

Date: January 12, 2022

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held electronically via webinar, on the 12th day of January, 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, Asst Treasurer
Lenore Paprocky, Member

Recused: Martin Callahan, Treasurer

Excused:

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 Gross, 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 assignment and assumption of the Agency’s Brookhaven Venture LLC 2021 Facility, the execution of documents with respect thereto, and the leasing of the facility to Brookhaven Residences LLC.

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

Voting Aye

Voting Nay

Braun
Grucci
Scheidt
Pollakusky
Trotta
Paprocky

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ASSIGNMENT AND ASSUMPTION OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY FROM BROOKHAVEN VENTURES LLC TO BROOKHAVEN RESIDENCES 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 BROOKHAVEN RESIDENCES LLC AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS AND MAKING CERTAIN FINDINGS AND DETERMINATIONS

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 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 has previously provided its assistance to Brookhaven Ventures LLC, a New York limited liability company (the “**Original Company**”) in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 0 Farm to Market Road and 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.007 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1,200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements,

the “**Facility**”), which Facility is to be subleased by the Agency to the Original Company to be known as The Arboretum at Farmingville and used by the Original Company to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (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 December 1, 2021 (the “**Original Company Lease**”), by and between the Original Company to the Agency, and a memorandum of such Original Company Lease was to be 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 December 29, 2021 (the “**Original Bill of Sale**”), from the Original to the Agency; and

WHEREAS, the Agency agreed to lease Company Facility to the Original Company pursuant to the Lease and Project Agreement, dated as of December 1, 2021 (the “**Original Lease Agreement**”), between the Agency and the Company; and

WHEREAS, Brookhaven Residences 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 Brookhaven Residences LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), has now requested the Agency’s consent to the (i) assignment by the Original Company of all of its rights, title, interest, duties, liabilities and obligations under the Original Company Lease and the Original Lease Agreement, and certain other agreements in connection with the Facility to the Company and the assumption by the Company of all of such rights, title, interest, duties, liabilities and obligations of the Original Company, and (ii) the release of the Original Company from any further liability with respect to the Facility, subject to certain requirements of the Agency (the “**Assignment and Assumption**”), all pursuant to the terms of an Assignment, Assumption and Amendment Agreement, to be dated as of January 1, 2022, or such other date as may be determined by the Chairman, Chief Executive Officer and counsel to the Agency (the “**Assignment and Assumption Agreement**”), by and among the Agency, the Original Company and the Company; and

WHEREAS, the Original Company Lease will be assigned by the Original Company to the Company pursuant to a certain Assignment and Assumption of Company Lease Agreement, to be dated as of January 1, 2022, or such other date as may be determined by the Chairman, Executive Director and counsel to the Agency (the “**Assignment of Company Lease**”, and together with the Original Company Lease, the “**Company Lease**”), by and between the Original Company and the Company, and consented to by the Agency; and

WHEREAS, the Original Lease Agreement will be assigned by the Original Company to the Company pursuant to a certain Assignment and Assumption of Lease Agreement, to be dated as of January 1, 2022, or such other date as may be determined by the Chairman, Executive Director and counsel to the Agency (the “**Assignment of Lease**”); and

Agreement", and together with the Original Lease Agreement, the "**Lease Agreement**"), by and between the Original Company and the Company, and consented to by the Agency; and

WHEREAS, the Agency will acquire the Equipment from the Company pursuant to a certain Bill of Sale, dated a date to be determined (the "**Bill of Sale**") from the Company to the Agency; and

WHEREAS, the Agency and the Company will enter into such other documents upon advice of counsel, in both form and substance, as may be reasonably required to effectuate the assignment and assumption of the Project (together with the Assignment and Assumption Agreement, the Assignment of Company Lease, and the Assignment of Lease, the "**Assignment Documents**"); and

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

WHEREAS, in connection with the Assignment and Assumption, a fourth supplemental public hearing (the "**Fourth Supplemental Hearing**") was held on January 10, 2022, 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 Fourth Supplemental Hearing was given on December 29, 2021, and such notice (together with proof of publication), was substantially in the form annexed hereto as Exhibit A; and

WHEREAS, the report of the Fourth Supplemental Hearing is substantially in the form annexed hereto as Exhibit B; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of: (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$91,000,000, but not to exceed \$95,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$682,500.00 but not to exceed \$712,500.00, in connection with the financing of the acquisition, demolition, renovation, construction, equipping and furnishing of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, demolishing, renovating, constructing, equipping and furnishing the Facility, (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$5,120,976.16 (less the amount of any exemption used by the Original Company to date), in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) an abatement of real property taxes as set forth in the PILOT Schedule annexed to the Original Lease Agreement as Exhibit C thereto; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed financial assistance 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, 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 Original Company 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 Assignment and Assumption Agreement.

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

Section 1. Subject to the provisions of this resolution, 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 execution and delivery of the Assignment Documents 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 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; and

(d) The execution and delivery of the Assignment Documents and the continued leasing 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 continues to conform 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) It is desirable and in the public interest for the Agency to consent to the execution and delivery of the Assignment Documents providing for the assignment by the Original Company of all of its rights, title, interest, duties, liabilities and obligations under the Company Lease, the Lease Agreement and the Facility to the Company and the assumption by the Company of all of such rights, title, interest, duties, liabilities and obligations of the Original Company under the Company Lease and the Lease Agreement; and

(h) The Assignment and Assumption Agreement, the Assignment of Company Lease, the Assignment of Lease, and any other Assignment Documents to which the Agency is a party will be effective instruments whereby the Original Company will assign all of its rights, title, interest, duties, liabilities and obligations under the Company Lease, the Lease Agreement, and the Facility to the Company and the Company will assume all of such rights, title, interest, duties, liabilities and obligations of the Original Company under the Company Lease, the Lease Agreement, and the Facility with the consent of the Agency.

Section 2. Subject to the provisions of this resolution, the Agency has assessed all material information included in connection with the Company's application for financial assistance, and such information has provided the Agency a reasonable basis for its decision to provide the financial assistance described herein to the Company.

Section 3. Subject to the provisions of this resolution, and in consequence of the foregoing, the Agency hereby determines to: (i) consent to the assignment by the Original Company of all of its rights, title, interest, duties, liabilities and obligations pertaining to the Facility under the Company Lease and the Lease Agreement to the Company and the assumption by the Company of all of such rights, title, interest, duties, liabilities and obligations of the Original Company pursuant to the Assignment and Assumption Agreement, (ii) execute, deliver and perform the Assignment and Assumption Agreement, (iii) execute, deliver and perform the Assignment of Company Lease, (iv) execute, deliver and perform the Assignment of Lease, and (v) execute and deliver the other Assignment Documents to which the Agency is a party.

Section 4. Subject to the provisions of this resolution, the Agency is hereby authorized to consent to the assignment by the Original Company of all of its rights, title, interest, duties, liabilities and obligations under the Company Lease, the Lease Agreement and the Facility to the Company and the assumption by the Company of all of such rights, title, interest, duties, liabilities and obligations of the Original Company pursuant to the Assignment and Assumption Agreement, the Assignment of Company Lease, and the Assignment of 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 assignment and assumption are hereby approved, ratified and confirmed.

Section 5. Subject to the provisions of this resolution, the Agency hereby authorizes and approves the following economic benefits to be granted to the Company (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$91,000,000, but not to exceed \$95,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$682,500.00 but not to exceed \$712,500.00, in connection with the financing of the acquisition, demolition, renovation, construction, equipping and furnishing of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, demolishing, renovating, constructing, equipping and furnishing the Facility, (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$5,120,976.16 (less the amount of any exemption used by the Original Company to date), in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, in connection with the purchase or lease of equipment, building materials, services or other

personal property with respect to the Facility and (iii) an abatement of real property taxes as set forth in the PILOT Schedule annexed to the Original Lease Agreement as Exhibit C thereto.

Section 6. Subject to the provisions of this resolution, the Company is hereby notified that it 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 Company is further notified that the tax exemptions and abatements provided pursuant to the Act 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 7. Subject to the provisions of this resolution and the holding of the Hearing, the form and substance of the Assignment and Assumption Agreement, the Assignment of Company Lease, the Assignment of Lease Agreement, and any other Assignment 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.

Any expenses incurred by the Agency with respect to the Assignment and Assumption 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 Consent to Transfer Ownership and Assignment of the Facility.

Section 8.

(a) Subject to the provisions of this resolution and the holding of the Hearing, 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 Assignment and Assumption Agreement, the Assignment of Company Lease, the Assignment of Lease Agreement, and the other Assignment 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 9. Subject to the provisions of this resolution, 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 10. Subject to the provisions of this resolution, 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 11. The provisions of this resolution shall continue to be effective for one year from the date hereof, whereupon the Agency may, at its option, terminate the effectiveness of this resolution (except with respect to the matters contained in Section 7 hereof).

Section 12. This resolution shall take effect immediately.

Exhibit A

NOTICE OF FOURTH SUPPLEMENTAL 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 10th day of January, 2022, at 10:00 a.m. local time, the Agency’s offices located at the Town of Brookhaven Town Hall, 2nd Floor, One Independence Hill, Farmingville, New York 11738, in connection with the following matters:

BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, “**BRP**”), submitted its application for financial assistance (the “**Original Application**”) to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to BRP to be known as The Arboretum at Farmingville and used by BRP to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”).

The Agency previously held a public hearing on August 20, 2019.

Subsequent to the submission of the Original Application by BRP to the Agency, BRP notified the Agency of a change in ownership structure of the Facility and requested that the Agency consent to amend the Application (the “**First Amendment to Application**”), to reflect that Brookhaven Venture 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 Brookhaven Venture LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Brookhaven**”).

Venture”), will be the fee owner of the Project. The Facility will be initially owned, operated, and/or managed by Brookhaven Venture.

The Agency previously held a supplemental public hearing on March 24, 2020.

Subsequent to the supplemental public hearing, Brookhaven Venture notified the Agency that due to the dramatic changes in the construction and materials markets caused by the COVID-19 Pandemic, the original project costs outlined in the Application are out-of-date and significantly lower than the currently anticipated costs. In connection with the increased costs, Brookhaven Venture requested that the Agency consent to a second amendment to the Original Application (the “**Second Amendment to Application**”), to reflect current costs of the Project.

The Agency previously held a second supplemental public hearing on April 7, 2021.

Subsequent to the second supplemental public hearing, Brookhaven Venture previously notified the Agency that due to the continued dramatic changes in the construction and materials markets caused by the COVID-19 Pandemic, the original project costs outlined in the Application, as amended, have increased over the estimated anticipated costs. In connection with the increased costs, Brookhaven Venture requested that the Agency consent to a third amendment to the Original Application (the “**Third Amendment to Application**”), to reflect current costs of the Project.

The Agency previously held a third supplemental public hearing on November 16, 2021.

