility; and

WHEREAS, the Issuer has given due consideration to the application of the Company and to representations by the Company that the issuance of the Bonds (or, in the alternative, the entering into of a straight lease transaction) is an inducement to the Company to maintain the Facility in the Town of Brookhaven, New York, or an inducement to the Company to maintain and expand the Facility in the Town of Brookhaven, New York 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 “**SEQR**”), the Issuer constitutes a “**State Agency**” and is therefore and “Involved Agency” for the Facility; and

WHEREAS, to aid the Issuer in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Issuer an Environmental Assessment Form and related documents (the “**Questionnaire**”) with respect to the Facility and an adjacent facility known as the HSRE-EB at Mount Sinai Facility (collectively, the “**Facilities**”) a copy of which is on file at the office of the Issuer; and

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

WHEREAS, the Issuer constitutes an “Involved Agency” (as defined in SEQR); and

WHEREAS, the construction and operation of the Facilities is an “Action” under SEQR; and

WHEREAS, the Town of Brookhaven Planning Board (the “**Planning Board**”), as an Involved Agency under SEQR, declared its intent to act as Lead Agency for purposes of review of the Action under SEQR; and

WHEREAS, on December 4, 2017, the Planning Board, determined that the Action to be an Unlisted Action as identified under SEQR and adopted a Negative Declaration for the Action; and

WHEREAS, the Planning Board reviewed the criteria for making a determination of significance comparing these criteria to identified impacts and made a determination that the Action will not result in significant adverse impacts to the environment; 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 Town of Brookhaven Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

Section 1. Based upon the Questionnaire prepared by the Company and reviewed by the Issuer, and other representations and information furnished regarding the Facility, the Issuer determines that the Action relating to the acquisition, construction, equipping and operation of the Facility in an “Unlisted” action, as that term is defined under SEQR. The Issuer also determines that the Facility 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 SEQR. Notice of this determination shall be filed to the extent required by the applicable regulations under SEQR or as may be deemed advisable by the Chairman or the Chief Executive Officer of the Issuer or counsel to the Issuer.

Section 2. (a) The acquisition, construction and equipping of the Facility and the financing thereof by the Issuer, through the issuance of the Bonds (or, in the alternative, through the entering into of the straight lease transaction) pursuant to the Act, and the provision of other financial assistance in connection therewith pursuant to the Act, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Town and the people of the State of New York and improve their standard of living, and thereby serve the public purposes of the Act, and the same is, therefore, approved; and

(b) Subject to receipt of the Requisite Materials and the preparation of a cost benefit analysis, the Issuer makes a preliminary determination that it is desirable and in the public interest for the Issuer to issue the Bonds (or, in the alternative to enter into the straight lease transaction), for the purpose of financing the costs of the acquisition, renovation and equipping of the Facility, together with necessary incidental expenses in connection therewith, as reflected in the Company's application to the Issuer, as amended from time to time prior to the issuance of the Bonds (or, the alternative, prior to the closing of the straight lease transaction). The currently estimated aggregate principal amount of the Bonds to be issued is approximately \$71,000,000, but not to exceed \$85,000,000.

Section 3. Subject to the receipt of the Requisite Materials, the preparation of the cost benefit analysis by the Issuer, and subject to approval of the issuance of the Tax-Exempt Bonds by Supervisor, of the Town of Brookhaven, Suffolk County, and the compliance with any other applicable provisions of the Code, the Issuer shall (i) issue the Bonds (if Bonds are issued in lieu of a straight lease transaction) in an amount and with maturities, an interest rate,

redemption terms and other terms and provisions to be determined by a further resolution of the Issuer, (ii) acquire, construct and equip the Facility, (iii) lease (with an obligation to purchase) the Facility to the Company pursuant to an agreement by and between the Issuer and the Company whereby the Company will be obligated, among other things, to make payments to or for the account of the Issuer in amounts and at times so that such payments will be adequate to pay the principal of, premium, if any, and interest on the Bonds (if Bonds are issued), and (iv) secure the Bonds (if Bonds are issued) in such manner as the Issuer, the Company and the purchaser(s) of the Bonds mutually deem appropriate. If the proceeds of the sale of the Bonds are insufficient to finance completion of the acquisition, construction and equipping of the Facility, the Issuer will, subject to the terms and conditions to be agreed upon by the Issuer and the Company, and upon the request of the Company, take such actions and execute such documents as may be necessary to effect the issuance from time to time of additional bonds, whether on a parity with the Bonds or otherwise, for the purpose of paying the costs of completing the Facility.

Section 4. Nothing herein shall be construed as committing the Issuer to approve the acquisition, construction, equipping and financing of the Facility until such time as the Issuer has received the Requisite Materials with respect to the Facility which enable the Agency to make findings and determinations that the Facility qualifies as a “project” under the Act.

Section 5. To the extent the Company has paid or incurred or will pay or incur preliminary expenditures or hard costs in connection with the Facility with its current funds, it reasonably expects to reimburse itself with proceeds from the Bonds, if Bonds are issued. This Resolution is intended to be a declaration of official intent pursuant to Section 1.150-2 of the Treasury Regulations to reimburse prior expenditures made by the Company for the Facility with proceeds of the Bonds, if Bonds are issued.

Section 6. The law firm of Nixon Peabody LLP is hereby appointed Bond Counsel to the Issuer in connection with the issuance of the Bonds (or, in the alternative, Transaction Counsel to the Issuer in connection with any straight lease transaction).

Section 7. Counsel to the Issuer and Bond Counsel (or, in the alternative, Transaction Counsel) are hereby authorized to work with counsel to the Company and others to prepare, for submission to the Issuer, all documents necessary to effect the authorization, issuance and sale of the Bonds (or, in the alternative, to effect the straight lease transaction).

Section 8. The Chairman, the Chief Executive Officer, counsel to the Issuer and all members of the Issuer 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 9. The adoption of a final authorizing resolution for the Facility and the issuance of the Bonds (or in the alternative entering into a straight lease transaction) and the granting of the benefits described herein, are subject to the Company obtaining, prior to the date of the public hearing, all necessary state, county, town and other governmental approvals and permits, including all required site plan and zoning approvals or variances, necessary to acquire, construct, equip and operate the Facility

Section 10. Any expenses incurred by the Issuer with respect to the Facility, including the expenses of Bond Counsel to the Issuer in connection with the issuance of the Bonds (or, in the alternative, Transaction Counsel to the Issuer in connection with any straight lease transaction), shall be paid by the Company. The Company agrees to pay such expenses and further agree to indemnify the Issuer, its members, directors, employees and agents and hold the Issuer 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 Issuer in good faith with respect to the Facility.

Section 11. This resolution shall take effect immediately.

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 foregoing copy of a resolution of the Town of Brookhaven Industrial Development Agency (the “**Issuer**”), with the original thereof on file in the office of the Issuer, and that the same is a true and correct copy of such resolution and of the proceedings of the Issuer in connection with such matter.

