

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ASSIGNMENT AND ASSUMPTION OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY TO **GGSP INVESTMENTS, LLC**, A DELAWARE LIMITED LIABILITY COMPANY, AND/OR **GS AA VISTAS OWNER, LLC**, AND/OR ANY OF THE PRINCIPALS OF **GS AA VISTAS OWNER, LLC** AND/OR OTHER ENTITIES FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING, AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS.

WHEREAS, the Town of Brookhaven Industrial Development Agency (the “**Agency**”) was created by 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 (collectively, the “**Act**”), with the authority and power to, among other things, acquire, construct, renovate and equip a project, provide financial assistance, and mortgage, lease, grant options with respect to and dispose of property; and

WHEREAS, the Agency previously provided its assistance to The Vistas of Port Jefferson LLC, a New York limited liability company (the “**Original Company**”), in connection with (a) the acquisition and construction of a senior housing rental community with approximately 244 senior citizen rental housing units and appurtenances (the “**Improvements**”), located or to be located on an approximately 27.324 acre parcel of land situated at Bicycle Path, Port Jefferson Station, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 0200-229.00-01.00-002.16 (formerly, 0200-229.00-01.00-002.11 through 002.15 and 0200-206.00-05.00-040.001)) (the “**Land**”), and (b) the acquisition and installation thereof of equipment and other personal property (the “**Equipment**”) (the Land, Improvements and Equipment may be collectively referred to as the “**Facility**”), which Facility is presently leased by the Agency to the Original Company for sublease of the rental units by the Original Company to qualified senior residents of at least 55 years of age (the “**Project**”), and

WHEREAS, the Agency previously acquired a leasehold interest in the Land and Improvements pursuant to a certain Company Lease Agreement, dated as of July 1, 2018 (the “**Original Company Lease**”), by and between the Original Company and the Agency, and a memorandum of such Original Company Lease was recorded in the Suffolk County Clerk’s office; and

WHEREAS, the Agency previously acquired title to the Equipment pursuant to a certain Bill of Sale, dated July 24, 2018 (the “**Bill of Sale**”), from the Original Company to the Agency; and

WHEREAS, the Agency currently subleases the Land and Improvements and leases the Equipment to the Original Company pursuant to a certain Lease and Project Agreement, dated as of July 1, 2018, as amended by a certain Amendment of Lease Agreement, dated January 9, 2019, a certain Second Amendment of Lease Agreement, dated July 17, 2019,

and a certain Third Amendment of Lease Agreement, dated September 1, 2020 (collectively, the “**Original Lease Agreement**”), by and between the Agency, as lessor, and the Original Company, as lessee, and a memorandum of such Lease and Project Agreement, dated as of July 1, 2018, was recorded in the Suffolk County Clerk’s office; and

WHEREAS, GGSP Investments, LLC, a Delaware limited liability company, on behalf of itself and/or GS AA Vistas Owner, LLC and/or the principals of GS AA Vistas Owner, LLC and/or entity formed or to be formed on behalf of the foregoing (collectively, the “**Assignee**”), has submitted its application for financial assistance (the “**Application**”) to the Agency in the form of (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$76,700,000.00, but not to exceed \$80,000,000.00, and (ii) the continued abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A), and requested the Agency’s consent to the assignment by the Original Company of all of its rights, title, interest and obligations under the Original Company Lease, the Original Lease Agreement, and certain other agreements in connection with the Facility, to the Assignee, and the assumption by the Assignee of all of such rights, title, interest and obligations of the Original Company, and the release of the Original Company from any future liability incurred after the date of the assignment with respect to the Facility subject to certain requirements of the Agency, all pursuant to the terms of an Assignment and Assumption Agreement, to be dated as of August 1, 2021 or such other date as may be determined by the Chairman, Chief Executive Officer or counsel to the Agency (the “**Assignment and Assumption Agreement**”); and

WHEREAS, the Original Company Lease will be assigned by the Original Company to the Assignee pursuant to the Assignment and Assumption Agreement and the Original Company Lease will be amended and restated pursuant to a certain Amended and Restated Company Lease, to be dated as of August 1, 2021 or such other date as the Chairman, Chief Executive Officer of the Agency or counsel to the Agency shall agree (the “**Company Lease**”) pursuant to which the Agency will lease from the Assignee the Land and Improvements for the remaining term of the Original Company Lease, and a memorandum of such Company Lease, as assigned and amended, shall be recorded in the Suffolk County Clerk’s office; and

WHEREAS, the Original Lease Agreement will be assigned by the Original Company to the Assignee pursuant to the Assignment and Assumption Agreement, and the Original Lease Agreement will be amended and restated pursuant to a certain Amended and Restated Lease and Project Agreement, to be dated as of August 1, 2021 or such other date as the Chairman, Chief Executive Officer of the Agency or counsel to the Agency shall agree (the “**Lease Agreement**”) pursuant to which the Agency will lease to the Assignee the Facility for the remaining term of the Original Lease Agreement, and a memorandum of such Lease Agreement, as assigned and amended, shall be recorded in the Suffolk County Clerk’s office; and