Subsequent to the third supplemental public hearing, Brookhaven Venture notified the Agency that it intends to enter into a lease-leaseback transaction with the Agency with respect to the Project, and then subsequently transfer ownership of the Facility to Brookhaven Residences 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 Brookhaven Residences LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”). Subsequent to such transfer of ownership, Brookhaven Venture will assign its leasehold interest in the Facility to the Company, and the Facility will be owned, operated, and/or managed by 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 in connection with the construction and equipping of the Facility and exemption of real property taxes, all consistent with the uniform tax exemption policies (“**UTEP**”) 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. Prior to the hearing, all persons will have the opportunity to review on the Agency’s website (<https://brookhavenida.org/>), the application for financial assistance filed by the Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Due to COVID-19 protocols, all persons attending the Public Hearing will be required to wear face masks and maintain proper social distancing.

Dated: December 29, 2021

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

Exhibit B

MINUTES OF PUBLIC HEARING HELD ON
JANUARY 10, 2022 AT 10:00 A.M.

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(BROOKHAVEN VENTURE LLC 2021 FACILITY)

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

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

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:

BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, “**BRP**”), submitted its application for financial assistance (the “**Original Application**”) to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to BRP to be known as The Arboretum at Farmingville and used by BRP to

provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”).

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The Agency previously held a supplemental public hearing on March 24, 2020.

Subsequent to the supplemental public hearing, Brookhaven Venture notified the Agency that due to the dramatic changes in the construction and materials markets caused by the COVID-19 Pandemic, the original project costs outlined in the Application are out-of-date and significantly lower than the currently anticipated costs. In connection with the increased costs, Brookhaven Venture requested that the Agency consent to a second amendment to the Original Application (the “**Second Amendment to Application**”), to reflect current costs of the Project.

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Subsequent to the second supplemental public hearing, Brookhaven Venture previously notified the Agency that due to the continued dramatic changes in the construction and materials markets caused by the COVID-19 Pandemic, the original project costs outlined in the Application, as amended, have increased over the estimated anticipated costs. In connection with the increased costs, Brookhaven Venture requested that the Agency consent to a third amendment to the Original Application (the “**Third Amendment to Application**”), to reflect current costs of the Project.

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Subsequent to the third supplemental public hearing, Brookhaven Venture notified the Agency that it intends to enter into a lease-leaseback transaction with the Agency with respect to the Project, and then subsequently transfer ownership of the Facility to Brookhaven Residences 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 Brookhaven Residences LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”). Subsequent to such transfer of ownership, Brookhaven Venture will assign its leasehold interest in the Facility to the Company, and the Facility will be owned, operated, and/or managed by 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 in connection with the construction and equipping of the Facility and exemption of real property taxes, all consistent with the uniform tax exemption policies (“UTEF”) of the Agency.

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

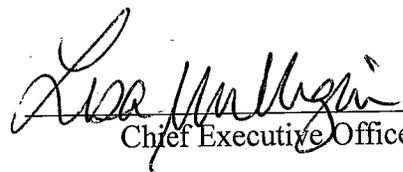
5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at 10:30 a.m.

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 foregoing copy of the minutes of a public hearing held by the Town of Brookhaven Industrial Development Agency (the "Agency") on the 16th day of January 10, 2022, at 10:00 a.m., local time, at the Town of Brookhaven, Industrial Development Agency, 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 January 10, 2022.



Chief Executive Officer

Date: November 17, 2021

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held electronically via webinar, on the 17th day of November, 2021, the following members of the Agency were:

Present: Frederick C. Braun III, Chairman
Felix J. Grucci, Jr., Vice Chair
Ann-Marie Scheidt, Secretary
Frank C. Trotta, Asst. Treasurer

Recused: Martin Callahan, Treasurer

Excused: Gary Pollakusky, Asst. Secretary
Lenore Paprocky, Member

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

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 an amendment to an authorizing resolution to a certain industrial development facility more particularly described below (Brookhaven Venture LLC 2021 Facility) and the leasing of the facility to Brookhaven Venture LLC.

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

Voting Aye

Voting Nay

Braun
Grucci
Scheidt
Trotta

THIRD AMENDED RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY AND APPROVING THE APPOINTMENT OF BROOKHAVEN VENTURE 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 BROOKHAVEN VENTURE 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 AN INDUSTRIAL DEVELOPMENT FACILITY AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS AND MAKING CERTAIN FINDINGS AND DETERMINATIONS

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 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, BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, “**BRP**”), submitted its application (the “**Application**”) to the Agency for the Agency’s assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the

acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to BRP to be known as The Arboretum at Farmingville and used by BRP to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”); and

WHEREAS, by Inducement/Authorizing Resolution, dated August 21, 2019 (the “**Authorizing Resolution**”), the Agency approved the Project; and

WHEREAS, subsequent to the Authorizing Resolution, BRP, by letter dated March 10, 2020, amended the Application and requested that the Agency consent to amend the Application (the “**First Amendment to Application**”), to reflect that Brookhaven Venture 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 Brookhaven Venture LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”) would replace BRP as the applicant for the Project; and

WHEREAS, in connection with First Amendment to Application, the Agency held a supplemental public hearing (the “**Supplemental Hearing**”) on March 24, 2020, 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, by Amended Authorizing Resolution, dated March 25, 2020 (the “**Amended Authorizing Resolution**”), the Agency consented to the First Amendment to Application and the identify the Company as the fee owner of the Project and the beneficiary of the Agency’s financial assistance contemplated by the Authorizing Resolution; and

WHEREAS, subsequent to the Amended Authorizing Resolution, the Company, by letter dated, March 25, 2021, requested the Agency consent to a second amendment to the Original Application (the “**Second Amendment to Application**”), to reflect an increase of current costs of the Project in connection with the acquisition, demolition, renovation, construction, equipping and furnishing of the Facility, due in part to the changes in construction and materials prices caused by the COVID-19 pandemic; and

WHEREAS, in connection with the Second Amendment to Application, the Company has requested the Agency consent to provide an increased financial assistance regarding the amount of mortgage exemptions from mortgage recording taxes and an increased amount of exemptions from sales and use taxes (collectively, the “**Second Increased Financial Assistance**”); and

WHEREAS, in connection with the Second Amendment to Application, the Agency held a supplemental public hearing (the “**Second Supplemental Hearing**”) on April 20, 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, by Second Amended Authorizing Resolution, dated April 21, 2021 (the “**Second Amended Authorizing Resolution**”), the Agency consented to the Second Amendment to Application and the Second Increased Financial Assistance; and

WHEREAS, subsequent to the Second Amended Authorizing Resolution, the Company, by letter dated, November 1, 2021, requested the Agency consent to a third amendment to the Original Application (the “**Third Amendment to Application**”; and, together with the Original Application, the First Amendment to Application, and the Second Amendment to Application, the “**Application**”), to reflect an increase of current costs of the Project in connection with the acquisition, demolition, renovation, construction, equipping and furnishing of the Facility, due in part to the changes in construction and materials prices caused by the COVID-19 pandemic; and

WHEREAS, in connection with the Third Amendment to Application, the Company has requested the Agency consent to provide an increased financial assistance regarding the amount of mortgage exemptions from mortgage recording taxes and an increased amount of exemptions from sales and use taxes (collectively, the “**Third Increased Financial Assistance**”); and

WHEREAS, in connection with the Third Increased Financial Assistance, a third supplemental public hearing (the “**Third Supplemental Hearing**”) was held on November 16, 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 Third Supplemental Hearing was given on November 7, 2021, and such notice (together with proof of publication), was substantially in the form annexed hereto as Exhibit A; and

WHEREAS, the report of the Third Supplemental Hearing is substantially in the form annexed hereto as Exhibit B; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of: (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$91,000,000, but not to exceed \$95,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$682,500.00 but not to exceed \$712,500.00, in connection with the financing of the acquisition, demolition, renovation, construction, equipping and furnishing of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, demolishing, renovating, constructing, equipping and furnishing the Facility, and (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$5,120,976.16, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility; and

WHEREAS, the Third Increased Financial Assistance authorized hereby shall be in lieu of, rather than in addition to, the exemptions from mortgage recording taxes and sales

tax previously authorized by the Authorizing Resolution, the Amended Authorizing Resolution and the Second Amended Authorizing Resolution; 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 Authorizing Resolution, as amended by the Amended Authorizing Resolution, as amended by the Second Amended Authorizing Resolution, as amended by this Third Amended Authorizing Resolution including the authorization of 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; and

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

Section 1. Based upon the representations of the Company, the Project and the related financial assistance is reasonable necessary to preserve the competitive position of the Company in its industry.

Section 2. The Agency hereby amends the Authorizing Resolution, as amended by the Amended Authorizing Resolution, as amended by the Second Amended Authorizing Resolution to accept the Third Amended Application and authorize the Third Increased Financial Assistance.

Section 3. Subject to the provisions of this resolution, the Agency hereby authorizes and approves the following economic benefits to be granted to the Company (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$91,000,000, but not to exceed \$95,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$682,500.00 but not to exceed \$712,500.00, in connection with the financing of the acquisition, demolition, renovation, construction, equipping and furnishing of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, demolishing, renovating, constructing, equipping and furnishing the Facility, and (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$5,120,976.16, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility; provided the Third Increased Financial Assistance authorized hereby shall be in lieu of, rather than in addition to, the mortgage recording tax exemptions and sales tax exemptions previously authorized by the Authorizing Resolution, the Amended Authorizing Resolution and the Second Amended Authorizing Resolution.

Section 4. The Agency hereby ratifies and confirms all terms contemplated by the Authorizing Resolution, as amended by the Amended Authorizing Resolution, as amended by the Second Amended Authorizing Resolution, as amended by this Third Amended Authorizing Resolution, including the Agency Documents, the Third Amended Application and the Third Increased Financial Assistance.

Section 5. 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 acquisition, demolition, renovation, construction, equipping and furnishing of the Facility.

Section 6. The provisions of this resolution shall continue to be effective for one year from the date hereof, whereupon the Agency may, at its option, terminate the effectiveness of this Resolution (except with respect to the matters contained in Section 5 hereof).

Section 7. This Third Amended Authorizing Resolution shall take effect immediately.

Exhibit A

NOTICE OF THIRD SUPPLEMENTAL 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 16th day of November, 2021, at 10:30 a.m. local time, the Agency’s offices located at the Town of Brookhaven Town Hall, 2nd Floor, One Independence Hill, Farmingville, New York 11738, in connection with the following matters:

BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, “**BRP**”), submitted its application for financial assistance (the “**Original Application**”) to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to BRP to be known as The Arboretum at Farmingville and used by BRP to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”).

The Agency previously held a public hearing on August 20, 2019.

Subsequent to the submission of the Original Application by BRP to the Agency, BRP notified the Agency of a change in ownership structure of the Facility and requested that the Agency consent to amend the Application (the “**First Amendment to Application**”), to reflect that Brookhaven Venture 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 Brookhaven Venture LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), will

be the fee owner of the Project. The Facility will be initially owned, operated and/or managed by the Company and BRP.

The Agency previously held a supplemental public hearing on March 24, 2020.

Subsequent to the supplemental public hearing, Company notified the Agency that due to the dramatic changes in the construction and materials markets caused by the COVID-19 Pandemic, the original project costs outlined in the Application are out-of-date and significantly lower than the currently anticipated costs. In connection with the increased costs, the Company requested that the Agency consent to a second amendment to the Original Application (the "**Second Amendment to Application**"), to reflect current costs of the Project.

