

Date: September 16, 2020

At a meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), held electronically via webinar on the 16th day of September, 2020, the following members of the Agency were:

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

Recused:

Excused:

Also Present: Lisa M.G. Mulligan, Chief Executive Officer
Lori LaPonte, Chief Financial Officer
James M. Tullo, Deputy Director
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 consent to a mortgage financing in connection with a certain industrial development facility more particularly described below (HSRE-EB Holtsville, LLC 2015 Facility).

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

Voting Aye

Braun
Grucci
Callahan
Middleton
Scheidt
Pollakusky
Trotta

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING A MORTGAGE FINANCING AND THE EXECUTION AND DELIVERY OF LOAN DOCUMENTS IN CONNECTION THEREWITH FOR THE HSRE-EB HOLTSVILLE, LLC 2015 FACILITY AND APPROVING THE FORM, SUBSTANCE, EXECUTION AND DELIVERY OF SUCH RELATED DOCUMENTS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as the same may be amended from time to time (collectively, the “**Act**”), the Town of Brookhaven Industrial Development Agency (the “**Agency**”), was created with the authority and power among other things, to assist with certain industrial development projects as authorized by the Act; and

WHEREAS, the Agency previously provided assistance to HSRE-EB Holtsville, LLC (the “**Company**”), in connection with the acquisition, construction, equipping and furnishing of an industrial development facility (i) the acquisition of a parcel of land totaling approximately 5.89 acres located at 2000 North Ocean Avenue, Farmingville, Town of Brookhaven, County of Suffolk, New York (the “**Land**”), and (ii) the construction, equipping and furnishing of a four-story above-grade approximately 120,000 square foot building to be located thereon consisting of approximately 140 assisted living units and 150 beds, for use by elderly citizens in the community as a fully integrated residence including living, dining, housekeeping, personal laundry and transportation services (collectively, the “**Facility**”), which Facility is currently leased by the Agency to the Company and used by the Company as an assisted living residential facility (the “**Project**”); and

WHEREAS, the Agency previously acquired subleasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of August 1, 2015 (the “**Company Lease**”), by and between the Company and the Agency, a memorandum of which Company Lease was to be recorded in the office of the Suffolk County Clerk;

WHEREAS, the Agency previously acquired title to the Equipment pursuant to a certain Bill of Sale, dated August 11, 2015 (the “**Bill of Sale**”), from the Company to the Agency; and

WHEREAS, the Agency is currently sub-subleasing and leasing the Facility to the Company, pursuant to a certain Lease Agreement, dated as of August 1, 2015 (the “**Lease Agreement**”), by and between the Agency and the Company; and

WHEREAS, the Agency and the Company previously mortgaged their respective rights in the property described on Exhibit A attached to the Lease Agreement to Wells Fargo Bank, National Association (“**Lender**”), pursuant to (i) a Building Loan Fee, Leasehold and Subleasehold Mortgage, Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated August 11, 2015 (the “**Building Loan Mortgage**”), in the amount of \$24,897,977.00, and (ii) a Project Loan Fee, Leasehold and Subleasehold Mortgage, Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated August 11, 2015 (the “**Project Loan Mortgage**”); and, together with the Building Loan Mortgage, the

“**Mortgages**”), in the amount of \$5,549,720.00, which Mortgages were recorded separately in the Suffolk County Clerk’s office; and

WHEREAS, the Agency previously consented to a request by the Company, (i) to extend the Maturity Date of the Mortgages, from August 11, 2020 to August 11, 2022, and (ii) to make certain amendments to the Loan Documents all as set forth, defined and subject to the terms and accordance of a certain Second Amendment to Loan Documents, dated as date to be determined (the “**Amendment to Loan Documents**”), between the Company and the Lender and consented to by the Agency; and

WHEREAS, the Company has now requested that the Agency consent to enter into a mortgage with the Lender to provide a second mortgage loan with respect to the Facility in the principal amount presently expected to be \$200,000 (the “**Second Loan**”); and

WHEREAS, as security for such Second Loan being made to the Company by the Lender, the Company has submitted a request to the Agency that it join with the Company in executing and delivering to the Lender one or more mortgages and such other loan documents, satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably requested by the Lender (the “**Second Loan Documents**”); and

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

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

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

Section 1. The Agency hereby finds and determines:

- (a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act.
- (b) The Facility continues to constitute a “project”, as such term is defined in the Act.
- (c) The Facility preserves the public purposes of the Act by increasing the number of private sector jobs in the Town of Brookhaven.
- (d) The financing or refinancing of the acquisition, renovation and equipping of the Facility will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven, Suffolk County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act.

- (e) The financing or refinancing of the acquisition, renovation and equipping of the Facility as contemplated in this resolution is reasonably necessary to maintain the competitive position of the Company in its industry.
- (f) Based upon representations of the Company and counsel to the Company, the Facility continues to conform with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local land use plans for the area in which the Facility is located.
- (g) It is desirable and in the public interest for the Agency to assist in the financing or refinancing of the acquisition, construction and equipping of the Facility.
- (h) The Second Loan Documents will be effective instruments whereby the Agency and the Company agree to secure the Second Loan and assign to the Lender their respective rights under the Lease Agreement (except the Agency's Unassigned Rights as defined therein).

Section 2.

In consequence of the foregoing, the Agency hereby determines to: (i) grant a mortgage on and security interest in and to the Facility pursuant to a certain mortgage and security agreement for the benefit of the Lender (the "**Second Mortgage**"), (ii) authorize the execution and delivery of the Second Mortgage, and (vi) execute, deliver and perform the Second Loan Documents to which the Agency is a party, as may be necessary or appropriate to effect the Second Loan or any subsequent refinancing of the Second Mortgage, provided, however, the Company shall be required to pay the mortgage recording tax on the full principal amount of the Second Mortgage

Section 3. Subject to the provisions of this resolution and the Lease Agreement, the Agency is hereby authorized to do all things necessary or appropriate for the execution, delivery and performance of the Second Loan Documents and Second Mortgage, and such other related documents as may be necessary or appropriate to effect the Second Loan, or any subsequent refinancing of the Second Loan, and all acts heretofore taken by the Agency with respect to such financing or refinancing 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 the Second Mortgage and Second Loan Documents, together with such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "**Agency Documents**"). The execution thereof by the Chairman, Chief Executive Officer, or any member of the Agency shall constitute conclusive evidence of such approval; and

(b) the Chairman, Chief Executive Officer, and any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives of the Agency.

Section 5. Subject to the provisions of this resolution and the Lease Agreement, the officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 6. Any expenses incurred by the Agency with respect to the financing or refinancing of the Facility shall be paid by the Company. The Company has agreed to pay such expenses and further shall 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 financing or refinancing of the Facility.

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 16th day of September, 2020, 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, due to the Novel Coronavirus (COVID-19) Emergency State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo’s Executive Order 202.1 issued on March 12, 2020, as amended and extended to date, permitting local governments to hold public hearings by telephone and video conference and/or similar device, the Agency’s Board Meeting on September 16, 2020 (the “**Board Meeting**”), was held electronically via webinar instead of a public meeting open for the public to attend in person. Members of the public were advised, via the Agency’s website, to listen to the Board Meeting by logging into <https://us02web.zoom.us/j/82747555028?pwd=K0lWbnhTd0g0TTFsbDc1NXFkRCtadz09>, and were further advised that the Minutes of the Board Meeting would be transcribed and posted on the Agency’s website, 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 16th day of September, 2020.

By 
Chief Executive Officer