Such resolution was passed at a meeting of the Issuer duly convened in public session on June 5, 2018 at the Town of Brookhaven Department of Economic Development, 1 Independence Hill, 3rd Floor, Farmingville, New York at which the following members were:

Present: Frederick C. Braun, III
 Felix J. Grucci, Jr.
 Scott Middleton
 Ann-Marie Scheidt

Recused:

Absent: Martin Callahan
 Michael Kelly
 Gary Pollakusky

Also Present: Lisa M. G. Mulligan, Chief Executive Officer

The question of the adoption of the foregoing resolution was duly put to vote on roll call, which resulted as follows:

<u>Voting Aye</u>	<u>Voting Nay</u>	<u>Abstain</u>
Braun		
Grucci		
Middleton		
Scheidt		

and, therefore, the resolution was declared duly adopted.

The Agreement and the Application are in substantially the form presented to and approved at such meeting.

I FURTHER CERTIFY that (i) all members of the Issuer 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 103a and 104, (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 as of June 5, 2018.

Secretary

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the “**Code**”), and Article 18-A of the New York State General Municipal Law will be held by the Town of Brookhaven Industrial Development Agency (the “**Issuer**”) on the ____ day of June, 2018, at _____ a.m. local time, at Town of Brookhaven Division of Economic Development, 2nd Floor, One Independence Hill, Farmingville, New York 11738, in connection with the following matters:

Engel Burman at Mt. Sinai, 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 Engel Burman at Mt. Sinai, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”) has applied to the Issuer to issue its tax-exempt Industrial Development Revenue Bonds pursuant to Section 142(a)(7) of the Code in an amount presently estimated to be approximately \$71,000,000, but not to exceed \$85,000,000 (the “**Tax-Exempt Bonds**”), or its taxable Industrial Development Revenue Bonds (the “**Taxable Bonds**”; and together with the Tax-Exempt Bonds, the “**Bonds**”), in an amount presently estimated to be approximately \$71,000,000, but not to exceed \$85,000,000 or a combination thereof (or, in the alternative, entering into a straight lease transaction), to finance certain costs of an industrial development facility consisting of the acquisition of an approximately 17.81 acre parcel of land (which is a part of an approximately 24.31 acre parcel of land to be subdivided) located on the south side of Route 25A near the intersection of Route 25A and Echo Avenue, Mount Sinai, Town of Brookhaven, New York (also known as Tax Map No. 0200-118.00-03.00-p/o 004.001) (the “**Land**”), and the construction, equipping and furnishing of approximately 225 new senior independent residential rental units across approximately thirty (30) buildings of one (1) and two (2) story heights for use by the Company as a senior living residential facility, including, a clubhouse, community building and swimming pool (collectively, the “**Equipment**” and “**Improvements**”).

In addition, the Bonds will be issued to finance the construction of (a) drive aisles and parking for approximately 534 vehicles, (b) a new wastewater collection system to be connected to an existing sanitary manhole being part of the Suffolk County Sewer District #2 (Talmadge Woods sewage treatment plant), (c) storm-water drainage facilities in the forms of dry-well systems to manage storm-water from new impervious areas on-site, and (d) utility service connections including electrical, gas and water service (the “**Related Improvements**”; and, together with the Land, the Equipment and the Improvements, the “**Facility**”).

The Issuer will acquire a leasehold interest to the Facility and will lease and sublease the Facility to the Company. The Facility will initially be owned, operated and/or managed by the Company.

In addition to the issuance of the Bonds, if Bonds are issued, the Issuer contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility and exemptions from sales and use taxes in connection with the construction and equipping of the Facility and abatement of real property taxes, all consistent with the policies of the Issuer.

The Bonds, if issued, will be a special obligation of the Issuer payable solely from proceeds of the lease or sale of the Facility to the Company and other amounts payable to the Issuer and certain other assets of the Company pledged to the repayment of the Bonds. The Bonds shall not be a debt of the State of New York or any political subdivision thereof, including the Town of Brookhaven and neither the State of New York nor any political subdivision thereof, including the Town of Brookhaven, shall be liable thereon.

A representative of the Issuer will, at the above-stated time and place, hear and accept written comments from all persons with views in favor of or opposed to either the issuance of the Bonds, the granting of other financial assistance contemplated by the Issuer or the location or nature of the Facility. At the hearing, all persons will have the opportunity to review the application for financial assistance filed by the Company with the Issuer, and an analysis of the costs and benefits of the proposed Facility.

Minutes of the hearing will be made available to the Supervisor of the Town of Brookhaven. Approval of the issuance of the Tax-Exempt Bonds, if issued, by the Supervisor of the Town of Brookhaven is necessary in order for the interest on the Tax-Exempt Bonds, if issued, to be excluded from gross income for federal income tax purposes.

Dated: June __, 2018

TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT
AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

AFFIDAVIT OF PUBLICATION

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

_____, being duly sworn, says that he/she is an officer of _____, the publisher of a newspaper circulated generally throughout Town of Brookhaven, Suffolk County, New York, and that the notice annexed hereto was published in said paper on the _____ day of June, 2018.

Officer

Copy of
Legal
Notice

Sworn to before me this _____
day of June, 2018.

Notary Public

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON
June __, 2018

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(Engel Burman at Mt Sinai, LLC Facility)

1. Lisa MG Mulligan, Chief Executive Officer of the Town of Brookhaven Industrial Development Agency (the “Issuer”), called the hearing to order.
2. The Chief Executive Officer then appointed, Jocelyn Brinka of the Issuer, to record the minutes of the hearing.
3. The Chief Executive Officer then described the proposed issuance of the Bonds and the location and nature of the Facility to be financed as follows:

Engel Burman at Mt. Sinai, 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 Engel Burman at Mt. Sinai, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”) has applied to the Issuer to issue its tax-exempt Industrial Development Revenue Bonds pursuant to Section 142(a)(7) of the Code in an amount presently estimated to be approximately \$71,000,000, but not to exceed \$85,000,000 (the “**Tax-Exempt Bonds**”), or its taxable Industrial Development Revenue Bonds (the “**Taxable Bonds**”; and together with the Tax-Exempt Bonds, the “**Bonds**”), in an amount presently estimated to be approximately \$71,000,000, but not to exceed \$85,000,000 or a combination thereof (or, in the alternative, entering into a straight lease transaction), to finance certain costs of an industrial development facility consisting of the acquisition of an approximately 17.81 acre parcel of land (which is a part of an approximately 24.31 acre parcel of land to be subdivided) located on the south side of Route 25A near the intersection of Route 25A and Echo Avenue, Mount Sinai, Town of Brookhaven, New York (also known as Tax Map No. 0200-118.00-03.00-p/o 004.001) (the “**Land**”), and the construction, equipping and furnishing of approximately 225 new senior independent residential rental units across approximately thirty (30) buildings of one (1) and two (2) story heights for use by the Company as a senior living residential facility, including, a clubhouse, community building and swimming pool (collectively, the “**Equipment**” and “**Improvements**”).