The Agency previously held a second supplemental public hearing on April 7, 2021.

The Company has notified the Agency that due to the continued dramatic changes in the construction and materials markets caused by the COVID-19 Pandemic, the original project costs outlined in the Application, as amended, have increased over the estimated anticipated costs. In connection with the increased costs, the Company has requested that the Agency consent to a third amendment to the Original Application (the "**Third Amendment to Application**"; and, together with the Original Application and the First Amendment to Application and the Second Amendment to Application, the "**Application**"), to reflect current costs of the Project.

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 in connection with the construction and equipping of the Facility and exemption of real property taxes, all consistent with the uniform tax exemption policies ("**UTEP**") 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. Prior to the hearing, all persons will have the opportunity to review on the Agency's website (<https://brookhavenida.org/>), the application for financial assistance filed by the Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Due to COVID-19 protocols, all persons attending the Public Hearing will be required to wear face masks and maintain proper social distancing.

Dated: November 5, 2021

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

Exhibit B

MINUTES OF PUBLIC HEARING HELD ON
NOVEMBER 16, 2021 AT 10:30 A.M.

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(BROOKHAVEN VENTURE LLC 2021 FACILITY)

1. Lisa MG Mulligan, Chief Executive Officer of the Town of Brookhaven Industrial Development Agency (the “**Agency**”) called the hearing to order.
2. Lisa MG Mulligan then appointed herself the hearing officer of the Agency, to record the minutes of the hearing.
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:

BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, “**BRP**”), submitted its application for financial assistance (the “**Original Application**”) to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to BRP to be known as The Arboretum at Farmingville and used by BRP to

provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”).

The Agency previously held a public hearing on August 20, 2019.

Subsequent to the submission of the Original Application by BRP to the Agency, BRP notified the Agency of a change in ownership structure of the Facility and requested that the Agency consent to amend the Application (the “**First Amendment to Application**”), to reflect that Brookhaven Venture 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 Brookhaven Venture LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), will be the fee owner of the Project. The Facility will be initially owned, operated and/or managed by the Company and BRP.

The Agency previously held a supplemental public hearing on March 24, 2020.

Subsequent to the supplemental public hearing, Company notified the Agency that due to the dramatic changes in the construction and materials markets caused by the COVID-19 Pandemic, the original project costs outlined in the Application are out-of-date and significantly lower than the currently anticipated costs. In connection with the increased costs, the Company requested that the Agency consent to a second amendment to the Original Application (the “**Second Amendment to Application**”), to reflect current costs of the Project.

The Agency previously held a second supplemental public hearing on April 7, 2021.

The Company has notified the Agency that due to the continued dramatic changes in the construction and materials markets caused by the COVID-19 Pandemic, the original project costs outlined in the Application, as amended, have increased over the estimated anticipated costs. In connection with the increased costs, the Company has requested that the Agency consent to a third amendment to the Original Application (the “**Third Amendment to Application**”; and, together with the Original Application and the First Amendment to Application and the Second Amendment to Application, the “**Application**”), to reflect current costs of the Project.

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 in connection with the construction and equipping of the Facility and exemption of real property taxes, all consistent with the uniform tax exemption policies (“**UTEP**”) of the Agency.

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

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 Chief Executive Officer 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 the 16th day of November, 2021, at 10:30 a.m., local time, at the Town of Brookhaven, Industrial Development Agency, 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 November 16, 2021.


Chief Executive Officer

Date: April 21, 2021

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held electronically via conference call, on the 21st day of April, 2021, 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, Asst. Treasurer

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

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 an amendment to an authorizing resolution to a certain industrial development facility more particularly described below (Brookhaven Venture LLC 2020 Facility) and the leasing of the facility to Brookhaven Venture LLC.

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

Voting Aye

Voting Nay

Braun
Grucci
Callahan
Scheidt
Pollakusky
Trotta

SECOND AMENDED RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY AND APPROVING THE APPOINTMENT OF BROOKHAVEN VENTURE 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 BROOKHAVEN VENTURE 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 AN INDUSTRIAL DEVELOPMENT FACILITY AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS AND MAKING CERTAIN FINDINGS AND DETERMINATIONS

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 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, BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, “**BRP**”), submitted its application (the “**Application**”) to the Agency for the Agency’s assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the

acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to BRP to be known as The Arboretum at Farmingville and used by BRP to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”); and

WHEREAS, by Inducement/Authorizing Resolution, dated August 21, 2019 (the “**Authorizing Resolution**”), the Agency approved the Project; and

WHEREAS, subsequent to the Authorizing Resolution, BRP, by letter dated March 10, 2020, amended the Application and requested that the Agency consent to amend the Application (the “**First Amendment to Application**”), to reflect that Brookhaven Venture 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 Brookhaven Venture LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”) would replace BRP as the applicant for the Project; and

WHEREAS, in connection with First Amendment to Application, the Agency held a supplemental public hearing (the “**Supplemental Hearing**”) on March 24, 2020, 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, by Amended Authorizing Resolution, dated March 25, 2020 (the “**Amended Authorizing Resolution**”), the Agency consented to the First Amendment to Application and the identify the Company as the fee owner of the Project and the beneficiary of the Agency’s financial assistance contemplated by the Authorizing Resolution; and

WHEREAS, subsequent to the Amended Authorizing Resolution, the Company, by letter dated, March 25, 2021, requested the Agency consent to a second amendment to the Original Application (the “**Second Amendment to Application**”; and, together with the Original Application and the First Amendment to Application, the “**Application**”), to reflect an increase of current costs of the Project in connection with the acquisition, demolition, renovation, construction, equipping and furnishing of the Facility, due in part to the changes in construction and materials prices caused by the COVID-19 pandemic; and

WHEREAS, in connection with the Second Amendment to Application, the Company has requested the Agency consent to provide an increased financial assistance regarding the amount of mortgage exemptions from mortgage recording taxes and an increased amount of exemptions from sales and use taxes (collectively, the “**Increased Financial Assistance**”); and

WHEREAS, in connection with the Increased Financial Assistance, a second supplemental public hearing (the “**Second Supplemental Hearing**”) was held on April 20, 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 Second Supplemental Hearing was given on April 7, 2021, and such notice (together with proof of publication), was substantially in the form annexed hereto as Exhibit A; and

WHEREAS, the report of the Second Supplemental Hearing is substantially in the form annexed hereto as Exhibit B; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of: (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$88,266,251, but not to exceed \$90,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$661,996.88 but not to exceed \$675,000.00, in connection with the financing of the acquisition, demolition, renovation, construction, equipping and furnishing of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, demolishing, renovating, constructing, equipping and furnishing the Facility, and (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$5,018,396.63, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility; and

WHEREAS, the Increased Financial Assistance authorized hereby shall be in lieu of, rather than in addition to, the exemptions from mortgage recording taxes and sales tax previously authorized by the Authorizing Resolution and the Amended Authorizing Resolution; 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 Authorizing Resolution, as amended by the Amended Authorizing Resolution, as amended by this Second Amended Authorizing Resolution, including the authorization of 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; and

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

Section 1. Based upon the representations of the Company, the Project and the related financial assistance is reasonable necessary to preserve the competitive position of the Company in its industry.

Section 2. The Agency hereby amends the Authorizing Resolution, as amended by the Amended Authorizing Resolution to accept the Second Amended Application and authorize the Increased Financial Assistance.

Section 3. Subject to the provisions of this resolution, the Agency hereby authorizes and approves the following economic benefits to be granted to the Company in the form of exemptions from mortgage recording taxes, to the extent allowed by law, for one or more mortgages securing the principal amount presently estimated to be \$88,266,251, but not to exceed \$90,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$661,996.88 but not to exceed \$675,000.00, in connection with the financing of the acquisition, demolition, renovation, construction, equipping and furnishing of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, demolishing, renovating, constructing, equipping and furnishing the Facility, and (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$5,018,396.63, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility; provided the Increased Financial Assistance authorized hereby shall be in lieu of, rather than in addition to, the mortgage recording tax exemptions and sales tax exemptions previously authorized by the Authorizing Resolution and the Amended Authorizing Resolution.

Section 4. The Agency hereby ratifies and confirms all terms contemplated by the Authorizing Resolution, as amended by the Amended Authorizing Resolution, as amended by this Second Amended Authorizing Resolution, including the Agency Documents, the Second Amended Application and the Increased Financial Assistance.

Section 5. 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 acquisition, demolition, renovation, construction, equipping and furnishing of the Facility.

Section 6. The provisions of this resolution shall continue to be effective for one year from the date hereof, whereupon the Agency may, at its option, terminate the effectiveness of this Resolution (except with respect to the matters contained in Section 5 hereof).

Section 7. This Second Amended Authorizing Resolution shall take effect immediately.

Exhibit A

NOTICE OF SECOND SUPPLEMENTAL PUBLIC HEARING

NOTICE IS HEREBY GIVEN 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 to date, permitting local governments to hold public hearings by telephone and video conference and/or similar device, the Public Hearing scheduled for April 20, 2021, at 10:00 a.m., local time, being held by the Town of Brookhaven Industrial Development Agency (the "**Agency**"), in accordance with the provisions of Article 18-A of the New York General Municipal Law will be held electronically via conference call instead of a public hearing open for the public to attend. PLEASE NOTE THE SPECIAL PUBLIC HEARING LOGISTICS AND INSTRUCTIONS INCLUDED AT THE END OF THIS NOTICE

BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, "**BRP**"), submitted its application for financial assistance (the "**Original Application**") to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the "**Land**"), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the "**Improvements**"), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the "**Equipment**"; and, together with the Land and the Improvements, the "**Facility**"), which Facility is to be subleased by the Agency to BRP to be known as The Arboretum at Farmingville and used by BRP to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the "**Project**").

The Agency previously held a public hearing on August 20, 2019.

Subsequent to the submission of the Original Application by BRP to the Agency, BRP notified the Agency of a change in ownership structure of the Facility and requested that the Agency consent to amend the Application (the “**First Amendment to Application**”), to reflect that Brookhaven Venture 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 Brookhaven Venture LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), will be the fee owner of the Project. The Facility will be initially owned, operated and/or managed by the Company and BRP.

The Agency previously held a supplemental public hearing on March 24, 2020.

The Company has notified the Agency that due to the dramatic changes in the construction and materials markets caused by the COVID-19 Pandemic, the original project costs outlined in the Application are out-of-date and significantly lower than the currently anticipated costs. In connection with the increased costs, the Company has requested that the Agency consent to a second amendment to the Original Application (the “**Second Amendment to Application**”; and, together with the Original Application and the First Amendment to Application, the “**Application**”), to reflect current costs of the Project.

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 in connection with the construction and equipping of the Facility and exemption of real property taxes, all consistent with the uniform tax exemption policies (“**UTEP**”) 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 Application, the financial assistance to the Company or the location or nature of the Facility. Prior to the hearing, all persons will have the opportunity to review on the Agency’s website (<https://brookhavenida.org/>), the Application filed by the Company with the Agency and an amended and restated analysis of the costs and benefits of the proposed Facility.

