

Date: April 13, 2022

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held via webinar, on the 13th day of April, 2022, the following members of the Agency were:

Present: Frederick C. Braun III, Chairman
Felix J. Grucci, Jr., Vice Chair
Martin Callahan, Treasurer
Ann-Marie Scheidt, Secretary
Gary Pollakusky, Asst. Secretary
Frank C. Trotta, Member
Lenore Paprocky, Member

Recused:

Absent:

Also Present: Lisa M. G. Mulligan, Chief Executive Officer
Lori LaPonte, Chief Financial Officer
Jocelyn Linse, Executive Assistant
Terri Alkon, Administrative Assistant
Amy Illardo, Administrative Assistant
Annette Eaderesto, Esq., Counsel to the Agency
William F. Weir, Esq., Transaction Counsel
Howard R. Gross, Esq., Transaction Counsel

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to the release of certain parcels of land in connection with a certain industrial development facility more particularly described below (Excel Holdings 6 LLC 2015 Facility) and approving the execution and delivery of related documents.

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

Voting Aye

Braun
Grucci
Callahan
Scheidt
Pollakusky
Trotta
Pollakusky

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE RELEASE OF CERTAIN PARCELS OF LAND AND CONSENT TO CERTAIN AGREEMENTS WITH RESPECT TO THE EXCEL HOLDINGS 6 LLC 2015 FACILITY AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as may be amended from time to time (collectively, the “**Act**”), the Town of Brookhaven Industrial Development Agency (the “**Agency**”) was created with the authority and power to issue its special revenue bonds for the purpose of, among other things, acquiring certain industrial development facilities as authorized by the Act; and

WHEREAS, the Agency, previously assisted Sayville Browning Properties, Inc., a New York business corporation (the “**Assignor**”), and Browning Extended Stay, LLC, a New York limited liability company (the “**Sublessee**”), in (a) the construction of an approximately 102,225 square foot building (the “**Improvements**”), on an approximately 2.45 acre parcel of land located at 65 Union Avenue, Ronkonkoma, Town of Brookhaven, Suffolk County, New York, (more particularly known as S.C. Tax Map: District 0200, Section 800, Block 02, Lot 024) (the “**Land**”), together with additional parking and various related site improvements and the acquisition of hotel related furniture, fixtures and equipment not part of the Equipment (as hereinafter defined) (the “**Facility Equipment**”; and together with the Land and the Improvements, the “**Company Facility**”), and (b) the acquisition and installation of certain equipment and personal property including hotel related furniture, fixtures and equipment (the “**Sublessee Equipment**”; and together with the Company Facility, the “**Facility**”), which Sublessee Equipment was leased to the Sublessee and which Facility was to be used as an approximately 122 room hotel to provide a full range of services to the business and leisure traveler visiting the Town of Brookhaven; and

WHEREAS, the Assignor leased the Land to the Agency pursuant to certain Company Lease Agreement, dated as of November 1, 2014 (the “**Original Company Lease Agreement**”), between the Assignor, as lessor and the Agency, as lessee; and

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

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

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

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

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

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

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

WHEREAS, the Agency currently leases the Facility to the Company pursuant to a certain Amended and Restated Lease Agreement, dated as of December 1, 2015, and further amended and restated as of February 1, 2017 (the "**Amended and Restated Lease Agreement**"; and together with the Original Lease Agreement and the Assignment, Assumption and Amendment Agreement, the "**Lease Agreement**"), between the Agency and the Company, a memorandum of which Lease Agreement was to be recorded in the Suffolk County Clerk's office; and

WHEREAS, the Original PILOT Agreement was amended and restated pursuant to and in accordance with a certain Amended and Restated Payment-In-Lieu-of-Tax Agreement, dated as of December 1, 2015 (the "**Amended and Restated PILOT Agreement**"), and amended and restated a second time, dated as of February 1, 2017 (the "**Second Amended and Restated PILOT Agreement**"; and together with the Amended and Restated PILOT Agreement and the Original PILOT Agreement, the "**PILOT Agreement**") by and between the Agency and the Company; and

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

obligations of the occurrence of the Company upon the occurrence of a Recapture Event (as defined therein); and

WHEREAS, in connection with a restructuring of ownership of a certain sewage treatment plan (the "Sewage Treatment Plant"), the Company has condominiumized the Facility and adjacent properties pursuant to a certain Declaration Establishing a Plan of Condominium Ownership, dated June 10, 2020, and recorded in the Suffolk County Clerk's office on September 1, 2021 (the "**Condominium Declaration**"); and