In addition, the Bonds will be issued to finance the construction of (a) drive aisles and parking for approximately 534 vehicles, (b) a new wastewater collection system to be connected to an existing sanitary manhole being part of the Suffolk County Sewer District #2 (Talmadge Woods sewage treatment plant), (c) storm-water drainage facilities in the forms of dry-well systems to manage storm-water from new impervious areas on-site, and (d) utility service connections including electrical, gas and water service (the “**Related Improvements**”; and, together with the Land, the Equipment and the Improvements, the “**Facility**”).

4. The Chief Executive Officer then opened up the hearing for comments from the floor for or against the proposed issuance of the Bonds and the location and nature of the Facility. The following is a listing of the persons heard and a summary of their views:

5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at _____ .m.

Secretary

Date: June 5, 2018

At a meeting of the Town of Brookhaven Industrial Development Agency (the “**Agency**”), held on the 5th day of June, 2018, at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738, the following members of the Agency were:

Present: Frederick C. Braun, III
Felix J. Grucci, Jr.
Scott Middleton
Ann-Marie Scheidt

Recused:

Absent: Martin Callahan
Michael Kelly
Gary Pollakusky

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 (ACE-Town Hall Solar, LLC 2018 Facility) and the leasing of the facility to ACE-Town Hall Solar, LLC.

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

Voting Aye

Braun
Grucci
Middleton
Scheidt

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE
APPOINTMENT OF ACE-TOWN HALL SOLAR, LLC, A
DELAWARE LIMITED LIABILITY COMPANY, ON BEHALF
OF ITSELF AND/OR THE PRINCIPALS OF ACE-TOWN
HALL SOLAR, 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 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, Agilitas Energy, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of Agilitas Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Developer**”), and ACE-Town Hall Solar, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of ACE-Town Hall Solar, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), have applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of a long term ground leasehold interest in an approximately 4.0 acre portion of an approximately 41.89 acre parcel of land located at 1 Independence Hill, Farmingville, New York 11738 (more particularly described as Suffolk County Tax Map No. 0200-572.00-03.00-002.001) (the “**Land**”), owned by the Town of Brookhaven (the “**Town**”), and the construction of an approximately 3.5 acre solar array thereon (the “**Improvements**”), and the equipping thereof, including, but not limited to, approximately 4,017 345-watt solar modules, approximately seventeen (17) 60-kilowatt inverters, approximately one (1) 50-kilowatt inverter and approximately one (1) 23-kilowatt inverter, and the installation and connection of two (2) electric car charging stations (collectively, the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”) (collectively, the “**Project**”); and

WHEREAS, the Agency will acquire a subleasehold interest in the Land and a leasehold interest in the Improvements pursuant to a certain Company Lease Agreement, dated as of June 1, 2018 or such other date as the Chairman, the 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 acquire title to the Equipment pursuant to a certain Bill of Sale, dated the Closing Date (as defined in the hereinafter defined Lease Agreement) (the “**Bill of Sale**”), from the Company to the Agency; and

WHEREAS, the Agency will sub-sublease the Land, sublease the Improvements and lease the Equipment to the Company pursuant to a certain Lease and Project Agreement, dated as of June 1, 2018 or such other date as the Chairman, the 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 in the form of: (i) exemptions from sales and use taxes in an amount not to exceed \$122,475, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof), 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, the Agency and the Company will execute and deliver to a lender or lenders to be determined (collectively, the “**Lender**”), a mortgage or mortgages, 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, a public hearing (the “**Hearing**”) was held on June 4, 2018 and notice of the Hearing was given and such notice (together with proof of publication) together with the minutes of the Hearing are in substantially in the form annexed hereto as Exhibits A and B respectively; and

WHEREAS, the Agency has given due consideration to the application of the Developer and the Company and to representations by the Developer and the Company that the proposed Facility is either an inducement to the Company to maintain and 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 “**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 (collectively, 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 Town of Brookhaven Town Board (the “**Town Board**”) determined that the Action in connection with the Facility (the “**Action**”), is an Unlisted Action for SEQR purposes, coordinated review with all potential Involved Agencies, and requested to act as Lead Agency for purposes of review of the Action under SEQR; and

WHEREAS, no Involved Agency objected to the Town Board, acting as Lead Agency for purposes of review of the Facility under SEQR, and therefore, the Town Board was the Lead Agency; and

WHEREAS, pursuant to resolutions dated September 29, 2016 and May 24, 2018, the Town Board determined that the Action will not have a “significant effect” on the environment, and, therefore, an environmental impact statement will not be prepared; and

WHEREAS, this determination constitutes a negative declaration for purposes of SEQR; and

WHEREAS, as an Involved Agency, the Agency must make its own findings under SEQR prior to funding, undertaking, or approving an Action; and

WHEREAS, the Agency has reviewed the Questionnaire and such other documents as the Agency felt it necessary or appropriate to examine to adequately review the proposed Action; and

WHEREAS, the Agency finds that the negative declaration of the Town Board accurately and adequately examines environmental issues presented by the Action; and

WHEREAS, the Developer and the Company have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the sub-subleasing, subleasing and 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. Based upon the EAF completed by the Company and other representations and information furnished regarding the Action, the Lead Agency, following coordinated review, determined that, based upon its review of the EAF, the appropriate criteria for determination of significance, and such other and further information which the Lead Agency felt necessary to review the Action, that the Action would 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 SEQR. The Agency hereby adopts the Lead Agency’s negative declaration as its own negative declaration under SEQR.

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 acquisition, construction and equipping of the Facility and the leasing 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

(d) The acquisition, construction and equipping of the Facility 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, Suffolk County, 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 lease the Facility to the Company; and

(g) The Company Lease will be an effective instrument whereby the Agency subleases the Land and leases the Improvements from the Company; and

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

(i) 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 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 Land and lease the Improvements from the Company pursuant to the

Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) lease, sublease and sub-sublease the Facility to the Company pursuant to the Lease Agreement, (iv) execute, deliver and perform the Lease Agreement, (v) grant a mortgage on and security interest in and to the Facility pursuant to the Loan Documents, and (vi) execute, deliver and perform the Loan Documents to which the Agency is a party.

Section 5. The Agency is hereby authorized to acquire the real property and personal property described in Exhibit A and Exhibit B, respectively, 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, construction and equipping of the Facility in the form of: (i) exemptions from sales and use taxes in an amount not to exceed \$122,475, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (ii) 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. Subject to the provisions of this resolution, the Company is herewith and hereby appointed the agent of the Agency to acquire, construct and equip the Facility. The Company is hereby empowered to delegate its status as agent of the Agency to its agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to acquire, construct and equip the Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency solely for purposes of making sales or leases of goods, services and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agent of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. This agency appointment expressly excludes the purchase by the Company of any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The Company shall indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Agency. The aforesaid appointment of the Company as agent of the Agency to acquire, construct and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which the Company has received exemptions from sales and use taxes in an amount not to exceed \$122,475 in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time. The aforesaid appointment of the Company is subject to the completion of the transaction and the execution of the documents contemplated by this resolution.