Members of the public may listen to the Public Hearing, and comment on the Application, the Project and the amended and restated benefits to be granted by the Agency to the Company during the Public Hearing, by calling (712) 770-5505 and entering access code 884-124. Comments may also be submitted to the Issuer in writing or electronically. Minutes of the Public Hearing will be transcribed and posted on the Issuer’s website.

Dated: April 7, 2021

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

Exhibit B

MINUTES OF PUBLIC HEARING HELD ON
APRIL 20, 2021 AT 10:00 A.M.

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(BROOKHAVEN VENTURE LLC 2021 FACILITY)

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

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

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:

BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, “**BRP**”), submitted its application for financial assistance (the “**Original Application**”) to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to BRP to be known as The Arboretum at Farmingville and used by BRP to

provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”).

The Agency previously held a public hearing on August 20, 2019.

Subsequent to the submission of the Original Application by BRP to the Agency, BRP notified the Agency of a change in ownership structure of the Facility and requested that the Agency consent to amend the Application (the “**First Amendment to Application**”), to reflect that Brookhaven Venture 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 Brookhaven Venture LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), will be the fee owner of the Project. The Facility will be initially owned, operated and/or managed by the Company and BRP.

The Agency previously held a supplemental public hearing on March 24, 2020.

The Company has notified the Agency that due to the dramatic changes in the construction and materials markets caused by the COVID-19 Pandemic, the original project costs outlined in the Application are out-of-date and significantly lower than the currently anticipated costs. In connection with the increased costs, the Company has requested that the Agency consent to a second amendment to the Original Application (the “**Second Amendment to Application**”; and, together with the Original Application and the First Amendment to Application, the “**Application**”), to reflect current costs of the Project.

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 in connection with the construction and equipping of the Facility and exemption of real property taxes, all consistent with the uniform tax exemption policies (“**UTEP**”) of the Agency.

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

5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at 10:30 A.M.

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 foregoing copy of the minutes of a public hearing held by the Town of Brookhaven Industrial Development Agency (the “Agency”) on the 20th day of April, 2021, at 10:00 a.m., local time, via Zoom, 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 April 20, 2021.


Chief Executive Officer

Date: March 25, 2020

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held electronically via conference call, on the 25th day of March, 2020, the following members of the Agency were:

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

Recused:

Excused: Scott Middleton

Also Present: Lisa MG 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 an amendment to an authorizing resolution to a certain industrial development facility more particularly described below (Brookhaven Venture LLC 2020 Facility) and the leasing of the facility to Brookhaven Venture LLC.

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

Voting Aye

Voting Nay

Braun
Gucci
Callahan
Scheidt
Pollakusky
Trotta

AMENDED RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY AND APPROVING THE APPOINTMENT OF BROOKHAVEN VENTURE 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 BROOKHAVEN VENTURE 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 AN INDUSTRIAL DEVELOPMENT FACILITY AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS AND MAKING CERTAIN FINDINGS AND DETERMINATIONS

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 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, BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, “BRP”), submitted its application (the “Application”) to the Agency for the Agency’s assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “Land”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “Improvements”), and (C) the

acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”); and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to BRP to be known as The Arboretum at Farmingville and used by BRP to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”); and

WHEREAS, by Inducement/Authorizing Resolution, dated August 21, 2019 (the “**Authorizing Resolution**”), the Agency approved the Project; and

WHEREAS, subsequent to the Authorizing resolution, BRP, by letter dated March 10, 2020, notified the Agency of a change in corporate structure of BRP and requested that the Agency consent to amend the Application to reflect that Brookhaven Venture 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 Brookhaven Venture LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), will now be the fee owner of the Project and BRP will be the manager of the Project; and

WHEREAS, prior to this Amended Authorizing Resolution, a public hearing (the “**Hearing**”) was held 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 request of BRP and the Company and to representations by BRP and the Company that the proposed transfer of a leasehold interest or a fee title interest is either an inducement to the Company to expand the Facility in the Town of Brookhaven or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, the Agency ratifies and confirms all terms contemplated under the 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; and

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

Section 1. Based upon the representations of the Company, the Project and the related financial assistance is reasonable necessary to preserve the competitive position of the Company in its industry.

Section 2. The Agency hereby amends the Authorizing Resolution to amend the definition of Company therein based on the materials submitted to the Agency by counsel to the Company.

Section 3. The Agency hereby ratifies and confirms all terms contemplated by the Authorizing Resolution, as amended by this Amended Authorizing Resolution, including the Agency Documents.

Section 4. This Amended Authorizing Resolution shall take effect immediately.

EXHIBIT A

NOTICE OF SUPPLEMENTAL PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a supplemental public hearing pursuant to Title 1 of 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 24th day of March, 2020, at 10:00 a.m., local time, at Town of Brookhaven, Offices of Economic Development, One Independence Hill, 2nd Floor, Farmingville, New York 11738, in connection with the following matters:

BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, “**BRP**”), submitted its application (the “**Application**”) to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”); and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to BRP to be known as The Arboretum at Farmingville and used by BRP to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”).

The Agency previously held a public hearing on August 20, 2019.

Subsequent to the submission of the Application by BRP to the Agency, BRP notified the Agency of a change in ownership structure of the Facility and requested that the Agency consent to amend the Application to reflect that Brookhaven Venture 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 Brookhaven Venture LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), will be the fee owner of the Project. The Facility will now be initially owned, operated and/or managed by the Company and BRP.

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 in connection with the construction and equipping of the Facility and exemption 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 Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Dated: March __, 2020

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON
MARCH 24, 2020 AT 10:00 A.M.

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(BROOKHAVEN VENTURE LLC 2020 FACILITY)

1. _____, _____ of the Town of Brookhaven Industrial Development Agency (the “Agency”) called the hearing to order.

2. The _____ then appointed _____, the _____ of the Agency, the hearing officer of the Agency, to record the minutes of the hearing.

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:

BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, “BRP”), submitted its application (the “Application”) to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “Land”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “Improvements”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “Equipment”; and, together with the Land and the Improvements, the “Facility”),

which Facility is to be subleased by the Agency to BRP to be known as The Arboretum at Farmingville and used by BRP to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”).

The Agency previously held a public hearing on August 20, 2019.

Subsequent to the submission of the Application by BRP to the Agency, BRP notified the Agency of a change in ownership structure of the Facility and requested that the Agency consent to amend the Application to reflect that Brookhaven Venture 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 Brookhaven Venture LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), will be the fee owner of the Project. The Facility will now be initially owned, operated and/or managed by the Company and BRP.

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 in connection with the construction and equipping of the Facility and exemption of real property taxes consistent with the policies of the Agency.

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:

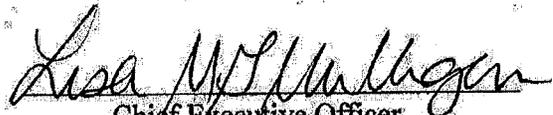
5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at _____.

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 foregoing copy of the minutes of a public hearing held by the Town of Brookhaven Industrial Development Agency (the "Agency") on the 24th day of March, 2020, at 10:00 a.m., local time, at the Town of Brookhaven, Offices 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 March 24, 2020.


Chief Executive Officer

Date: August 21, 2019

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held on the 21st day of August, 2019, at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738, the following members of the Agency were:

Present: Frederick C. Braun, III
Martin Callahan
Felix J. Grucci, Jr.
Scott Middleton
Gary Pollakusky
Ann-Marie Scheidt
Frank C. Trotta

Recused:

Excused:

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 (The Arboretum at Farmingville 2019 Facility) and the leasing of the facility to BRP Farmingville LLC.

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

Voting Aye

Voting Nay

Braun
Callahan
Grucci
Middleton
Pollakusky
Scheidt
Trotta

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE
APPOINTMENT OF BRP FARMINGVILLE LLC, A NEW
YORK LIMITED LIABILITY COMPANY, ON BEHALF OF
ITSELF AND/OR THE PRINCIPALS OF BRP FARMINGVILLE
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, BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1,200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which

Facility is to be subleased by the Agency to the Company to be known as The Arboretum at Farmingville and used by the Company to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”); and

WHEREAS, the Agency will acquire a leasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of August 1, 2019 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 sublease and lease the Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of August 1, 2019 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 mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$77,000,000 but not to exceed \$80,000,000 in connection with the financing of the acquisition, renovation and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating, redeveloping and equipping the Facility, (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$3,320,625, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof); 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 not yet 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 August 20, 2019 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 Company and to representations by 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, the Agency required the Company to provide to the Agency a feasibility report (the “**Feasibility Study**”), together with a letter from interested parties (the “**Letter of Support**”) (the Feasibility Study and the Letter of Support are collectively, the “**Requisite Materials**”) to enable the Agency 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 such Requisite Materials are listed below and attached as Exhibit E hereof:

1. Socio-Economic Impact of The Arboretum: Redevelopment of 62 acres at 510 Horseblock Road, Farmingville, New York, dated December, 2018, by The Long Island Center for Socio-Economic Policy;
2. Letter from Farmingville Residents Association, Inc., dated February 28, 2019;
3. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
4. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.; and

WHEREAS, the Agency’s Uniform Tax Exemption Policy (“**UTEP**”), which such UTEP is annexed hereto as Exhibit F, provides for the granting of financial assistance by the Agency for unusual projects pursuant to Sections 3(B), 8(A) and 8(C); 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, the Applicant and/or its predecessor in interest submitted a request for rezoning to MF Residence and J Business 2 for multi-family residential and commercial development to the Brookhaven Town Board (“**Town Board**”) for The Arboretum at Farmingville (the “**Action**”); and

WHEREAS, the Town Board coordinated review of the application with Involved Agencies under the provisions of SEQR, and determined that The Arboretum at Farmingville was a Type 1 Action; and

WHEREAS, the Town Board declared itself Lead Agency for purposes of review of the Action, and on March 26, 2015 determined that the Draft Generic Environmental Impact Statement (“**DGEIS**”) for the Action was adequate for public review; and

WHEREAS, following public comment, the Town Board accepted a Final Environmental Impact Statement (“**FEIS**”), on August 5, 2015; and

WHEREAS, the Brookhaven Town Board, as Lead Agency, adopted a Findings Statement for the Action, on October 4, 2011 and circulated the Findings Statement to the Agency; and

WHEREAS, by resolution dated September 17, 2015, the Agency concurred with the Findings Statement of the Lead Agency and adopted the Lead Agency's Findings Statement as its own Findings Statement under SEQR; 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 previously reviewed the Facility as part of The Arboretum at Farmingville. Therefore, no further SEQR review of the Facility is required.