WHEREAS, the Agency, the Assignee and the Original Company will enter into such other documents upon the advice of counsel, in both form and substance, as may be reasonably required to effectuate the assignment and assumption of the Facility (together with

the Assignment and Assumption Agreement, the Company Lease and Lease Agreement, the “**Assignment Documents**”); and

WHEREAS, pursuant to Section 9.3 of the Original Lease Agreement, the Facility may be assigned, in whole or in part, with the prior written consent of the Agency; and

WHEREAS, subject to the execution and delivery of the Assignment and Assumption Agreement, the Company Lease, the Lease Agreement, and the other required Assignment Documents, the Agency will consent to the assignment by the Original Company and the assumption by the Assignee of the Original Company’s interests in the Facility and the Agency will thereafter lease and sublease the Facility to the Assignee; and

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

WHEREAS, the Agency contemplates that it will provide financial assistance to the Assignee, consistent with the policies of the Agency, in the form of the continued abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof) pursuant to the terms of the Lease Agreement and as assigned by the Original Company to the Assignee in accordance with the Assignment and Assumption Agreement, all consistent with the policies of the Agency; and

WHEREAS, as security for a loan or loans (the “**Loan**”), the Agency and the Assignee will execute and deliver to a lender or lenders not yet determined (collectively, the “**Lender**”), a mortgage or mortgages and/or a security agreement or security agreements (the “**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 July 27, 2021, so that all persons with views in favor of, or opposed to, either the financial assistance contemplated by the Agency or the location or nature of the Facility, could be heard; and

WHEREAS, notice of the Hearing was given more than ten days prior thereto, such notice (together with proof of publication) having been filed with the records of this Agency; and

WHEREAS, the minutes of the Hearing having been filed with the records of this Agency; and

WHEREAS, the Agency has given due consideration to the requests of the Assignee; and

WHEREAS, the Agency has given due consideration to the application of the Assignee and to the representations by the Assignee that the proposed transfer of real estate is an inducement to the Assignee and to maintain or expand the Facility in the Town of Brookhaven or is necessary to maintain the competitive positions of the Assignee in its industry; and

WHEREAS, the Assignee 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 Assignee.

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 as defined in the Act; and

c. The execution and delivery of the Assignment and Assumption Agreement, the acquisition of the Facility, the leasing and subleasing of the Facility to the Assignee, the financial assistance to the Assignee within the meaning of the Act, and the mortgages on, and security interests in, the Facility, 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. Based upon the representations of the Assignee:

i the Facility conforms with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local use plans for the area in which the Facility is located; and

ii The Facility and the operations conducted therein will not cause or result in the violation of the health, labor or other laws of the United States of America, the State of New York, or the Town of Brookhaven; and

iii The acquisition of the Facility and the provision for financial assistance in the form of exemptions from mortgage recording taxes and the continued abatement of real property taxes are reasonably necessary to induce the Assignee to maintain and expand its operations within the State of New York, and shall not result in the removal of a facility or plant of the Assignee from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the Assignee; and

e. It is desirable and in the public interest for the Agency to lease and sublease the Facility to the Assignee.

f. It is desirable and in the public interest for the Agency to consent to the execution and delivery of the Assignment and Assumption Agreement providing for the assignment by the Original Company of all of its rights, title, interest, duties, liabilities and obligations under the Original Company Lease, the Original Lease Agreement and the Facility to the Assignee and the assumption by the Assignee of all of such rights, title, interest, duties, liabilities and obligations of the Original Company under the Original Company Lease, the Original Lease Agreement and the Facility.

g. The Assignment and Assumption Agreement, the Company Lease, the Lease Agreement and the other Assignment Documents, will be effective instruments whereby the Original Company will assign all of its rights, title, interest, duties, liabilities and obligations under the Original Company Lease, the Original Lease Agreement and the Facility to the Assignee, and the Assignee will assume all of such rights, title, interest, duties, liabilities and obligations of the Original Company under the Original Company Lease, the Original Lease Agreement and the Facility with the consent of the Agency, the Agency leases the Land and Improvements from the Assignee, and the Agency leases and subleases the Facility to the Assignee.

h. The Loan Documents to which the Agency is a party will be effective instruments whereby the Agency and the Assignee agree to secure the Loan made to the Assignee by the Lender.

Section 2. The Agency has assessed all material information included in connection with the Assignee's application for financial assistance, as amended, 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 Assignee.

Section 3. In consequence of the foregoing, the Agency is hereby authorized and determines to, in furtherance of the purposes of the Act, (i) consent to the assignment by the Original Company to, and the assumption of the Facility by, the Assignee, pursuant to the Assignment and Assumption Agreement, (ii) execute, deliver and perform the Assignment and Assumption Agreement, (iii) lease the Land and Improvements from the Assignee pursuant to the Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) lease and sublease the Facility to the Assignee pursuant to the Lease Agreement, (iv) execute, deliver and perform the Lease Agreement, (v) grant mortgage lien(s) and security interest(s) in the Facility pursuant to the Loan Documents, and (vi) execute, deliver and perform the Loan Documents to which the Agency is a party.