Section 8. The Developer and the Company are hereby notified that they 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 Developer and the Company are further notified that the tax exemptions and abatements provided pursuant to the Act and the appointment of the Developer and the Company as agents of the Agency 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 9. The form and substance of the Company Lease, the Lease Agreement and the Loan Documents to which the Agency is a party (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 10.

(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, the Lease Agreement and the Loan Documents to which the Agency is a party, 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, the Chief Executive Officer of the Agency 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 11. 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 12. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. 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 Facility.

Section 13. This resolution shall take effect immediately.

ADOPTED: June 5, 2018

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 5th day of June, 2018, 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 5th day of June, 2018.

By: _____
Secretary

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York State General Municipal Law will be held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on the 4th day of June, 2018, at 11:30 a.m. local time, at Brookhaven Town Hall, Division of Economic Development, One Independence Hill, 2nd Floor, Farmingville, New York 11738, in connection with the following matters:

Agilitas Energy, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of Agilitas Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Developer**”), and ACE–Town Hall Solar, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of ACE–Town Hall Solar, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), have applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of a long term ground leasehold interest in an approximately 4.0 acre portion of an approximately 41.89 acre parcel of land located at 1 Independence Hill, Farmingville, New York 11738 (more particularly described as Suffolk County Tax Map No. 0200-572.00-03.00-002.001) (the “**Land**”), owned by the Town of Brookhaven (the “**Town**”), and the construction of an approximately 3.5 acre solar array thereon (the “**Improvements**”), and the equipping thereof, including, but not limited to, approximately 4,017 345-watt solar modules, approximately seventeen (17) 60-kilowatt inverters, approximately one (1) 50-kilowatt inverter and approximately one (1) 23-kilowatt inverter, and the installation and connection of two (2) electric car charging stations (collectively, the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”) (collectively, the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a subleasehold interest in the Land, a leasehold interest in the Improvements and title to or a leasehold interest in the Equipment and will sub-lease, sublease and lease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility, exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Agency.

A representative of the Agency will at the above-stated time and place hear and accept written 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. At the hearing, all persons will have the opportunity to review the application for financial assistance filed by the Developer and the Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Dated: May 25, 2018

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON

June 4, 2018

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY (ACE-TOWN HALL SOLAR, LLC 2018 FACILITY)

Section 1. Lisa MG Mulligan, Chief Executive Officer of the Town of Brookhaven Industrial Development Agency (the “**Agency**”) called the hearing to order.

Section 2. Lisa MG Mulligan then appointed herself the hearing officer of the Agency, to record the minutes of the hearing.

Section 3. The hearing officer then described the proposed transfer of the real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility as follows:

Agilitas Energy, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of Agilitas Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Developer**”), and ACE-Town Hall Solar, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of ACE-Town Hall Solar, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), have applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of a long term ground leasehold interest in an approximately 4.0 acre portion of an approximately 41.89 acre parcel of land located at 1 Independence Hill, Farmingville, New York 11738 (more particularly described as Suffolk County Tax Map No. 0200-572.00-03.00-002.001) (the “**Land**”), owned by the Town of Brookhaven (the “**Town**”), and the construction of an approximately 3.5 acre solar array thereon (the “**Improvements**”), and the equipping thereof, including, but not limited to, approximately 4,017 345-watt solar modules, approximately seventeen (17) 60-kilowatt inverters, approximately one (1) 50-kilowatt inverter and approximately one (1) 23-kilowatt inverter, and the installation and connection of two (2) electric car charging stations (collectively, the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”) (collectively, the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a subleasehold interest in the Land, a leasehold interest in the Improvements and title to or a leasehold

interest in the Equipment and will sub-sublease, sublease and lease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility, exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Agency.

Section 4. The hearing officer then opened the hearing for comments from the floor for or against the proposed transfer of real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility. The following is a listing of the persons heard and a summary of their views:

N/A

Section 5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at 12:00 p.m.

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 foregoing copy of the minutes of a public hearing held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on June 4, 2018, at 11:30 a.m., local time, at Brookhaven Town Hall, Division of Economic Development, One Independence Hill, 2nd Floor, Farmingville, New York 11738, with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of the minutes in connection with such matter.

IN WITNESS WHEREOF, I have hereunto set my hand as of June 4, 2018.

Secretary

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

Definitions:

Normal Tax Due = Those payments for taxes and assessments, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Sachem Central School District, Suffolk County which are or may be imposed for special improvements or special district improvements, that the Company would pay without exemption.

<u>Year</u>	<u>Payment</u>
1	0% Normal Tax Due
2	0% Normal Tax Due
3	0% Normal Tax Due
4	0% Normal Tax Due
5	0% Normal Tax Due
6	0% Normal Tax Due
7	0% Normal Tax Due
8	0% Normal Tax Due
9	0% Normal Tax Due
10	0% Normal Tax Due
11	0% Normal Tax Due
12	0% Normal Tax Due
13	0% Normal Tax Due
14	0% Normal Tax Due
15	0% Normal Tax Due
16	0% Normal Tax Due
17	0% Normal Tax Due
18	0% Normal Tax Due
19	0% Normal Tax Due
20	0% Normal Tax Due

Date: June 5, 2018

At a meeting of the Town of Brookhaven Industrial Development Agency (the “**Agency**”), held on the 5th day of June, 2018, at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738, the following members of the Agency were:

Present: Frederick C. Braun, III
Felix J. Grucci, Jr.
Scott Middleton
Ann-Marie Scheidt

Recused:

Absent: Martin Callahan
Michael Kelly
Gary Pollakusky

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 (ACE-Calabro Solar 2, LLC 2018 Facility) and the leasing of the facility to ACE-Calabro Solar 2, LLC.

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

Voting Aye

Voting Nay

Braun
Grucci
Middleton
Scheidt

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE
APPOINTMENT OF ACE-CALABRO SOLAR 2, LLC, A
DELAWARE LIMITED LIABILITY COMPANY, ON BEHALF
OF ITSELF AND/OR THE PRINCIPALS OF ACE-CALABRO
SOLAR 2, 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 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, Agilitas Energy, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of Agilitas Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Developer**”), and ACE–Calabro Solar 2, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of ACE–Calabro Solar 2, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), have applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of a long term ground leasehold interest in an approximately 5.5 acre portion of an approximately 93 acre parcel of land located at 135 Dawn Drive, Shirley, New York 11967 (more particularly described as Suffolk County Tax Map No. 0200-672.00-01.00-001.000) (the “**Land**”), owned by the Town of Brookhaven (the “**Town**”), and the construction of an approximately 5.4 acre solar array thereon (the “**Improvements**”), and the equipping thereof, including, but not limited to, approximately 5,121 ground-mounted 340-watt solar modules, approximately three (3) 60-kilowatt inverters, approximately nineteen (19) 50-kilowatt inverters, approximately one (1) 36-kilowatt inverter and approximately one (1) 28-kilowatt inverter (collectively, the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”) (collectively, the “**Project**”); and