Section 2. In connection with the acquisition, construction and equipping of the Facility the Agency hereby makes the following determinations and findings based upon the Agency's review of the information provided by the Company with respect to the Facility, including, the Company's Application, the Requisite Materials and other public information:

(a) There is a lack of affordable, safe, clean and modern housing in the Town of Brookhaven;

(b) Such lack of housing has resulted in individuals leaving the Town of Brookhaven and therefore adversely affecting employers, businesses, retailers, banks, financial institutions, insurance companies, health and legal services providers and other merchants in the Town of Brookhaven and otherwise adversely impacting the economic health and well-being of the residents of the Town of Brookhaven, employers, and the tax base of the Town of Brookhaven;

(c) The Facility, by providing such housing will enable persons to remain in the Town of Brookhaven and thereby to support the businesses, retailers, banks, and other financial institutions, insurance companies, health care and legal services providers and other merchants in the Town of Brookhaven which will increase the economic health and well-being of the residents of the Town of Brookhaven, help preserve and increase permanent private sector jobs in furtherance of the Agency's public purposes as set forth in the Act, and therefore the Agency finds and determines that the Facility is a commercial project within the meaning of Section 854(4) of the Act;

(d) The Facility will provide services, i.e., housing, which but for the Facility, would not otherwise be reasonably accessible to the residents of the Town of Brookhaven.

Section 3. 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 leases the Land and the Improvements from the Company; and

(h) The Lease Agreement will be an effective instrument whereby the Agency 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 4. 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 5. In consequence of the foregoing, the Agency hereby determines to:
(i) lease the Land and the Improvements from the Company pursuant to the Company Lease,

(ii) execute, deliver and perform the Company Lease, (iii) lease and 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 6. 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 7. 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 mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$77,000,000 but not to exceed \$80,000,000 in connection with the financing of the acquisition, renovation and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating, redeveloping and equipping the Facility, (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$3,320,625, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof.

Section 8. 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 \$3,320,625 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 9. The Company hereby agrees to comply with Section 875 of the Act. The Company further agrees that the exemption of sales and use tax provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this Authorizing Resolution is subject to termination and recapture of benefits pursuant to Section 875 of the Act and the recapture provisions of the Lease Agreement.

Section 10. 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 11.

(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 12. 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 13. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. The Company shall agree 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 14. This resolution shall take effect immediately.

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 20th day of August, 2019, at 10:30 a.m. local time, at the Town of Brookhaven, Offices of Economic Development, One Independence Hill, 2nd Floor, Farmingville, New York 11738, in connection with the following matters:

BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1,200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to the Company to be known as The Arboretum at Farmingville and used by the Company to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment 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 in connection with the construction and

equipping of the Facility and exemption 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 Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Dated: August 9, 2019

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON
AUGUST 20, 2019

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(THE ARBORETUM AT FARMINGVILLE 2019 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:

BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1,200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units,

kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to the Company to be known as The Arboretum at Farmingville and used by the Company to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment 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 in connection with the construction and equipping of the Facility and exemption 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:

Louis Fiore, Forchelli Deegan Terrana, representing BRP – no comment

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.

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 School District, Suffolk County and Appropriate Special Districts

Property Address: 510 Horseblock Road, Farmingville, New York

Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and
0200-653.00-07.00-001.000

<u>Tax Year</u>	<u>PILOT Payment Amount</u>
2020/2021	\$ 92,427
2021/2022	\$186,703
2022/2023	\$282,855
2023/2024	\$380,911
2024/2025	\$384,720
2025/2026	\$528,452
2026/2027	\$533,736
2027/2028	\$539,074
2028/2029	\$544,465
2029/2030	\$549,909
2030/2031	\$1,225,165
2031/2032	\$1,237,417
2032/2033	\$1,249,791
2033/2034	\$1,262,289
2034/2035	\$1,274,912
2035/2036 and thereafter	100% of full taxes and assessments on the Facility

EXHIBIT D

SEQR Findings Statement

EXHIBIT E

Requisite Materials

1. Socio-Economic Impact of The Arboretum: Redevelopment of 62 acres at 510 Horseblock Road, Farmingville, New York, dated December, 2018, by The Long Island Center for Socio-Economic Policy;
2. Letter from Farmingville Residents Association, Inc., dated February 28, 2019;
3. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
4. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.

EXHIBIT E-1

Socio-Economic Impact of The Arboretum: Redevelopment of 62 acres at
510 Horseblock Road, Farmingville, New York, dated December, 2018,
by The Long Island Center for Socio-Economic Policy

Letter from Farmingville Residents Association, Inc., dated February 28, 2019

New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential
Developments for IDA Benefits

Ryan et al. v. Town of Hempstead Industrial Development Agency et al.

EXHIBIT F

Town of Brookhaven Industrial Development Agency Uniform Tax Exemption Policy

Date: April 17, 2019

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held on the 17th day of April, 2019, at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738, the following members of the Agency were:

Present: Frederick C. Braun, III
Martin Callahan
Felix J. Grucci, Jr.
Gary Pollakusky
Ann-Marie Scheidt

Recused:

Excused: Scott Middleton
Frank C. Trotta

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 (The Arboretum at Farmingville 2019 Facility) and the leasing of the facility to Kelly Builders of Farmingville, LLC.

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

Voting Aye

Braun
Callahan
Grucci
Pollakusky
Scheidt

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE
APPOINTMENT OF KELLY BUILDERS OF FARMINGVILLE,
LLC, A NEW YORK LIMITED LIABILITY COMPANY, ON
BEHALF OF ITSELF AND/OR THE PRINCIPALS OF KELLY
BUILDERS OF FARMINGVILLE, 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, Kelly Builders of Farmingville, 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 Kelly Builders of Farmingville, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000) (the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon and (iii) the construction, equipping and furnishing of approximately 292 residential units (of which 10% will be set-aside as affordable units) consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements,

the “**Facility**”), which Facility is to be subleased by the Agency to the Company to be known as The Arboretum at Farmingville and used by the Company to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”); and

WHEREAS, the Agency will acquire a leasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of April 1, 2019 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 sublease and lease the Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of April 1, 2019 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 mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$77,000,000 but not to exceed \$80,000,000 in connection with the financing of the acquisition, renovation and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating, redeveloping and equipping the Facility, (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$3,320,625, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof); 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 not yet 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 April 16, 2019 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 Company and to representations by 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, the Agency required the Company to provide to the Agency a feasibility report (the “**Feasibility Study**”), together with a letter from interested parties (the “**Letter of Support**”) (the Feasibility Study and the Letter of Support are collectively, the “**Requisite Materials**”) to enable the Agency 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 such Requisite Materials are listed below and attached as Exhibit E hereof:

1. Socio-Economic Impact of The Arboretum: Redevelopment of 62 acres at 510 Horseblock Road, Farmingville, New York, dated December, 2018, by The Long Island Center for Socio-Economic Policy;
2. Letter from Farmingville Residents Association, Inc., dated February 28, 2019;
3. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
4. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.; and

WHEREAS, the Agency’s Uniform Tax Exemption Policy (“**UTEP**”), which such UTEP is annexed hereto as Exhibit F, provides for the granting of financial assistance by the Agency for unusual projects pursuant to Sections 3(B), 8(A) and 8(C); 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, the Applicant and/or its predecessor in interest submitted a request for rezoning to MF Residence and J Business 2 for multi-family residential and commercial development to the Brookhaven Town Board (“**Town Board**”) for The Arboretum at Farmingville (the “**Action**”); and

WHEREAS, the Town Board coordinated review of the application with Involved Agencies under the provisions of SEQR, and determined that The Arboretum at Farmingville was a Type 1 Action; and

WHEREAS, the Town Board declared itself Lead Agency for purposes of review of the Action, and on March 26, 2015 determined that the Draft Generic Environmental Impact Statement (“**DGEIS**”) for the Action was adequate for public review; and

WHEREAS, following public comment, the Town Board accepted a Final Environmental Impact Statement (“**FEIS**”), on August 5, 2015; and

WHEREAS, the Brookhaven Town Board, as Lead Agency, adopted a Findings Statement for the Action, on October 4, 2011 and circulated the Findings Statement to the Agency; and

WHEREAS, by resolution dated September 17, 2015, the Agency concurred with the Findings Statement of the Lead Agency and adopted the Lead Agency's Findings Statement as its own Findings Statement under SEQR; 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 previously reviewed the Facility as part of The Arboretum at Farmingville. Therefore, no further SEQR review of the Facility is required.

Section 2. In connection with the acquisition, construction and equipping of the Facility the Agency hereby makes the following determinations and findings based upon the Agency's review of the information provided by the Company with respect to the Facility, including, the Company's Application, the Requisite Materials and other public information:

(a) There is a lack of affordable, safe, clean and modern housing in the Town of Brookhaven;

(b) Such lack of housing has resulted in individuals leaving the Town of Brookhaven and therefore adversely affecting employers, businesses, retailers, banks, financial institutions, insurance companies, health and legal services providers and other merchants in the Town of Brookhaven and otherwise adversely impacting the economic health and well-being of the residents of the Town of Brookhaven, employers, and the tax base of the Town of Brookhaven;

(c) The Facility, by providing such housing will enable persons to remain in the Town of Brookhaven and thereby to support the businesses, retailers, banks, and other financial institutions, insurance companies, health care and legal services providers and other merchants in the Town of Brookhaven which will increase the economic health and well-being of the residents of the Town of Brookhaven, help preserve and increase permanent private sector jobs in furtherance of the Agency's public purposes as set forth in the Act, and therefore the Agency finds and determines that the Facility is a commercial project within the meaning of Section 854(4) of the Act;

(d) The Facility will provide services, i.e., housing, which but for the Facility, would not otherwise be reasonably accessible to the residents of the Town of Brookhaven.

Section 3. 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 leases the Land and the Improvements from the Company; and

(h) The Lease Agreement will be an effective instrument whereby the Agency 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 4. 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 5. In consequence of the foregoing, the Agency hereby determines to:
(i) lease the Land and the Improvements from the Company pursuant to the Company Lease,

(ii) execute, deliver and perform the Company Lease, (iii) lease and 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 6. 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 7. 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 mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$77,000,000 but not to exceed \$80,000,000 in connection with the financing of the acquisition, renovation and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating, redeveloping and equipping the Facility, (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$3,320,625, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof.

Section 8. 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 \$3,320,625 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 9. The Company hereby agrees to comply with Section 875 of the Act. The Company further agrees that the exemption of sales and use tax provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this Authorizing Resolution is subject to termination and recapture of benefits pursuant to Section 875 of the Act and the recapture provisions of the Lease Agreement.

Section 10. 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 11.

(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 12. 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 13. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. The Company shall agree 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 14. 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 17th day of April, 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 17th day of April, 2019.

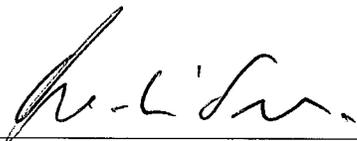
By: 
Secretary

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 16th day of April, 2019, at 10:00 a.m. local time, at the Town of Brookhaven, Offices of Economic Development, One Independence Hill, 2nd Floor, Farmingville, New York 11738, in connection with the following matters:

Kelly Builders of Farmingville, 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 Kelly Builders of Farmingville, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000) (the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon and (iii) the construction, equipping and furnishing of approximately 292 residential units (of which 10% will be set-aside as affordable units) consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to the Company to be known as The Arboretum at Farmingville and used by the Company to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment 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 in connection with the construction and equipping of the Facility and exemption 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 Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Dated: April 5, 2019

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON APRIL 16, 2019

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY (THE ARBORETUM AT FARMINGVILLE 2019 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:

Kelly Builders of Farmingville, 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 Kelly Builders of Farmingville, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000) (the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon and (iii) the construction, equipping and furnishing of approximately 292 residential units (of which 10% will be set-aside as affordable units) consisting of 164 two-bedroom units, (with 2 baths), 77 two and three- bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three-bedroom (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre public park with walking trails, and an approximately 1200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”; and, together with the Land and the

Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to the Company to be known as The Arboretum at Farmingville and used by the Company to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment 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 in connection with the construction and equipping of the Facility and exemption 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 10:30 a.m.