Section 4. The Agency is hereby authorized to acquire the real property and personal property described in 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 of the following financial benefits to be granted to the Assignee in connection with the acquisition, construction and equipping of the Facility: the continued abatement of real property taxes (as set forth in the

PILOT Schedule attached as Exhibit A hereof) pursuant to the terms of the Lease Agreement, consistent with the policies of the Agency

Section 7. The Chairman, Chief Executive Officer and/or any other member of the Agency are hereby authorized and directed to, on behalf of and in the name of the Agency, execute, deliver and perform the Assignment and Assumption Agreement, Company Lease, Lease Agreement, the other Assignment Documents, and the Loan Documents to which the Agency is a party, and additional certificates, agreements, instruments and documents (collectively, the “**Agency Documents**”), in such form and containing such terms, conditions and provisions as the person executing same on behalf of the Agency shall deem necessary or desirable, and shall approve, such necessity, desirability, and approval, to be conclusively evidenced by his or her execution and delivery thereof. The Chairman, Chief Executive Officer and/or any other member of the Agency are hereby authorized and directed, on behalf of and in the name of the Agency, to pay all fees, charges and expenses incurred, to cause compliance with the terms, conditions and provisions of agreements binding upon the Agency, and to do all such further acts and things, in furtherance of the foregoing as such person shall deem necessary or desirable, and shall approve.

Section 8. 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 9. The Assignee hereby agrees, and shall confirm such agreement in the Lease Agreement, to comply with Section 875 of the Act. The Assignee further agrees that the tax exemptions and abatements provided by the Act are subject to termination and recapture of benefits pursuant to Sections 859-a and 875 of the Act.

Section 10. Weinberg Gross & Pergament LLP are hereby appointed Transaction Counsel to the Agency, and is authorized and directed to work with counsels to the Original Company, the Assignee and others, to prepare, for submission to the Agency, all documents necessary to effect the transaction described in these resolutions.

Section 11. Any and all acts, instruments, and other writings heretofore or hereafter performed and/or executed and delivered by any one or more of the Chairman, Chief Executive Officer or any member of the Agency, pursuant to the several foregoing resolutions, for and on behalf of and in the name of the Agency, in connection with the transactions contemplated thereby, be and the same hereby are, in all respects ratified, confirmed and approved.

Section 12. The Agency Documents, promptly following the execution, and delivery thereof, be identified by any of the Chairman, Chief Executive Officer or any member of the Agency by his or her endorsement thereon and when so identified be filed with the official records of the Agency.

Section 13. Any expenses incurred by the Agency with respect to or in connection with the assignment of the Facility shall be paid by the Original Company and the Assignee. By acceptance hereof, the Original Company and the Assignee, jointly and severally, agree to pay such expenses and further agree to indemnify and hold harmless the Agency, its members, directors, employees and agents from and against all claims, suits, actions, proceedings, obligations, damages, liabilities, judgments, costs and expenses, including legal fees and expenses, incurred as a result of action or inaction taken by or on behalf of the Agency in good faith with respect to the assignment of the Facility.

Section 14. The Chairman, Chief Executive Officer, Counsel to the Agency or any member of the Agency are hereby authorized and directed (i) to distribute copies of this resolution to the Original Company and the Assignee, 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 15. This resolution shall take effect immediately, and, unless sooner rescinded or amended, shall be deemed rescinded at the expiration of six (6) months after the date of the adoption of this resolution if the closing contemplated hereunder has not occurred prior to such expiration, subject to extension at the discretion of the Agency upon the written request of the Original Company or the Assignee.

Adopted: July 28, 2021

Accepted: _____, 2021

GGSP Investments, LLC

By: _____
Its: _____

GS AA Vistas Owner, LLC

By: _____
Its: _____

Accepted: _____, 2021

The Vistas of Port Jefferson, LLC

By: _____
Its: _____

EXHIBIT A

PROPOSED PILOT BENEFITS ARE FOR DISCUSSION PURPOSES ONLY
AND HAVE NOT APPROVED BY THE AGENCY BOARD.

<u>Tax Year</u>	<u>PILOT Amount</u>
2020/2021	\$51,928.00
2021/2022	\$52,967.00
2022/2023	\$54,026.00
2023/2024	\$89,906.00
2024/2025	\$190,423.00
2025/2026	\$315,453.00
2026/2027	\$471,910.00
2027/2028	\$655,730.00
2028/2029	\$854,564.00
2029/2030	\$1,055,557.00
2030/2031	\$1,252,293.00
2031/2032	\$1,445,900.00
2032/2033	\$1,516,043.00