WHEREAS, the Agency will acquire a subleasehold interest in the Land and a leasehold interest in the Improvements pursuant to a certain Company Lease Agreement, dated as of June 1, 2018 or such other date as the Chairman, the 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 acquire title to the Equipment pursuant to a certain Bill of Sale, dated the Closing Date (as defined in the hereinafter defined Lease Agreement) (the “**Bill of Sale**”), from the Company to the Agency; and

WHEREAS, the Agency will sub-sublease the Land, sublease the Improvements and lease the Equipment to the Company pursuant to a certain Lease and Project Agreement, dated as of June 1, 2018 or such other date as the Chairman, the 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 in the form of: (i) exemptions from sales and use taxes in an amount not to exceed \$204,182, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof), 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, the Agency and the Company will execute and deliver to a lender or lenders to be determined (collectively, the “**Lender**”), a mortgage or mortgages, 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, a public hearing (the “**Hearing**”) was held on June 4, 2018 and notice of the Hearing was given and such notice (together with proof of publication) together with the minutes of the Hearing are in substantially in the form annexed hereto as Exhibits A and B respectively; and

WHEREAS, the Agency has given due consideration to the application of the Developer and the Company and to representations by the Developer and the Company that the proposed Facility is either an inducement to the Company to maintain and 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 “**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 (collectively, 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 Town of Brookhaven Town Board (the “**Town Board**”) determined that the Action in connection with the Facility (the “**Action**”), is an Unlisted Action for SEQR purposes, coordinated review with all potential Involved Agencies, and requested to act as Lead Agency for purposes of review of the Action under SEQR; and

WHEREAS, no Involved Agency objected to the Town Board, acting as Lead Agency for purposes of review of the Facility under SEQR, and therefore, the Town Board was the Lead Agency; and

WHEREAS, pursuant to resolutions dated September 29, 2016 and May 24, 2018, the Town Board determined that the Action will not have a “significant effect” on the environment, and, therefore, an environmental impact statement will not be prepared; and

WHEREAS, this determination constitutes a negative declaration for purposes of SEQR; and

WHEREAS, as an Involved Agency, the Agency must make its own findings under SEQR prior to funding, undertaking, or approving an Action; and

WHEREAS, the Agency has reviewed the Questionnaire and such other documents as the Agency felt it necessary or appropriate to examine to adequately review the proposed Action; and

WHEREAS, the Agency finds that the negative declaration of the Town Board accurately and adequately examines environmental issues presented by the Action; and

WHEREAS, the Developer and the Company have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the sub-subleasing, subleasing and 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. Based upon the EAF completed by the Company and other representations and information furnished regarding the Action, the Lead Agency, following coordinated review, determined that, based upon its review of the EAF, the appropriate criteria for determination of significance, and such other and further information which the Lead Agency felt necessary to review the Action, that the Action would 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 SEQR. The Agency hereby adopts the Lead Agency’s negative declaration as its own negative declaration under SEQR.

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 acquisition, construction and equipping of the Facility and the leasing 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

(d) The acquisition, construction and equipping of the Facility 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, Suffolk County, 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 lease the Facility to the Company; and

(g) The Company Lease will be an effective instrument whereby the Agency subleases the Land and leases the Improvements from the Company; and

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

(i) 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 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 Land and lease the Improvements from the Company pursuant to the

Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) lease, sublease and sub-sublease the Facility to the Company pursuant to the Lease Agreement, (iv) execute, deliver and perform the Lease Agreement, (v) grant a mortgage on and security interest in and to the Facility pursuant to the Loan Documents, and (vi) execute, deliver and perform the Loan Documents to which the Agency is a party.

Section 5. The Agency is hereby authorized to acquire the real property and personal property described in Exhibit A and Exhibit B, respectively, 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, construction and equipping of the Facility in the form of: (i) exemptions from sales and use taxes in an amount not to exceed \$204,182, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (ii) 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. Subject to the provisions of this resolution, the Company is herewith and hereby appointed the agent of the Agency to acquire, construct and equip the Facility. The Company is hereby empowered to delegate its status as agent of the Agency to its agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to acquire, construct and equip the Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency solely for purposes of making sales or leases of goods, services and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agent of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. This agency appointment expressly excludes the purchase by the Company of any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The Company shall indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Agency. The aforesaid appointment of the Company as agent of the Agency to acquire, construct and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which the Company has received exemptions from sales and use taxes in an amount not to exceed \$204,182 in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time. The aforesaid appointment of the Company is subject to the completion of the transaction and the execution of the documents contemplated by this resolution.

Section 8. The Developer and the Company are hereby notified that they 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 Developer and the Company are further notified that the tax exemptions and abatements provided pursuant to the Act and the appointment of the Developer and the Company as agents of the Agency 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 9. The form and substance of the Company Lease, the Lease Agreement and the Loan Documents to which the Agency is a party (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 10.

(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, the Lease Agreement and the Loan Documents to which the Agency is a party, 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, the Chief Executive Officer of the Agency 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 11. 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 12. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. 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 Facility.

Section 13. This resolution shall take effect immediately.

ADOPTED: June 5, 2018

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 5th day of June, 2018, 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 5th day of June, 2018.

By: _____
Secretary

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York State General Municipal Law will be held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on the 4th day of June, 2018, at 10:30 a.m. local time, at Brookhaven Town Hall, Division of Economic Development, One Independence Hill, 2nd Floor, Farmingville, New York 11738, in connection with the following matters:

Agilitas Energy, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of Agilitas Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Developer**”), and ACE–Calabro Solar 2, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of ACE–Calabro Solar 2, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), have applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of a long term ground leasehold interest in an approximately 5.5 acre portion of an approximately 93 acre parcel of land located at 135 Dawn Drive, Shirley, New York 11967 (more particularly described as Suffolk County Tax Map No. 0200-672.00-01.00-001.000) (the “**Land**”), owned by the Town of Brookhaven (the “**Town**”), and the construction of an approximately 5.4 acre solar array thereon (the “**Improvements**”), and the equipping thereof, including, but not limited to, approximately 5,121 ground-mounted 340-watt solar modules, approximately three (3) 60-kilowatt inverters, approximately nineteen (19) 50-kilowatt inverters, approximately one (1) 36-kilowatt inverter and approximately one (1) 28-kilowatt inverter (collectively, the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”) (collectively, the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a subleasehold interest in the Land, a leasehold interest in the Improvements and title to or a leasehold interest in the Equipment and will sub-lease, sublease and lease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility, exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Agency.

A representative of the Agency will at the above-stated time and place hear and accept written 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. At the hearing, all persons will have the opportunity to review the application for financial assistance filed by the Developer and the Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Dated: May 25, 2018

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON

June 4, 2018

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY (ACE-CALABRO SOLAR 2, LLC 2018 FACILITY)

Section 1. Lisa MG Mulligan, Chief Executive Officer of the Town of Brookhaven Industrial Development Agency (the “**Agency**”) called the hearing to order.