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 School District, Suffolk County and Appropriate Special Districts

Property Address: 510 Horseblock Road, Farmingville, New York

Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000

<u>Tax Year</u>	<u>PILOT Payment Amount</u>
2020/2021	\$ 92,427
2021/2022	\$186,703
2022/2023	\$282,855
2023/2024	\$380,911
2024/2025	\$384,720
2025/2026	\$528,452
2026/2027	\$533,736
2027/2028	\$539,074
2028/2029	\$544,465
2029/2030	\$549,909
2030/2031	\$1,225,165
2031/2032	\$1,237,417
2032/2033	\$1,249,791
2033/2034	\$1,262,289
2034/2035	\$1,274,912
2035/2036 and thereafter	100% of full taxes and assessments on the Facility

EXHIBIT D

SEQR Findings Statement

EXHIBIT E

Requisite Materials

1. Socio-Economic Impact of The Arboretum: Redevelopment of 62 acres at 510 Horseblock Road, Farmingville, New York, dated December, 2018, by The Long Island Center for Socio-Economic Policy;
2. Letter from Farmingville Residents Association, Inc., dated February 28, 2019;
3. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
4. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.

EXHIBIT E-1

Socio-Economic Impact of The Arboretum: Redevelopment of 62 acres at
510 Horseblock Road, Farmingville, New York, dated December, 2018,
by The Long Island Center for Socio-Economic Policy

EXHIBIT E-2

Letter from Farmingville Residents Association, Inc., dated February 28, 2019

New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential
Developments for IDA Benefits

Ryan et al. v. Town of Hempstead Industrial Development Agency et al.

EXHIBIT F

Town of Brookhaven Industrial Development Agency Uniform Tax Exemption Policy

Date: August 21, 2019

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held on the 21st day of August, 2019, at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738, the following members of the Agency were:

Present: Frederick C. Braun, III
Martin Callahan
Felix J. Grucci, Jr.
Scott Middleton
Gary Pollakusky
Ann-Marie Scheidt
Frank C. Trotta

Recused:

Excused:

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 (The Arboretum at Farmingville 2019 Facility) and the leasing of the facility to BRP Farmingville LLC.

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

Voting Aye

Voting Nay

Braun
Callahan
Grucci
Middleton
Pollakusky
Scheidt
Trotta

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE
APPOINTMENT OF BRP FARMINGVILLE LLC, A NEW
YORK LIMITED LIABILITY COMPANY, ON BEHALF OF
ITSELF AND/OR THE PRINCIPALS OF BRP FARMINGVILLE
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, BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1,200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which

Facility is to be subleased by the Agency to the Company to be known as The Arboretum at Farmingville and used by the Company to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”); and

WHEREAS, the Agency will acquire a leasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of August 1, 2019 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 sublease and lease the Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of August 1, 2019 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 mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$77,000,000 but not to exceed \$80,000,000 in connection with the financing of the acquisition, renovation and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating, redeveloping and equipping the Facility, (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$3,320,625, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof); 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 not yet 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 August 20, 2019 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 Company and to representations by 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, the Agency required the Company to provide to the Agency a feasibility report (the “**Feasibility Study**”), together with a letter from interested parties (the “**Letter of Support**”) (the Feasibility Study and the Letter of Support are collectively, the “**Requisite Materials**”) to enable the Agency 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 such Requisite Materials are listed below and attached as Exhibit E hereof:

1. Socio-Economic Impact of The Arboretum: Redevelopment of 62 acres at 510 Horseblock Road, Farmingville, New York, dated December, 2018, by The Long Island Center for Socio-Economic Policy;
2. Letter from Farmingville Residents Association, Inc., dated February 28, 2019;
3. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
4. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.; and

WHEREAS, the Agency’s Uniform Tax Exemption Policy (“**UTEP**”), which such UTEP is annexed hereto as Exhibit F, provides for the granting of financial assistance by the Agency for unusual projects pursuant to Sections 3(B), 8(A) and 8(C); 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, the Applicant and/or its predecessor in interest submitted a request for rezoning to MF Residence and J Business 2 for multi-family residential and commercial development to the Brookhaven Town Board (“**Town Board**”) for The Arboretum at Farmingville (the “**Action**”); and

WHEREAS, the Town Board coordinated review of the application with Involved Agencies under the provisions of SEQR, and determined that The Arboretum at Farmingville was a Type 1 Action; and

WHEREAS, the Town Board declared itself Lead Agency for purposes of review of the Action, and on March 26, 2015 determined that the Draft Generic Environmental Impact Statement (“**DGEIS**”) for the Action was adequate for public review; and

WHEREAS, following public comment, the Town Board accepted a Final Environmental Impact Statement (“**FEIS**”), on August 5, 2015; and

WHEREAS, the Brookhaven Town Board, as Lead Agency, adopted a Findings Statement for the Action, on October 4, 2011 and circulated the Findings Statement to the Agency; and

WHEREAS, by resolution dated September 17, 2015, the Agency concurred with the Findings Statement of the Lead Agency and adopted the Lead Agency's Findings Statement as its own Findings Statement under SEQR; 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 previously reviewed the Facility as part of The Arboretum at Farmingville. Therefore, no further SEQR review of the Facility is required.

Section 2. In connection with the acquisition, construction and equipping of the Facility the Agency hereby makes the following determinations and findings based upon the Agency's review of the information provided by the Company with respect to the Facility, including, the Company's Application, the Requisite Materials and other public information:

(a) There is a lack of affordable, safe, clean and modern housing in the Town of Brookhaven;

(b) Such lack of housing has resulted in individuals leaving the Town of Brookhaven and therefore adversely affecting employers, businesses, retailers, banks, financial institutions, insurance companies, health and legal services providers and other merchants in the Town of Brookhaven and otherwise adversely impacting the economic health and well-being of the residents of the Town of Brookhaven, employers, and the tax base of the Town of Brookhaven;

(c) The Facility, by providing such housing will enable persons to remain in the Town of Brookhaven and thereby to support the businesses, retailers, banks, and other financial institutions, insurance companies, health care and legal services providers and other merchants in the Town of Brookhaven which will increase the economic health and well-being of the residents of the Town of Brookhaven, help preserve and increase permanent private sector jobs in furtherance of the Agency's public purposes as set forth in the Act, and therefore the Agency finds and determines that the Facility is a commercial project within the meaning of Section 854(4) of the Act;

(d) The Facility will provide services, i.e., housing, which but for the Facility, would not otherwise be reasonably accessible to the residents of the Town of Brookhaven.

Section 3. 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 leases the Land and the Improvements from the Company; and

(h) The Lease Agreement will be an effective instrument whereby the Agency 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 4. 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 5. In consequence of the foregoing, the Agency hereby determines to:
(i) lease the Land and the Improvements from the Company pursuant to the Company Lease,

(ii) execute, deliver and perform the Company Lease, (iii) lease and 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 6. 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 7. 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 mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$77,000,000 but not to exceed \$80,000,000 in connection with the financing of the acquisition, renovation and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating, redeveloping and equipping the Facility, (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$3,320,625, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof.

Section 8. 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 \$3,320,625 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 9. The Company hereby agrees to comply with Section 875 of the Act. The Company further agrees that the exemption of sales and use tax provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this Authorizing Resolution is subject to termination and recapture of benefits pursuant to Section 875 of the Act and the recapture provisions of the Lease Agreement.

Section 10. 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 11.

(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 12. 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 13. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. The Company shall agree 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 14. This resolution shall take effect immediately.

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 20th day of August, 2019, at 10:30 a.m. local time, at the Town of Brookhaven, Offices of Economic Development, One Independence Hill, 2nd Floor, Farmingville, New York 11738, in connection with the following matters:

BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1,200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units, kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to the Company to be known as The Arboretum at Farmingville and used by the Company to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment 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 in connection with the construction and

equipping of the Facility and exemption 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 Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Dated: August 9, 2019

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON AUGUST 20, 2019

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY (THE ARBORETUM AT FARMINGVILLE 2019 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:

BRP Farmingville 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 BRP Farmingville LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with (A) the acquisition of an approximately 62.0 acre parcel of land located at 510 Horseblock Road, Farmingville, New York (also known as 3 Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and 0200-653.00-07.00-001.000) (collectively, the “**Land**”), (B) (i) the demolition of an approximately 5,000 square foot building located thereon, (ii) the renovation and equipping of an approximately 3,000 square foot building located thereon, and (iii) the construction, equipping and furnishing of multiple buildings to include 292 residential units (of which 10% will be set-aside as affordable units) and consisting of 164 two-bedroom units, (with 2 baths), 77 two and three bedroom townhome style units (with 2 and 2.5 baths) and 51 single-family detached style cottages which will be three and/or four bedroom homes (with 2 and 2.5 bath), including an approximately 7,500 square foot clubhouse, with pools and outdoor activities, a state of the art 150,000 gallons-per-day on-site waste water treatment plant, a 7-acre park with walking trails for use by all residents of Farmingville, and an approximately 1,200 square foot building to be constructed and donated for use by the Farmingville Chamber of Commerce as an office, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including common areas consisting of recreational areas and other amenities and the furnishing thereof including, but not limited to furniture, appliances in the units,

kitchen equipment (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to the Company to be known as The Arboretum at Farmingville and used by the Company to provide multi-family housing and outdoor recreational green space areas for the residents of Farmingville (the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment 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 in connection with the construction and equipping of the Facility and exemption 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:

Louis Fiore, Forchelli Deegan Terrana, representing BRP – no comment

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.

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 School District, Suffolk County and Appropriate Special Districts

Property Address: 510 Horseblock Road, Farmingville, New York

Tax Map Nos. 0200-626.00-03.00-039.500 and 040.000 and
0200-653.00-07.00-001.000

<u>Tax Year</u>	<u>PILOT Payment Amount</u>
2020/2021	\$ 92,427
2021/2022	\$186,703
2022/2023	\$282,855
2023/2024	\$380,911
2024/2025	\$384,720
2025/2026	\$528,452
2026/2027	\$533,736
2027/2028	\$539,074
2028/2029	\$544,465
2029/2030	\$549,909
2030/2031	\$1,225,165
2031/2032	\$1,237,417
2032/2033	\$1,249,791
2033/2034	\$1,262,289
2034/2035	\$1,274,912
2035/2036 and thereafter	100% of full taxes and assessments on the Facility

EXHIBIT D

SEQR Findings Statement

EXHIBIT E

Requisite Materials

1. Socio-Economic Impact of The Arboretum: Redevelopment of 62 acres at 510 Horseblock Road, Farmingville, New York, dated December, 2018, by The Long Island Center for Socio-Economic Policy;
2. Letter from Farmingville Residents Association, Inc., dated February 28, 2019;
3. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
4. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.

