

Date: February 20, 2019

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738, on the 20th day of February, 2019, the following members of the Agency were:

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

Recused:

Absent: Felix J. Grucci, Jr.
Scott Middleton

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

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to a certain industrial development facility more particularly described below (ACE-Calabro Solar 2, LLC 2019 Facility).

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

Voting Aye

Voting Nay

Braun
Callahan
Pollakusky
Scheidt
Trotta

AMENDED RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE AMENDMENT OF CERTAIN DOCUMENTS WITH RESPECT TO A CERTAIN INDUSTRIAL DEVELOPMENT 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, 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, ACE-Calabro Solar 2, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware, 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**”) has previously requested the Agency’s assistance with a certain industrial development facility; and

WHEREAS, the Agency by resolution duly adopted on June 5, 2018, as amended on January 9, 2019 (collectively, the “**Original Authorizing Resolution**”), authorized the acquisition, construction and equipping of such facility and the execution and delivery of the Agency Documents (as defined therein); and

WHEREAS, the Agency acquired a subleasehold interest in the Facility (as defined in the hereinafter defined Lease Agreement) pursuant to a certain Company Lease Agreement, dated as of January 1, 2019 (the “**Company Lease**”), by and between the Company and the Agency; and

WHEREAS, the Agency sub-subleased, subleased and leased the Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of January 1, 2019 (the “**Lease Agreement**”), by and between the Agency and the Company; and

WHEREAS, Section 5.1 of the Lease Agreement and the Schedule of PILOT Payments (as defined in the Lease Agreement) attached as Exhibit C to the Lease Agreement, each state the Facility is located within the Eastport-South Manor Central School District; and

WHEREAS, it has come to the Agency’s attention that the Facility may be located within the taxing jurisdiction of one or more of the following school districts: (i) William Floyd School District; (ii) Longwood Central School District; and (iii) Eastport-South Manor Central School District (collectively, the “**School Districts**”); and

WHEREAS, the Lease Agreement will be amended to reflect that the Facility may be located within the taxing jurisdiction of the School Districts and to include the School Districts as Taxing Authorities (as such term is defined in the Lease Agreement), pursuant to a certain Amendment of Lease and Project Agreement, dated a date to be determined (the “**Lease Amendment**”), by and between the Agency and the Company; and

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

WHEREAS, the Agency ratifies and confirms all terms contemplated under the Original Authorizing Resolution, as amended by this Amended Authorizing Resolution, including the Agency Documents (as defined therein); and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company.

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

Section 1. The Agency hereby amends the Original Authorizing Resolution to reflect that the Facility may be located within the taxing jurisdiction of one or more of the following school districts: (i) William Floyd School District; (ii) Longwood Central School District; and (iii) Eastport-South Manor Central School District. The Original Authorizing Resolution shall continue to have the same force and effect except as modified hereby.

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 amendment of the Lease Agreement to include the School Districts as Taxing Authorities 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 Lease Amendment will be an effective instrument whereby the Agency and the Company will amend the Lease Agreement.

Section 3. The form and substance of the Lease Amendment (in substantially the form presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 4.

(a) The Chairman, 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 Lease Amendment, in substantially the form 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 5. The Agency hereby ratifies and confirms all terms contemplated by the Original Authorizing Resolution, as amended by this Amended Authorizing Resolution, including the Agency Documents.

Section 6. 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 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 20th day of February, 2019, 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 20th day of February, 2019.

By:  _____
Secretary