Section 2. Lisa MG Mulligan then appointed herself the hearing officer of the Agency, to record the minutes of the hearing.

Section 3. The hearing officer then described the proposed transfer of the real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility as follows:

Agilitas Energy, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of Agilitas Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Developer**”), and ACE–Calabro Solar 2, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of ACE–Calabro Solar 2, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), have applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of a long term ground leasehold interest in an approximately 5.5 acre portion of an approximately 93 acre parcel of land located at 135 Dawn Drive, Shirley, New York 11967 (more particularly described as Suffolk County Tax Map No. 0200-672.00-01.00-001.000) (the “**Land**”), owned by the Town of Brookhaven (the “**Town**”), and the construction of an approximately 5.4 acre solar array thereon (the “**Improvements**”), and the equipping thereof, including, but not limited to, approximately 5,121 ground-mounted 340-watt solar modules, approximately three (3) 60-kilowatt inverters, approximately nineteen (19) 50-kilowatt inverters, approximately one (1) 36-kilowatt inverter and approximately one (1) 28-kilowatt inverter (collectively, the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”) (collectively, the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a subleasehold interest in the Land, a leasehold interest in the Improvements and title to or a leasehold interest in the Equipment and will sub-sublease, sublease and lease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent

refinancing of the Facility, exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Agency.

Section 4. The hearing officer then opened the hearing for comments from the floor for or against the proposed transfer of real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility. The following is a listing of the persons heard and a summary of their views:

N/A

Section 5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at 11:00 a.m.

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 foregoing copy of the minutes of a public hearing held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on June 4, 2018, at 10:30 a.m., local time, at Brookhaven Town Hall, Division of Economic Development, One Independence Hill, 2nd Floor, Farmingville, New York 11738, with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of the minutes in connection with such matter.

IN WITNESS WHEREOF, I have hereunto set my hand as of June 4, 2018.

Secretary

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), William Floyd Union Free School District, Suffolk County and Appropriate Special Districts

Definitions:

Normal Tax Due = Those payments for taxes and assessments, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), William Floyd Union Free School District, Suffolk County which are or may be imposed for special improvements or special district improvements, that the Company would pay without exemption.

<u>Year</u>	<u>Payment</u>
1	0% Normal Tax Due
2	0% Normal Tax Due
3	0% Normal Tax Due
4	0% Normal Tax Due
5	0% Normal Tax Due
6	0% Normal Tax Due
7	0% Normal Tax Due
8	0% Normal Tax Due
9	0% Normal Tax Due
10	0% Normal Tax Due
11	0% Normal Tax Due
12	0% Normal Tax Due
13	0% Normal Tax Due
14	0% Normal Tax Due
15	0% Normal Tax Due
16	0% Normal Tax Due
17	0% Normal Tax Due
18	0% Normal Tax Due
19	0% Normal Tax Due
20	0% Normal Tax Due

Date: June 5, 2018

At a meeting of the Town of Brookhaven Industrial Development Agency (the “**Agency**”), held on the 5th day of June, 2018, at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738, the following members of the Agency were:

Present: Frederick C. Braun, III
Felix J. Grucci, Jr.
Scott Middleton
Ann-Marie Scheidt

Recused:

Absent: Martin Callahan
Michael Kelly
Gary Pollakusky

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 (ACE-Calabro Solar, LLC 2018 Facility) and the leasing of the facility to ACE-Calabro Solar, LLC.

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

Voting Aye

Voting Nay

Braun
Grucci
Middleton
Scheidt

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE
APPOINTMENT OF ACE-CALABRO SOLAR, LLC, A
DELAWARE LIMITED LIABILITY COMPANY, ON BEHALF
OF ITSELF AND/OR THE PRINCIPALS OF ACE-CALABRO
SOLAR, 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 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, Agilitas Energy, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of Agilitas Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Developer**”), and ACE-Calabro Solar, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of ACE-Calabro Solar, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), have applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of a long term ground leasehold interest in an approximately 4.7 acre portion of an approximately 413 acre parcel of land located at 135 Dawn Drive, Shirley, New York 11967 (the “**Land**”), owned by the Town of Brookhaven (the “**Town**”), and the construction of an approximately 4.6 acre solar array thereon (the “**Improvements**”), and the equipping thereof, including, but not limited to, approximately 5,250 ground-mounted 340-watt solar modules, approximately four (4) 60-kilowatt inverters, approximately sixteen (16) 50-kilowatt inverters, approximately four (4) 36-kilowatt inverters, approximately one (1) 28-kilowatt inverter and approximately one (1) 23-kilowatt inverter (collectively, the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”) (collectively, the “**Project**”); and

WHEREAS, the Agency will acquire a subleasehold interest in the Land and a leasehold interest in the Improvements pursuant to a certain Company Lease Agreement, dated as of June 1, 2018 or such other date as the Chairman, the 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 acquire title to the Equipment pursuant to a certain Bill of Sale, dated the Closing Date (as defined in the hereinafter defined Lease Agreement) (the “**Bill of Sale**”), from the Company to the Agency; and

WHEREAS, the Agency will sub-sublease the Land, sublease the Improvements and lease the Equipment to the Company pursuant to a certain Lease and Project Agreement, dated as of June 1, 2018 or such other date as the Chairman, the 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 in the form of: (i) exemptions from sales and use taxes in an amount not to exceed \$209,326, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof), 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, the Agency and the Company will execute and deliver to a lender or lenders to be determined (collectively, the “**Lender**”), a mortgage or mortgages, 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, a public hearing (the “**Hearing**”) was held on June 4, 2018 and notice of the Hearing was given and such notice (together with proof of publication) together with the minutes of the Hearing are in substantially in the form annexed hereto as Exhibits A and B respectively; and

WHEREAS, the Agency has given due consideration to the application of the Developer and the Company and to representations by the Developer and the Company that the proposed Facility is either an inducement to the Company to maintain and 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 “**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 (collectively, 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 Town of Brookhaven Town Board (the “**Town Board**”) determined that the Action in connection with the Facility (the “**Action**”), is an Unlisted Action for SEQR purposes, coordinated review with all potential Involved Agencies, and requested to act as Lead Agency for purposes of review of the Action under SEQR; and

WHEREAS, no Involved Agency objected to the Town Board, acting as Lead Agency for purposes of review of the Facility under SEQR, and therefore, the Town Board was the Lead Agency; and

WHEREAS, pursuant to resolutions dated September 29, 2016 and May 24, 2018, the Town Board determined that the Action will not have a “significant effect” on the environment, and, therefore, an environmental impact statement will not be prepared; and

WHEREAS, this determination constitutes a negative declaration for purposes of SEQR; and

WHEREAS, as an Involved Agency, the Agency must make its own findings under SEQR prior to funding, undertaking, or approving an Action; and

WHEREAS, the Agency has reviewed the Questionnaire and such other documents as the Agency felt it necessary or appropriate to examine to adequately review the proposed Action; and

WHEREAS, the Agency finds that the negative declaration of the Town Board accurately and adequately examines environmental issues presented by the Action; and

WHEREAS, the Developer and the Company have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the sub-subleasing, subleasing and 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. Based upon the EAF completed by the Company and other representations and information furnished regarding the Action, the Lead Agency, following coordinated review, determined that, based upon its review of the EAF, the appropriate criteria for determination of significance, and such other and further information which the Lead Agency felt necessary to review the Action, that the Action would 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 SEQR. The Agency hereby adopts the Lead Agency’s negative declaration as its own negative declaration under SEQR.