EXHIBIT E-1

Socio-Economic Impact of The Arboretum: Redevelopment of 62 acres at
510 Horseblock Road, Farmingville, New York, dated December, 2018,
by The Long Island Center for Socio-Economic Policy

EXHIBIT E-2

Letter from Farmingville Residents Association, Inc., dated February 28, 2019

Farmingville Residents Association, Inc.

February 28, 2019

Councilman Kevin LaValle
One Independence Hill
Farmingville, New York 11738

RE: Arboretum Project /Developer Mike Kelly
Horseblock Road, Farmingville

Dear Councilman LaValle:

The revised plan for the above project was presented to the FRA Board and membership at our regular meeting on February 19, 2019. All are in agreement with the amendment of the restrictive covenant for the development of this property.

If you need any additional information, please do not hesitate to contact us.

Thank you.

Sincerely,
Marisa Pizza

Marisa Pizza
Director

cc: Mr. Thomas Chawner, AICP, Town of Brookhaven
Mr. Michael Kelly, Kelly Development Group

sjbs

DIRECTORS

AnnMarie Horn Marisa Pizza James Stratford Jaime Aqueron Michael Underhill Kenneth Maher

P.O. Box 302, Farmingville, NY 11738
Phone: 631-260-7411 E-Mail: fra23@optonline.net
www.farmingvilleresidents.org

New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential
Developments for IDA Benefits

New York Law Journal

Real Estate Trends

WWW.NYLJ.COM

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WEDNESDAY, MARCH 22, 2017

ZONING AND LAND USE PLANNING

Eligibility of Residential Developments for IDA Benefits

By
Anthony S.
Guardino



It has been nearly 50 years since the New York State Legislature enacted legislation authorizing industrial development agencies (IDAs) for the purpose of promoting economic development. Now, towns, cities, and counties throughout the state have created their own IDAs under General Municipal Law (GML) Article 18-A (the IDA Act) and use them to encourage—and to financially assist—a wide variety of real estate developments, often to great success.

In many instances, however, an IDA's efforts are met with objections, both in and out of court. Recently, for example, tax benefits afforded by a town's IDA to the Green Acres Mall on Long Island aroused community criticism, and led New York State Comptroller Thomas DiNapoli to announce that he would audit the IDA to determine its compliance with policies and procedures related to its approval of the project.

There also continues to be disputes over the scope of projects that may receive IDA benefits. Last August, the Supreme Court, Seneca County, rejected a challenge to a decision by the Seneca County IDA to provide tax benefits for a casino being built in the county. *Nearpass v. Seneca County Industrial Development Agency*, 53 Misc. 3d 737 (Sup.Ct. Seneca Co. 2016). The petitioners argued that the casino was not a project defined in the IDA Act and, therefore, that it was ineligible for IDA benefits. They pointed out, among other things, that when the IDA Act first was enacted, casinos were prohibited in New York, and after casinos were allowed by amendment to the New York Constitution, the IDA Act was not amended to include casinos as a project entitled to IDA benefits.

The court was not persuaded and decided, instead, that the casino facility was a commercial project under the IDA Act and, in particular, that it also was a recreation facility within the purview of GML Section 854(9).

Perhaps more surprising than a dispute over the eligibility of a casino to receive IDA benefits was a recent court case that asked whether a residential development could qualify for IDA benefits—an issue of statewide significance. In *Matter of Ryan v. Town of Hempstead Industrial Development Agency*, Index No. 5324/16 (Sup.Ct. Nassau Co. Jan. 27, 2017), the Supreme Court, Nassau County, held that a residential apartment building project fell within the definition of a project for which IDA benefits may be granted.

After first providing background on the IDA Act, this column will discuss the court's decision in *Matter of Ryan* and its implications.

The IDA Act

When the legislation governing the creation, organization, and powers of IDAs in New York State was enacted in 1969, it provided that its general purpose was "to promote the economic welfare of [the state's] inhabitants and to actively promote, attract,

ANTHONY S. GUARDINO is a partner with Farrell Fritz in the firm's Hauppauge office.

encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration." This intent was further evidenced by the original provision of GML Section 858, which provided that:

The purposes of the agency shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the state of New York and to improve their standard of living.

The decision by the Nassau County Supreme Court in *Matter of Ryan* provides confirmation that residential developments are eligible to receive industrial development agency benefits.

In approving the bill, then-Governor Nelson Rockefeller noted that "industrial development agencies provide one means for communities to attract new industry, encourage plant modernization and create new job opportunities." McKinney's 1969 Session Laws, Vol. 2, p. 2572.

The original legislation has been amended a number of times since 1969 to broaden the scope of permissible IDA activities. For example, the definition of project was expanded to specifically include construction of industrial pollution control facilities (L 1971, ch 978), winter recreation facilities and then recreation facilities generally (L 1974, ch 954; L 1977, ch 630), horse racing facilities (L 1977, ch 267), railroad facilities (L 1980, ch 803) and educational or cultural facilities (L 1982, ch 541).

As noted above, however, it has not been amended to specifically include casinos. And it also does not specifically include residential developments.

In 1985, however, the New York state comptroller's office was asked by the village attorney for the village of Port Chester whether construction of an apartment complex was a commercial purpose within the meaning of GML Section 854(4) and, thereby, whether it was a proper project for industrial development bond financing. In response, the Comptroller issued Opinion No. 85-51, 1985 N.Y. St. Comp. 70 (Aug. 16, 1985) (the "comptroller's opinion").

In the comptroller's opinion, the comptroller's office explained that, at its inception, the IDA Act's primary thrust was to promote the development of commerce and industry as a means of increasing employment opportunities.

The comptroller's opinion then reasoned that for an apartment complex to qualify as an eligible project under Article 18-A, it had to promote employment opportunities and prevent economic deterioration in the area served by the IDA.

The comptroller's opinion added that the comptroller's office was "not in a position to render an opinion" as to whether a project that consisted of the construction of an apartment complex was a commercial activity within the meaning of Article 18-A. Rather, it continued, such a determination "must be made by local officials based upon all the facts relevant to the proposed project."

Any such determination, the comptroller's opinion concluded, had to take into account the stated purposes of the IDA Act: "the promotion of employment opportunities and the prevention of economic deterioration."

When this issue reached the court in *Triple S. Realty v. Village of Port Chester*, Index No. 22355/86 (Sup. Ct. Westchester Co. Aug. 19, 1987), the Westchester County Supreme Court held that residential construction may be eligible for industrial development agency benefits if such construction "would increase employment opportunities and prevent economic determination in the area served by the IDA."

The decision by the Nassau County Supreme Court in *Matter of Ryan* provides further confirmation that

residential developments certainly are eligible to receive IDA benefits.

'Matter of Ryan'

The case arose after the Town of Hempstead Industrial Development Agency (TOHIDA) granted financial and tax benefits and assistance to Renaissance Downtowns UrbanAmerica, with respect to the construction of a new 336-unit residential apartment complex in the village of Hempstead on Long Island. That was Phase 1 of a multi-phase revitalization project that was planned to include additional mixed-use buildings and parking facilities.

The financial benefits and assistance granted by the TOHIDA included:

- exemptions from mortgage recording taxes for one or more mortgages;
- securing the principal amount not to exceed \$70 million;
- a sales and use tax exemption up to \$3.45 million in connection with the purchase/lease of building materials, services, or other personal property for the project; and
- abatement of real property taxes for an initial term of 10 years pursuant to a payment in lieu of taxes (PILOT) agreement.

Six petitioners, including a trustee for the village of Hempstead, challenged the TOHIDA's resolution in an Article 78 proceeding, arguing that an IDA could not grant benefits

for a project that was residential, either in whole or in part, in nature.

For their part, the respondents contended that the development of a residential rental building fell within the ambit of the statutory definition of a project entitled to receive an IDA's financial assistance and benefits in that it promoted "employment opportunities" and prevented "economic deterioration" in the area served by the IDA.

The court agreed with the respondents and dismissed the petition.

In its decision, the court noted that the comptroller's opinion had observed that the determination of whether construction of an apartment complex was a commercial activity within the meaning of the IDA Act had to be made by local officials based on facts relevant to the proposed project.

The court then pointed out that the TOHIDA had approved Renaissance's application for assistance with respect to the first phase of the revitalization project based on the TOHIDA's findings, that, among other things:

- the town of Hempstead was in need of attractive multi-family housing to retain workers in the town and attract new business;
- a healthy residential environment located in the town was needed to further economic growth;
- there was a lack of affordable, safe, clean multi-family housing within the town; and

- the facility would provide the nucleus of a healthy residential environment, and would be instrumental and vital in the further growth of the town.

Moreover, the court continued, the TOHIDA also found that the development of the first phase of the facility would "promote and maintain the job opportunities, health, general prosperity and economic welfare" of the town's citizens and "improve their standard of living."

Given that the project promoted employment opportunities and served to combat economic deterioration in the area served by the TOHIDA, the court upheld the TOHIDA's decision as rationally based and not arbitrary or capricious, an abuse of discretion, or an error of law.

Conclusion

IDA benefits can play an important role in real estate development. For nearly five decades, they have benefited New Yorkers in numerous situations. As the comptroller's office and the courts have recognized, a project—including a residential project—that demonstrates that it promotes employment opportunities and prevents economic deterioration is eligible to receive IDA benefits.

EXHIBIT E-4

Ryan et al. v. Town of Hempstead Industrial Development Agency et al.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE

-----X TRIAL/IAS PART 13
In the Matter of DONALD L. RYAN, FLAVIA
IANNACONE, JAMES DENON, JOHN M. WILLAMS, INDEX # 5324/16
REGINAL LUCAS and ROBERT DeBREW, JR.,

Petitioners,

Mot. Seq. 1
Mot. Date 9.13.16
Submit Date 11.17.16

For A Judgment Pursuant to Article 78 of the New York
Civil Practice and Rules,

XXX

-against-

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT
AGENCY, RENAISSANCE DOWNTOWNS
URBANAMERICA, LLC, and RDU A PARCEL 1 LLC,

Respondents.
-----X

The following papers were read on this motion:	Papers Numbered
Notice of Petition, Affidavits, Exhibits, Memorandum Annexed.....	1,2
Verified Answers.....	3,4,5
Opposing Affidavits.....	6,7,8,9,10,11,12
Reply Affidavits.....	13, 14
Sur-Reply Affidavit.....	15
Hearing Record (3 Vols.).....	16

Application by petitioners pursuant to Article 78 to invalidate as *ultra vires* and to void the May 18, 2016 resolution passed by the Town of Hempstead Industrial Development Agency (TOHIDA) is decided as hereinafter provided.

In this Article 78 proceeding, petitioners seek to invalidate the resolution passed by respondent TOHIDA on May 18, 2016, which granted financial and tax benefits and assistance to respondent Renaissance Downtowns UrbanAmerica, LLC (Renaissance) *vis-a-vis* construction of a new 336 unit residential apartment complex on the northwest corner of the intersection of Washington and Front Streets (Phase I of the multi-phase Village of Hempstead downtown revitalization project¹ which was planned to include additional mixed use buildings/parking facilities). The Phase I property was a tax exempt Village property for at least 50 years until December 15, 2015 when it was acquired by respondent Renaissance.