WHEREAS, a part of the Condominium Declaration, the Company now only owns condominium Unit 2, as defined in the Condominium Declaration ("**Unit 2**"), which Unit 2 consists primarily of the Improvements and the portion of the Land directly under the Improvements, and the remainder of the Facility is now common areas with the remainder of the condominium declarants; and

WHEREAS, the Company has now submitted a request for the Agency's consent to the release of certain parcels of land presently known as the common areas from the Facility (the "**Released Property**") and the continued leasing and subleasing by the Agency to the Company of Unit 2; and

WHEREAS, in connection with such Released Property, the Agency and the Company agree to modify the description of the Land conveyed by the Original Company Lease and the Lease Agreement; and

WHEREAS, it is the intent of the parties hereto to amend the definition of the Facility in the Original Company Lease and the Lease Agreement to exclude the Released Property therefrom pursuant to a certain Amendment and Modification Agreement, to be dated as of May 1, 2022, or such other date as may be approved by the Chairman, the Chief Executive Officer of the Agency and counsel to the Agency (the "**Amendment and Modification Agreement**"); and

WHEREAS, the Lease Agreement shall be amended pursuant to a certain Amendment of Lease Agreement, dated as of May 1, 2022 or such other date as may be determined by the Chairman, Chief Executive Officer and counsel to the Agency (the "**Lease Amendment**"), by and among the Agency, the Company and the Sublessee; and

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

WHEREAS, in connection with the Sewage Treatment Plan, the Company has also requested that the Agency consent to certain declarations of covenants and restrictions and a certain Agreement for the Construction, Operation, and Maintenance of a Sewer System by and among the Company, the Suffolk County Department of Public Works, the Suffolk County Sewer Agency, the Suffolk County Department of Health, and the County of Suffolk, as well as any other reasonable consents requested by the Company and approved by counsel to the Agency (the "**Consents**"); 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 Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the continued leasing and subleasing of the Facility.

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

Section 1. The Agency hereby finds and determines:

(a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

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

(c) The continued leasing and subleasing of Unit 2 to the Company, 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 Amendment and Modification Agreement will be an effective instrument whereby the Agency provides for the release of the Released Property from the Original Company Lease and the Lease Agreement.

(e) The Lease Amendment will be an effective instrument whereby the Agency and the Company set forth the terms and conditions of their agreement regarding the release of the Released Property with respect to the Facility.

(f) Based upon representations of the Company and counsel to the Company, the Facility conforms with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local land use plans for the area in which the Facility is located; and

(g) It is desirable and in the public interest for the Agency to grant the release of the Released Property to the Company; and

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) execute, deliver and perform the Amendment and Modification Agreement, (ii) execute and deliver the Lease Amendment, (iii) execute and deliver the Amendment Documents, (iv) execute and deliver the Consents, and (v) execute and deliver any additional documents to which the Agency is a party, in connection with the Released Property.

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

Section 4.

(a) The Chairman, Vice Chairman, Chief Executive Officer, or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Lease Amendment, the Amendment and Modification Agreement, the Amendment Documents, and the Consents all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Chief Executive Officer, or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "**Agency Documents**"). The execution thereof by the Chairman, Vice Chairman, Chief Executive Officer, or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, Chief Executive Officer, or any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Installment Sale Agreement, as amended).

Section 5.

(a) Subject to the provisions of this resolution and the Lease Agreement; the Chairman, Chief Executive Officer and all other members of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Amendment and Modification Agreement, together with such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "**Agency Documents**"). The execution thereof by the Chairman, Chief Executive Officer or any member of the Agency shall constitute conclusive evidence of such approval; and

(b) The Chairman, the Chief Executive Officer, and any member of the Agency are each 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 6. Subject to the provisions of this resolution and the Lease Agreement, the officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or

agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 7. This resolution shall take effect immediately.

STATE OF NEW YORK)

: SS.:

COUNTY OF SUFFOLK)

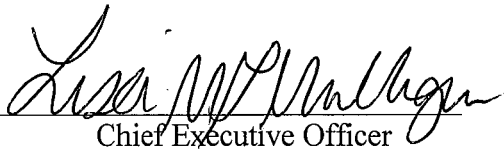
I, the undersigned Chief Executive Officer of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

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 13th day of April, 2022, 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, the Agency’s Board Meeting on April 13, 2022, was held as a public meeting open for the public to attend in person, and that all members of said Agency had due notice of said meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 13th day of April, 2022.

By: 
Chief Executive Officer