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 acquisition, construction and equipping of the Facility and the leasing 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

(d) The acquisition, construction and equipping of the Facility 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, Suffolk County, 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 lease the Facility to the Company; and

(g) The Company Lease will be an effective instrument whereby the Agency subleases the Land and leases the Improvements from the Company; and

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

(i) 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 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 Land and lease the Improvements from the Company pursuant to the

Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) lease, sublease and sub-sublease the Facility to the Company pursuant to the Lease Agreement, (iv) execute, deliver and perform the Lease Agreement, (v) grant a mortgage on and security interest in and to the Facility pursuant to the Loan Documents, and (vi) execute, deliver and perform the Loan Documents to which the Agency is a party.

Section 5. The Agency is hereby authorized to acquire the real property and personal property described in Exhibit A and Exhibit B, respectively, 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, construction and equipping of the Facility in the form of: (i) exemptions from sales and use taxes in an amount not to exceed \$209,326, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (ii) 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. Subject to the provisions of this resolution, the Company is herewith and hereby appointed the agent of the Agency to acquire, construct and equip the Facility. The Company is hereby empowered to delegate its status as agent of the Agency to its agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to acquire, construct and equip the Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency solely for purposes of making sales or leases of goods, services and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agent of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. This agency appointment expressly excludes the purchase by the Company of any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The Company shall indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Agency. The aforesaid appointment of the Company as agent of the Agency to acquire, construct and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which the Company has received exemptions from sales and use taxes in an amount not to exceed \$209,326 in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time. The aforesaid appointment of the Company is subject to the completion of the transaction and the execution of the documents contemplated by this resolution.

Section 8. The Developer and the Company are hereby notified that they 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 Developer and the Company are further notified that the tax exemptions and abatements provided pursuant to the Act and the appointment of the Developer and the Company as agents of the Agency 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 9. The form and substance of the Company Lease, the Lease Agreement and the Loan Documents to which the Agency is a party (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 10.

(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, the Lease Agreement and the Loan Documents to which the Agency is a party, 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, the Chief Executive Officer of the Agency 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 11. 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 12. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. 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 Facility.

Section 13. This resolution shall take effect immediately.

ADOPTED: June 5, 2018

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 5th day of June, 2018, 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 5th day of June, 2018.

By: _____
Secretary

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York State General Municipal Law will be held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on the 4th day of June, 2018, at 11:00 a.m. local time, at Brookhaven Town Hall, Division of Economic Development, One Independence Hill, 2nd Floor, Farmingville, New York 11738, in connection with the following matters:

Agilitas Energy, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of Agilitas Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Developer**”), and ACE–Calabro Solar, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of ACE–Calabro Solar, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), have applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of a long term ground leasehold interest in an approximately 4.7 acre portion of an approximately 413 acre parcel of land located at 135 Dawn Drive, Shirley, New York 11967 (the “**Land**”), owned by the Town of Brookhaven (the “**Town**”), and the construction of an approximately 4.6 acre solar array thereon (the “**Improvements**”), and the equipping thereof, including, but not limited to, approximately 5,250 ground-mounted 340-watt solar modules, approximately four (4) 60-kilowatt inverters, approximately sixteen (16) 50-kilowatt inverters, approximately four (4) 36-kilowatt inverters, approximately one (1) 28-kilowatt inverter and approximately one (1) 23-kilowatt inverter (collectively, the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”) (collectively, the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a subleasehold interest in the Land, a leasehold interest in the Improvements and title to or a leasehold interest in the Equipment and will sub-sublease, sublease and lease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility, exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Agency.

A representative of the Agency will at the above-stated time and place hear and accept written 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. At the hearing, all persons will have the opportunity to review the application for financial assistance filed by the Developer and the Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Dated: May 25, 2018

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON June 4, 2018

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY (ACE-CALABRO SOLAR, LLC 2018 FACILITY)

Section 1. Lisa MG Mulligan, Chief Executive Officer of the Town of Brookhaven Industrial Development Agency (the “**Agency**”) called the hearing to order.

Section 2. Lisa MG Mulligan then appointed herself the hearing officer of the Agency, to record the minutes of the hearing.

Section 3. The hearing officer then described the proposed transfer of the real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility as follows:

Agilitas Energy, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of Agilitas Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Developer**”), and ACE–Calabro Solar, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of ACE–Calabro Solar, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), have applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of a long term ground leasehold interest in an approximately 4.7 acre portion of an approximately 413 acre parcel of land located at 135 Dawn Drive, Shirley, New York 11967 (the “**Land**”), owned by the Town of Brookhaven (the “**Town**”), and the construction of an approximately 4.6 acre solar array thereon (the “**Improvements**”), and the equipping thereof, including, but not limited to, approximately 5,250 ground-mounted 340-watt solar modules, approximately four (4) 60-kilowatt inverters, approximately sixteen (16) 50-kilowatt inverters, approximately four (4) 36-kilowatt inverters, approximately one (1) 28-kilowatt inverter and approximately one (1) 23-kilowatt inverter (collectively, the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”) (collectively, the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a subleasehold interest in the Land, a leasehold interest in the Improvements and title to or a leasehold interest in the Equipment and will sub-sublease, sublease and lease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage

recording taxes in connection with the financing or any subsequent refinancing of the Facility, exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Agency.

Section 4. The hearing officer then opened the hearing for comments from the floor for or against the proposed transfer of real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility. The following is a listing of the persons heard and a summary of their views:

N/A

Section 5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at 11:30 a.m.

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 foregoing copy of the minutes of a public hearing held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on June 4, 2018, at 11:00 a.m., local time, at Brookhaven Town Hall, Division of Economic Development, One Independence Hill, 2nd Floor, Farmingville, New York 11738, with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of the minutes in connection with such matter.

IN WITNESS WHEREOF, I have hereunto set my hand as of June 4, 2018.

Secretary

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), William Floyd Union Free School District, Suffolk County and Appropriate Special Districts

Definitions:

Normal Tax Due = Those payments for taxes and assessments, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), William Floyd Union Free School District, Suffolk County which are or may be imposed for special improvements or special district improvements, that the Company would pay without exemption.