The financial benefits and assistance granted include:

exemptions from mortgage recording taxes for one or more mortgages securing the principal amount not to exceed \$70,000,000;

sales and use tax exemption up to \$3,450,000 in connection with the purchase/lease of building materials, services or other personal property for the project;

abatement of real property taxes for an initial term of ten years pursuant to Payment in Lieu of Taxes Agreement (PILOT).

Based on the theory that the resolution was affected by an error of law, i.e., that residential apartment buildings are not included in the type of project or facility that is eligible for financial assistance under the General Municipal Law Article 18-A (Industrial Development Act [the IDA or the Act]), petitioners seek to invalidate the subject resolution as *ultra vires*/void.

In opposition, respondents first seek dismissal of the petition based on its alleged multiple fatal flaws including petitioners' lack of standing; failure to raise the *ultra vires* issue in the administrative proceeding before respondent TOHIDA; and failure to serve the attorney general in accordance with CPLR 7804(e).

The alleged flaws are not fatal and do not provide a basis for dismissal. Petitioners have standing to maintain an action for equitable or declaratory relief under State Finance Law § 123-b *vis-a-vis* the issue of whether the project herein falls within the definition of a "project" for which IDA benefits may be granted (*see Nearpass v Seneca County Indus. Dev. Agency*, 52 Misc 3d 533 [Sup Ct, Seneca County 2016 Falvey, J.]; *Dudley v. Kerwick*, 52 NY2d 542 [1981]; *cf.*

¹The development as outlined in the Appraisal Report (Exhibit "2" to the Petition) was approved in a unanimous 5-0, bi-partisan vote by the Village of Hempstead Board. It includes the construction of, among other things: residential units, structured parking, retail space, medical office building, mixed used artist loft with grade and basement level supermarket, surface parking office space, senior independent living apartment building, hotel and restaurant space.

Kadish v. Roosevelt Raceway Assoc., 183 AD2d 874, 875 [2d Dept 1992] [no standing under State Finance Law § 123-b (1) to challenge financing and acquisition of property by TOHIDA through bond issuance because statute specifically excludes bond issuance by a public benefit corporation). Further, the *ultra vires* issue was, in fact, raised in the administrative proceeding before respondent TOHIDA (Record: Vol, 3 Tab 25, pp 113-114), and the Nassau County Regional Office of the New York State Attorney General rejected service of the petition on the ground that the office did not represent respondent TOHIDA.

In further support of its dismissal, movants argue that the petition fails to state a viable cause of action as it is based on the false premise that an Industrial Development Agency may not grant benefits for a commercial project that is residential, either in whole or in part, in nature.

For the reasons which follow, the petition must be dismissed.

Pursuant to General Municipal Law § 858, an Industrial Development Agency

"shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities . . . and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living."

An Industrial Development Agency is thus a "governmental agenc[y] or instrumentalit[y] created for the purpose of preventing unemployment and economic deterioration (General Municipal Law § 852) and to "provide one means for communities to attract new industry, encourage plant modernization and create new job opportunities" (Governor's Mem., 1969 McKinney's Session Laws of N. Y. at 2572).

According to respondents, the development of a residential rental building falls within the ambit of the statutory definition of a project,² entitled to financial assistance and benefits, as set forth in § 854(4) of the General Municipal Law in that it "promotes employment opportunities and prevents economic deterioration in the area served by the industrial development agency" (Opns. St. Comp. No. 85-51 [N.Y.S. Cptr., 1985 WL 25843]).

In the opinion of the State Comptroller, the determination of whether construction of an apartment complex is a commercial activity within the meaning of the statute must be made by

²As set forth in § 854(4) the term "project" is broadly defined to include, in relevant part, "any land, any building or other improvement, and all real and personal properties located within the state of New York and within or outside or partially within and partially outside the municipality for whose benefit the agency was created. . . ."

local officials based upon facts relevant to the proposed project (*Id.* ["Local officials must determine, based upon all the relevant facts, whether construction of an apartment complex will promote employment opportunities and prevent economic deterioration. . . ."]). Respondents argue that TOHIDA acted within the scope of its authority in resolving to provide IDA assistance to the project since it would promote job creation and growth in a distressed area of the Village of Hempstead and serve as the first physical manifestation of the Village's Downtown Revitalization plan and a catalyst for future phases.

Here, the record establishes that a duly noticed public hearing was held regarding respondent Renaissance's application for TOHIDA assistance with respect to the first phase of the \$2.5 billion Hempstead Revitalization project for which site plan approval was already in place and a building permit issued. The resolution was granted based on respondent TOHIDA's findings, that, among other things:

(a) The Town of Hempstead is in need of attractive multi-family housing to retain workers in the Town and attract new business;

(b) a healthy residential environment located in the Town of Hempstead is needed in order to further economic growth;

(c) there is a lack of affordable, safe, clean multi-family housing within the Town of Hempstead;

(d) the facility will provide the nucleus of a healthy residential environment, and will be instrumental and vital in the further growth of the Town of Hempstead.

Respondent TOHIDA also found that:

the acquisition, construction and equipping of the Phase I Facility will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Hempstead and the State of New York and improve their standard of living and thereby serve the public purposes of the Act;

the project conformed with local zoning laws and planning regulations of the Town of Hempstead; and

the project will not have a significant effect on the environment as determined in accordance with Article 8 of the Environmental Conservation Law and regulations promulgated thereunder.

The allegations proffered in opposition to the resolution, regarding traffic congestion; additional garbage/sewage; additional burden of increased student population in an already overcrowded/underfunded school district; burden of increased financial costs of municipal services to support increased population, are speculative and lack merit in the face of reasoned evaluation of the project by respondent TOHIDA as set forth in the record. As stated in the affidavit of Wayne J. Hall, Sr., Mayor of the Incorporated Village of Hempstead and Chairman of the Village Community Development Agency:

“the IDA benefits awarded to Renaissance for this particular Phase I of the development are critically important to the revitalization of the Village of Hempstead's downtown area, and are essential to the twin goals of preventing any further physical and economic deterioration of the area, as well as promoting employment opportunities to the Village.”

As stated in the Socio-Economic Impact of the Village of Hempstead's Revitalization Plan report, dated March 31, 2016, (Exhibit “A” to the Affidavit of Donald Monti in Opposition to Petition):

“Upon completion, the overall revitalization of the Village of Hempstead will have generated an estimated \$4 billion in economic activity, comprised of economic activity during and after the construction period.

Nearly \$3 billion of primary and secondary economic activity will be generated from construction of the development encompassing 5 million square feet, comprising 2.8 million square feet of 3,500 residential units and 2.2 million square feet of mixed use, retail, hospitality, office and other commercial uses.

This will result in new socio-economic improvements to the Village of Hempstead that will provide much needed housing for Long Island's young professionals and active adults, and create during the construction period as many as 22,000 temporary construction and secondary jobs generating nearly \$1.4 billion in wages.

When completed, the revitalization will create approximately 6,000 permanent and 4,500 secondary jobs generating \$498 million in wages of which 1,500 of the permanent jobs generating \$125 million in wages projected to be held by Village of Hempstead residents. Thus, in total, the construction activity and resulting permanent jobs and their related secondary economic impacts are expected to generate nearly \$4 billion in primary and secondary economic impact, and over the 20 year PILOT period \$142 million in new county, town, school and village property taxes, and \$43.5 million in new county sales taxes.”

In reviewing the actions of an administrative agency, courts must assess whether the determination was the result of an error of law or was arbitrary, capricious, or an abuse of discretion such that the actions at issue were taken without sound basis in reason and without regard to the facts (*Matter of County of Monroe v Kaladjian*, 83 NY2d 185, 189 [1994], citing *Matter of Pell v Bd. of Educ.*, 34 NY2d 222, 231 [1974]; *Akpan v Koch*, 75 NY2d 561, 570-71 [1990]; *Matter of Calvi v Zoning Bd. of Appeals of the City of Yonkers*, 238 AD2d 417, 418 [2d Dept 1997]). The agency's determination need only be supported by a rational basis (*Matter of County of Monroe v Kaladjian, supra*; *Matter of Jennings v Comm. N.Y. Dept. of Social Svcs.*, 71 AD3d 98, 108 [2d Dept 2010]). If the determination is rationally based, a reviewing court may not substitute its judgment for that of the agency even if the court might have decided the matter differently (*Matter of Savetsky v Zoning Bd. of Appeals of Southampton*, 5 AD3d 779, 780 [2d Dept 2004]; *Matter of Calvi v Zoning Bd. of Appeals of the City of Yonkers, supra*). It is not for the reviewing court to weigh the evidence or reject the choice made by the agency where the evidence conflicts and room for choice exists (*Matter of Calvi v Zoning Bd. of Appeals of the City of Yonkers, supra*, citing *Toys "R" Us v Silva*, 89 NY2d 411, 424 [1996]; *Akpan v Koch, supra*).

The record at bar establishes that in adopting the challenged resolution following a public hearing, review of Renaissance's application, and the environmental effects, respondent TOHIDA did not act in excess of its jurisdiction or beyond the scope of its authority; i.e., *ultra vires*. Nor was TOHIDA's decision after review of all of the circumstances to adopt the resolution finding that the Phase I facility constituted a "project" under the IDA affected by an error of law as would warrant relief under Article 78.

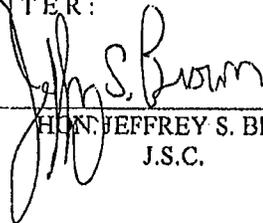
Where, as here, the project at issue promotes employment opportunities and serves to combat economic deterioration in an area served by an industrial development agency, a finding that the project falls within the ambit of the IDA is rationally based; neither arbitrary or capricious or an abuse of discretion, nor an error of law.

Accordingly, the petition is denied and the proceeding is hereby dismissed.

This constitutes the decision and order of this court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
January 25, 2017

ENTER:



HON. JEFFREY S. BROWN
J.S.C.

Attorney for Petitioner
LaReddola Lester & Assocs., LLP
600 Old Country Road, Ste. 224
Garden City, NY 11530
516-357-0056
5163570069@fax.nycourts.gov

Attorney for Respondent Renaissance Downtowns
Forchelli Curto Deegan Schwartz
Mineo & Terrana, LLP
333 Earle Ovington Blvd., Ste. 1010
Uniondale, NY 11553
516-248-1700
5162481729@fax.nycourts.gov

Attorneys for Respondent Hempstead Industrial
Lisa Bloom, Esq.
William F. Weir, Esq.
Nixon Peabody, LLP
50 Jericho Quadrangle, Ste. 300
Jericho, NY 11753
516-832-7500
lbloom@nixonpeabody.com

and

Ryan Brennan & Donnelly, LLP
John E. Ryan, Esq.
131 Tulip Avenue
Floral Park, NY 11001
516-328-1100
jryan@rbdllp.net

EXHIBIT F

Town of Brookhaven Industrial Development Agency Uniform Tax Exemption Policy

EXHIBIT D

SEQR Findings Statement