<u>Year</u>	<u>Payment</u>
1	0% Normal Tax Due
2	0% Normal Tax Due
3	0% Normal Tax Due
4	0% Normal Tax Due
5	0% Normal Tax Due
6	0% Normal Tax Due
7	0% Normal Tax Due
8	0% Normal Tax Due
9	0% Normal Tax Due
10	0% Normal Tax Due
11	0% Normal Tax Due
12	0% Normal Tax Due
13	0% Normal Tax Due
14	0% Normal Tax Due
15	0% Normal Tax Due
16	0% Normal Tax Due
17	0% Normal Tax Due
18	0% Normal Tax Due
19	0% Normal Tax Due
20	0% Normal Tax Due

WHEREAS, the Agency previously consented, inter alia, to (i) the acquisition of 100% of the interests in Tate's Wholesale, LLC by Tate's Bake Shop, Inc., a corporation organized and existing under the laws of the State of New York and a wholly owned subsidiary of Tate's Holding Company, a corporation organized and existing under the laws of the State of Delaware which is controlled by, and a majority of whose equity interests are owned by, Riverside Micro-Cap Fund III, L.P., a limited partnership organized and existing under the laws of the State of Delaware, and (ii) the transfer of Cookie Commissary LLC's interest in the Facility to Tate's Holding Company and the further transfer thereof by Tate's Holding Company to Tate's Wholesale, LLC; and

WHEREAS, Cookie Commissary LLC, inter alia, transferred to Tate's Holding Company its interest in and to, and Tate's Holding Company assumed the obligations of Cookie Commissary LLC under, (i) the Lease Agreement pursuant to a certain Assignment and Assumption of Lease Agreement and Consent, dated as of August 28, 2014, (ii) the PILOT Agreement pursuant to a certain Assignment and Assumption of PILOT Agreement and Consent, dated as of August 28, 2014, and (iii) the Recapture Agreement pursuant to a certain Assignment and Assumption of Recapture Agreement and Consent, dated as of August 28, 2014; and

WHEREAS, Tate's Holding Company, inter alia, transferred to Tate's Wholesale, LLC its interest in and to, and Tate's Wholesale, LLC assumed the obligations of Tate's Holding Company under, (i) the Lease Agreement pursuant to a certain Assignment and Assumption of Lease Agreement and Consent, dated as of August 28, 2014, (ii) the PILOT Agreement pursuant to a certain Assignment and Assumption of PILOT Agreement and Consent, dated as of August 28, 2014, and (iii) the Recapture Agreement pursuant to a certain Assignment and Assumption of Recapture Agreement and Consent, dated as of August 28, 2014; and

WHEREAS, the Agency, Tate's Holding Company and Tate's Bake Shop, Inc. entered into a certain Agency Compliance and Guaranty Agreement, dated August 28, 2014 (the "**Agency Compliance and Guaranty Agreement**"), providing for, inter alia, Tate's Holding Company's and Tate's Bake Shop, Inc.'s guaranty to the Agency of Tate's Wholesale, LLC's obligations under the Lease Agreement, the PILOT Agreement and the Recapture Agreement, as any of same may be amended from time to time; and

WHEREAS, the Agency and Tate's Wholesale, LLC amended the Lease Agreement pursuant to a certain letter agreement, dated August 28, 2014, by and among Tate's Holding Company, Tate's Wholesale, LLC and the Agency, and a certain Amendment of Lease Agreement, effective August 28, 2014; and

WHEREAS, Mondelēz Global LLC ("**Global**"), a limited liability company organized and existing under the laws of the State of Delaware, on behalf of itself and its parent, Mondelēz International, Inc., a corporation organized and existing under the laws of the State of Virginia and the parent of Global (together with Global, "**Mondelēz**"), Tate's Holding Company, Tate's Wholesale, LLC and Tate's Bake Shop, Inc. (the "**Applicants**") have now applied to the Agency for the Agency's consent to the acquisition by Global of one

hundred percent (100%) of the issued capital stock of Tate's Holding Company pursuant to the Lease Agreement, as amended, including under Section 9.3 of the Lease Agreement; and

WHEREAS, the Agency will consent to the transfer to Global of one hundred percent (100%) of the issued capital stock of Tate's Holding Company pursuant to this resolution (the "**Consent**"); 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 Tate's Holding Company and Global have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the transfer of ownership of Tate's Holding Company 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; and

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

(c) The transfer of ownership of one hundred percent (100%) of the issued capital stock of Tate's Holding Company to Global 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 transfer of ownership of one hundred percent (100%) of the issued capital stock of Tate's Holding Company to Global is reasonably necessary to induce Tate's Wholesale, LLC to maintain and expand its business operations in the State of New York; and

(e) Based upon representations of Tate's Holding Company and its counsel, and Global and its counsel, 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; and

(f) It is desirable and in the public interest for the Agency to consent to the transfer of ownership of Tate's Holding LLC to Global.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) consent to the transfer of one hundred percent (100%) of the issued capital stock of Tate's Holding Company to Global; and (ii) execute, deliver and perform such agreements, modifications, amendments, approvals, consents, notices, assignments, assumption agreements, releases, and other documents as may be, in the judgment of the Chairman, Vice Chairman, Chief Executive Officer or counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution, such necessity or desirability and approval to be conclusively evidenced by his or her execution and delivery thereof.

Section 3. Subject to the provisions of this resolution, the Lease Agreement, as amended, and the Agency Documents (defined below), the Agency hereby consents to the transfer of one hundred percent (100%) of the issued capital stock of Tate's Holding Company to Global and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such transfer of ownership of Tate's Holding Company to Global are hereby approved, ratified and confirmed.

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 such agreements, modifications, amendments, approvals, consents, notices, assignments, assumption agreements, releases, and other documents as may be, in the judgment of the Chairman, Vice Chairman, Chief Executive Officer, or counsel of 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, Chief Executive Officer or any member of the Agency shall constitute conclusive evidence of such necessity or appropriateness and approval; and

(b) Each of 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 PILOT Agreement, the Recapture Agreement, and the Agency Compliance and Guaranty Agreement, as any of same may be amended, 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 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 6. Any expenses incurred by the Agency with respect to the transactions contemplated herein shall be paid by Tate's Wholesale, LLC, Tate's Holding Company or

Global. By acceptance hereof, Tate's Wholesale, LLC, Tate's Holding Company and Global agree to pay such expenses and further agree 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, including the Consent. The Consent of the Agency to the transfer of one hundred percent (100%) of the issued capital stock of Tate's Holding Company to Global is subject to the payment of all outstanding invoices of the Agency, the Agency's general counsel, Annette Eaderesto, Esq. and the Agency's transaction counsel, Weinberg, Gross & Pergament LLP.

Section 7. This resolution shall take effect immediately.

ADOPTED: June 5, 2018

ACCEPTED: _____, 2018

MONDELÉZ GLOBAL LLC

By: _____
Name:
Title:

TATE'S HOLDING COMPANY

By: _____
Name:
Title:

TATE'S WHOLESALE, LLC

By: _____
Name:
Title: