Date: February 26, 2020

At a meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), held on the 26th day of February, 2020, at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738, the following members of the Agency were:

Present:

Frederick C. Braun, III

Martin Callahan Scott Middleton Gary Pollakusky Frank C. Trotta

Recused:

Excused:

Felix J. Grucci, Jr.

Ann-Marie Scheidt

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 (On The Common at Rocky Point 2020 Facility) and the leasing of the facility to On The Common at Rocky Point, LLC.

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

Voting Aye

Voting Nay

Braun

Callahan

Middleton

Pollakusky

Trotta

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 ON THE COMMON AT ROCKY POINT, 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 ON THE COMMON AT ROCKY POINT, 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, AND MAKING CERTAIN FINDINGS AND DETERMINATIONS 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, On The Common at Rocky Point, 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 On The Common at Rocky Point, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the "Company"), has applied to the Agency to enter into a transaction in which the Agency will assist in (A) the acquisition of three (3) parcels of land totaling approximately 1.64 acres (of which, an approximately .65 acre parcel and an approximately .19 acre parcel are located on the south side of Prince Road, west of Tyler Street and east of Broadway, and an approximately .79 acre parcel is located on the south side of King Road beginning approximately 232 feet east of Broadway) (collectively, the "Land"), (B) (i) the demolition of an approximately 19,300 square foot building located thereon, (ii) the construction, equipping and furnishing of approximately ten (10) buildings which will provide for thirty-eight (38) one bedroom, one bath, approximately 600 square foot senior apartments (age 55 plus) with a maximum occupancy of two (2) seniors per apartment. The building located on the Southwest corner of Prince Road and Polk Street will include 1,200 square feet of office space, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the "Improvements"), (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including shared common recreation areas and other amenities and the furnishing thereof including, but not limited to, furniture, appliances, structures, equipment and personal property in the units (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 On The Common at Rocky Point and used by the Company to provide affordable senior housing for the residents of Rocky Point (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 March 1, 2020, 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 March 1, 2020, or such other date as the Chairman, the Chief Executive Officer of the Agency and counsel 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 \$5,000,000 but not to exceed \$7,000,000 in connection with the financing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing and equipping the Facility, (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$215,625, 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 January 27, 2020 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  $\underline{\text{Exhibits A}}$  and  $\underline{\text{B}}$  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 D 1-4 hereof:

- 1. Socio-Economic Impact of On The Common at Rocky Point, Rocky Point, New York, dated September 30, 2019 by The Long Island Center for Socio-Economic Policy;
- 2. A. Letter from Rocky Point Lions Club, dated October 23, 2019;
  - B. Letter from Rocky Point Civic Association, dated October 23, 2019;
  - C. Letter from RPSB Chamber of Commerce, undated;
  - D. Letter from Rocky Point Historical Society, dated October 23, 2019;
  - E. Letter from Rocky Point Veterans of Foreign Wars of the United States, dated October 23, 2019;
  - F. Letter from Helen Piacenti, dated August 31, 2017;
  - G. Letter from JoAnn Alfaro, dated August 31, 2017;
  - H. Letter from Herbert and Colleen Hain, dated August 28, 2017;
  - I. Letter from Rocky Point Historical Society, dated August 28, 2017;
  - J. Letter from Kevin T. McCarrick, dated August 25, 2017;
  - K. Letter from Albo Agency, dated August 25, 2017;
  - L. Letter from Rocky Point Lions Club, dated August 24, 2017;
  - M. Letter from Rocky Point Rotary Club, dated August 24, 2017;
  - N. Letter from Janet Jeelosi, dated August 18, 2017;
  - O. Letter from Elaine P. Cappitella, dated August 18, 2017;
  - P. Letter from J. Biehe, dated August 16, 2017;
  - Q. Letter from Catherine Mager, undated;
  - R. Letter from Joan Collier, dated August 18, 2017;
  - S. Letter from Loni Gook, dated August 24, 2017;
  - T. Letter from Madeline Giannuno, dated August 23, 2017;
  - U. Letter from Susan Kiefer, dated August 23, 2017;
  - V. Letter from Terry Windus, dated August 23, 2017;
  - W. Letter from Marie-Elana and Tim Wong;

- X. Letter from Elizabeth Hoffmann, dated August 22, 2017;
- Y. Letter from Ingrid Vessie, dated August 21, 2017;
- Z. Letter from Mrs. Francis Mongioni, dated August 18, 2017;
- aa. Letter from Joan Collier, dated August 18, 2017;
- bb. Letter from Irene Dixon, dated August 27, 2017; and
- 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, 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, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form and related documents (the "Questionnaire") with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, the Questionnaire has been reviewed by the Agency; 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. Based upon the Environmental Assessment Form completed by the Company and reviewed by the Agency and other representations and information furnished by the Company regarding the Facility, the Agency determines that the action relating to the acquisition, construction, equipping, and operation of the Facility is an "unlisted" action, as that term is defined in the SEQR Act. The Agency also determines that the action will not have a "significant effect" on the environment, and, therefore, an environmental impact statement will not be prepared. This determination constitutes a negative declaration for purposes of SEQR. Notice of this determination shall be filed to the extent required by the applicable regulations under SEQR or as may be deemed advisable by the Chairman or Chief Executive Officer of the Agency or counsel to the Agency.

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 senior housing in the Town of Brookhaven;
- (b) Such lack of senior 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 senior 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 wellbeing 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., senior housing, which but for the Facility, would not otherwise be reasonably accessible to the residents of the Town of Brookhaven.

## <u>Section 3.</u> 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 by the Agency, the subleasing and leasing of the Facility to the Company and the provision of financial assistance pursuant to the Act will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Town of Brookhaven and the people of the State of New York and improve their standard of living, and thereby serve the public purposes of the Act, and the same is, therefore, approved; 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 and subleases 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) sublease and lease 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 interests in and to the Facility pursuant to the Loan Documents, and (vi) execute and deliver 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 \$5,000,000 but not to exceed \$7,000,000 in connection with the financing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing and equipping the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$215,625, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the

Facility, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof), all consistent with the policies of the Agency.

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 agent 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. 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 \$215,625 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 execution of the documents contemplated by this resolution.

Section 9. 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 and the appointment of the Company, as agent of the Agency pursuant to this Authorizing Resolution 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 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 Assistant 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 26th day of February, 2020, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that 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 26th day of February, 2020.

Assistant 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 27th day of January, 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, in connection with the following matters:

On The Common at Rocky Point, 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 On The Common at Rocky Point, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the "Company"), has applied to the Agency to enter into a transaction in which the Agency will assist in (A) the acquisition of two (2) parcels of land totaling approximately 1.64 acres (of which, an approximately .85 acre parcel is located on the south side of Prince Road, west of Tyler Street and east of Broadway, and an approximately .79 acre parcel is located on the south side of King Road beginning approximately 232 feet east of Broadway) (collectively, the "Land"), (B) (i) the demolition of an approximately 19,300 square foot building located thereon, (ii) the construction, equipping and furnishing of approximately ten (10) buildings which will provide for thirty-eight (38) one bedroom, one bath, approximately 600 square foot senior apartments (55+) with a maximum occupancy of two (2) seniors per apartment. The building located on the SW corner of Prince Road and Polk Street will include 1,200 square feet of office space, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the "Improvements"), (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including shared common recreation areas and other amenities and the furnishing thereof including, but not limited to, furniture, appliances, structures, equipment and personal property in the units (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 On The Common at Rocky Point and used by the Company to provide affordable senior housing for the residents of Rocky Point (the "Project"). The Facility will be initially owned and managed or operated 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: January 16, 2020

TOWN OF BROOKHAVEN INDUSTRIAL

DEVELOPMENT AGENCY

By:

Lisa MG Mulligan

Title: Chief Executive Officer

#### EXHIBIT B

## MINUTES OF PUBLIC HEARING HELD ON JANUARY 27, 2020 AT 10:00 A.M.

## TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY (ONE THE COMMON AT ROCKY POINT 2020 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:

On The Common at Rocky Point, 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 On The Common at Rocky Point, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the "Company"), has applied to the Agency to enter into a transaction in which the Agency will assist in (A) the acquisition of two (2) parcels of land totaling approximately 1.64 acres (of which, an approximately .85 acre parcel is located on the south side of Prince Road, west of Tyler Street and east of Broadway, and an approximately .79 acre parcel is located on the south side of King Road beginning approximately 232 feet east of Broadway) (collectively, the "Land"), (B) (i) the demolition of an approximately 19,300 square foot building located thereon, (ii) the construction, equipping and furnishing of approximately ten (10) buildings which will provide for thirty-eight (38) one bedroom, one bath, approximately 600 square foot senior apartments (55+) with a maximum occupancy of two (2) seniors per apartment. The building located on the SW corner of Prince Road and Polk Street will include 1,200 square feet of office space, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the "Improvements"), (C) the acquisition and installation therein of certain equipment and personal property including, but not limited to, including shared common recreation areas and other amenities and the furnishing thereof including, but not limited to, furniture, appliances, structures, equipment and personal property in the units (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 On The Common at Rocky Point and used by the Company to provide affordable senior housing for the residents of Rocky Point (the "Project"). The Facility will be initially owned and managed or operated 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:

Anita Nigrel, President, Rocky Point Lions Club - see attached letter

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.

STATE OF NEW YORK	)
	: SS.:
COUNTY OF SUFFOLK	) .

I, the undersigned Assistant Secretary 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 January 27, 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, 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 27, 2020.

Secretary

## ROCKY POINT LIONS CLUB P.O. BOX 323 ROCKY POINT, NY 11778

October 23, 2019

Town of Brookhaven Industrial Development Agency One Independence Hill Farmingville, NY 11738

Attn: Fred Braun, Chairman

Re: Town of Brookhaven Industrial Development Agency (On The Common at Rocky Point, LLC 2019 Facility)

CONOMIC PEVEZO (AS)

Dear Chairman Braun,

With regard to the subject project, we are in full support.

This project will be the catalyst to bringing back our Broadway, Rocky Point to what it once was, a vibrant commercial center dating back to the early 1900's.

Our community like many on Long Island is aging out and our seniors are somewhat stranded in homes they have owned for half a century and now do not have the energy, family or resources to maintain them, nor do they need them. These homes need young families to breathe new life into them as well as our community.

Conversely our communities' seniors do not want to leave their hometown, neighbors and friends, however they have no local housing options, affordable or otherwise.

On The Common at Rocky Point fills this need while at the same time repurposing the 3 acres of blight of a shuttered lumber yard and (2) vacant lots in our downtown. The plan to construct ten house like structures in keeping with our residential neighborhood yet allowing a seamless transition to our commercial center, Broadway, while at the same time providing a cadre of seniors walking to our restaurants, salons, barber shops, pharmacy, bakery, gym, et al is an exciting prospect which surely will help to spawn other businesses to capitalize on the 20 plus vacant commercial parcels in our community.

We are further excited by On the Commons commitment to our Veteran Community as Rocky Point and the Rocky Point VFW Post 6249 is steeped in history in defense of our country and to know that 25% of On the Common apartments are priority allocated to our senior Veterans further excites the community.

We would be remiss if we did not mention the other ancillary benefits that On the Common provides our community.

On the Common as part of their plan will be creating a one acre Green Space (Common) which surely will become a cornerstone of our community. This Common will be contiguous to a new 10 mile county walking trail (Rails to Trails) to break ground in 2020. The Common also includes a Museum which will be owned and operated by our local VFW which will allow for displays of all sorts, sponsored by a myriad of Historical, Science and Cultural Educational Societies throughout our region allowing our residents to be experience a plethora of information which would not be available elsewhere in our community. Additionally, adjacent to the Common is our very popular Farmers Market which no doubt will benefit from this scenic Community open space where children/grandchildren can run and play while patrons avail themselves of the markets vendors.

In closing, we have worked with the On The Common developers since its inception and are excited to move forward in the renaissance of our community and ask you also to support this important project.

Regards,

Anita Nigrel President

Rocky Point Lions

## 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), Rocky Point School District, Suffolk County and Appropriate Special Districts

Property Address:

3 parcels approximately 1.64 acres located at Prince Road and King

Road, Rocky Point, New York, address to be determined

Tax Map Nos.

0200-077.00-07.00-004.000 and part of 003.000 and

part of 090.000 (.79 ac)

0200-077.00-07.00-050.000 (.19 ac)

0200-077.00-07.00-051.000 and 052.000 (.65 ac)

School District:

Rocky Point

Tax Year	PILOT Payment Amount
1.	\$43,152
2.	53,285
3.	64,570
4.	75,855
5.	87,140
6.	98,425
7.	109,710
8.	120,995
9	132,280
10.	143,565
and thereafter	100% of full taxes and
	assessments on the Facility

## Requisite Materials

- 1. Socio-Economic Impact of On The Common at Rocky Point, Rocky Point, New York, dated September 30, 2019 by The Long Island Center for Socio-Economic Policy;
- 2. A. Letter from Rocky Point Lions Club, dated October 23, 2019;
  - B. Letter from Rocky Point Civic Association, dated October 23, 2019;
  - C. Letter from RPSB Chamber of Commerce, undated;
  - D. Letter from Rocky Point Historical Society, dated October 23, 2019;
  - E. Letter from Rocky Point Veterans of Foreign Wars of the United States, dated October 23, 2019;
  - F. Letter from Helen Piacenti, dated August 31, 2017;
  - G. Letter from JoAnn Alfaro, dated August 31, 2017;
  - H. Letter from Herbert and Colleen Hain, dated August 28, 2017;
  - I. Letter from Rocky Point Historical Society, dated August 28, 2017;
  - J. Letter from Kevin T. McCarrick, dated August 25, 2017;
  - K. Letter from Albo Agency, dated August 25, 2017;
  - L. Letter from Rocky Point Lions Club, dated August 24, 2017;
  - M. Letter from Janet Jeelosi, dated August 18, 2017;
  - N. Letter from Elaine P. Cappitella, dated August 18, 2017;
  - O. Letter from J. Biehe, dated August 16, 2017;
  - P. Letter from Catherine Mager, undated;
  - Q. Letter from Joan Collier, dated August 18, 2017;
  - R. Letter from Loni Gook, dated August 24, 2017;
  - S. Letter from Madeline Giannuno, dated August 23, 2017;
  - T. Letter from Susan Kiefer, dated August 23, 2017;
  - U. Letter from Terry Windus, dated August 23, 2017;
  - V. Letter from Marie-Elana and Tim Wong;
  - W. Letter from Elizabeth Hoffmann, dated August 22, 2017;
  - X. Letter from Ingrid Vessie, dated August 21, 2017;
  - Y. Letter from Mrs. Francis Mongioni, dated August 18, 2017;

- aa. Letter from Joan Collier, dated August 18, 2017;bb. Letter from Irene Dixon, dated August 27, 2017; and
- 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

Socio-Economic Impact of On The Common at Rocky Point, Rocky Point, New York, dated September 30, 2019 by The Long Island Center for Socio-Economic Policy

- 1. A. Letter from Rocky Point Lions Club, dated October 23, 2019;
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  - I. Letter from Rocky Point Historical Society, dated August 28, 2017;
  - J. Letter from Kevin T. McCarrick, dated August 25, 2017;
  - K. Letter from Albo Agency, dated August 25, 2017;
  - L. Letter from Rocky Point Lions Club, dated August 24, 2017;
  - M. Letter from Rocky Point Rotary Club, dated August 24, 2017;
  - N. Letter from Janet Jeelosi, dated August 18, 2017;
  - O. Letter from Elaine P. Cappitella, dated August 18, 2017;
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## LONG ISLAND CENTER FOR SOCIO-ECONOMIC POLICY

## THE SOCIO-ECONOMIC IMPACT

**OF** 

# ON THE COMMON AT ROCKY POINT ROCKY POINT, NEW YORK

PREPARED FOR
ON THE COMMON AT ROCKY POINT, LLC.

PREPARED BY

DR. MARTIN R. CANTOR, CPA

**September 30, 2019** 

The Long Island Center for Socio-Economic Policy Director, Dr. Martin R. Cantor, CPA 28 Woodmont Road Melville, New York 11747 Tel: (631) 491-1388 Fax: (631) 491-6744

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# The Socio-Economic Impact of

## On The Common At Rocky Point:

## Redevelopment of 3.2 Acres at 7 &122 Prince Road/110 King Road, Rocky Point, New York

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## September 2019

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### ABSTRACT

On The Common at Rocky Point will bring much needed economic activity to the Rocky Point community and the Town of Brookhaven. On The Common, created by the redevelopment of a blighted and underutilized former lumber company property will create 47 construction jobs with a direct payroll of \$2.35 million, 70 secondary jobs with aggregate payroll of \$2.45 million and over \$259,000 in new Suffolk County sales tax revenues. The permanent and recurring direct economic activity from the residents of On The Common will bring a minimum aggregate gross annual household income of nearly \$2.3 million to the Rocky Point community, 24 primary and secondary jobs with aggregate payroll of \$880,000 and generate over \$41,200 in new and recurring Suffolk County sales taxes.

The other beneficiary of On The Common is the Rocky Point Union Free School District where 2017 student enrollment decreased by 565 or 15.6 percent from the 2005-2006 school year. On The Common, as an age 55 and over residential community will not increase student enrollment since there will be no school age children living at On The Common. On The Common will be sending new school property taxes, above the current \$41,231, to the Rocky Point Union Free School District without a corresponding cost to education any children, a net financial gain to the school district.

### INTRODUCTION

In support of the application for financial assistance from the Town of Brookhaven Industrial Development Agency, we have been retained by On The Common At Rocky Point, LLC to prepare a report of the projected economic impact generated in the Town of Brookhaven community of Rocky Point from the redevelopment of the 3.2 blighted and vacant acres of the former Thurber Lumber Co. and Avenues Nightclub into On The Common At Rocky Point, a 38-unit senior citizen residential community.

On The Common is comprised of 38 affordable, one-bedroom, 600 square feet senior residential units and a 1,200 square foot office. The design allows for three separate parcels fronting King and Prince roads along with one acre of "The Common", green space contiguous to Suffolk County Rails to Trails, for residents of On The Common and the Rocky Point community; a museum for the Rocky Point Veterans of Foreign Wars (VFW) – replicating the original Train Station; and a recreation area for the use by the VFW and residents of On The Common.

The economic activity generated from On The Common is achievable because the rezoning of the property as MF (multi-family) allows for the 38 residential units. The projected economic activity from On The Common will create new jobs; attract new businesses; generate a positive trend in neighborhood real estate values; create other new housing opportunities by diversifying housing stock; encourage development of other vacant and underutilized Rocky Point properties for commercial and residential uses; generate additional local and school district tax revenues without increasing student enrollment; and create a sense of place that will enhance and improve Rocky Point's aesthetics, green spaces and overall environment.

On The Common At Rocky Point, LLC is prepared to bring its investment in the redevelopment of the 3.2 acres to nearly \$8 million to construct a 38-unit affordable senior residential community. The new residents of these units will provide a much-needed injection of economic activity to a post Great Recession Rocky Point community while generating new housing stock for first time Millennial home buyers.

The development at On The Common at Rocky Point will be on a previously blighted, underutilized vacant property, most recently used as a former lumber company and nightclub, and will bring socio-economic improvements to the Rocky Point community that are compatible with the surrounding neighborhood.

The development will provide needed affordable housing for Long Island's senior citizens; create nearly 117 temporary construction and secondary jobs and 24 permanent primary and secondary jobs; and generate upwards of \$259,000 dollars of new sales tax revenues for Suffolk County during the construction period and over \$41,000 of new permanent and recurring sales tax revenues from the economic activity generated by the residents of On The Common. The new \$1.5 million of recurring economic activity that On The Commo will attract can only benefit local Rocky Point businesses.

The Rocky Point Union Free School District, currently receiving approximately \$41,000 in property taxes from the vacant 3.2 acres, will benefit from the additional new property tax revenues generated by On The Common, a community that will generate no additional school age children. This will benefit the Rocky Point Union Free School District which has had increasing budgets and decreasing enrollments since 2005.

Further, research by the Urban Land Institute (ULI) affirms that higher-density housing with fewer families with children, such as On The Common, puts less demand on schools and other public services as compared to low density housing such as single-family homes. ULI research also noted that higher-density development generates less traffic than low-density development such as single-family homes and puts less stress on emergency fire and police services.

The following analysis presents how On The Common benefits the Rocky Point community's socio-economic quality of life.

#### POPULATION: ROCKY POINT GROWS FASTER THAN BROOKHAVEN TOWN

As illustrated in Table 1, Rocky Point's population increased by 28.56 percent between 2000 and 2017, over 3 times greater than the 8.81 percent increase in the Town of Brookhaven's population.

Table 1: Total Population Growth: Town of Brookhaven and Rocky Point - 2000-2017

	<u>2000</u>	<u>2010</u>	2017	<u>Increase</u> (Decrease) 2000-2017	% Increase (Decrease) 2000-2017
Brookhaven:	448,248	486,040	487,731	39,483	8.81%
Rocky Point	10,185	14,014	13,094	2,909	28.56%

Source: U.S. Census 2000 Summary File 1 Table DP-1; U.S. Census 2010-American FactFinder Table DP-1, U.S. Census 2017-American Community Survey 5-Year Estimates 2013-2017 Table DP05.

While there were minimal population shifts between 2010 and 2017 in both Rocky Point and the Town of Brookhaven, as a percent of the Town of Brookhaven population, Rocky Point's population increased by 18 percent from 2.27 percent in 2000 to 2.68 percent in 2017. On The Common at Rocky Point would attract new senior residents and their spendable income to Rocky Point and the Town of Brookhaven and no new children for the Rocky Point Union Free School District.

#### THE AGING OF ROCKY POINT AND THE TOWN OF BROOKHAVEN

As in The Town of Brookhaven, the Rocky Point community has aged without an offsetting influx of younger families. Table 2 illustrates that the under 5 population in the Town of Brookhaven has decreased as a percentage of the population between 2000 and 2017, as did those between 5 and 54 years of age, while those over 55 grew. Those under 5 years of age in the Rocky Point community fell by 26.5 percent between 2000 and 2017 to 5.2 percent of Rocky Point's population while those over 55 increased by 110.7 percent to 23.2 percent of the Rocky Point population.

Rocky Point's nearly 20 percent population gain between 2000 and 2017 of those 5 to 54 years of age contrasted with 1.9 percent decrease of those in the same demographic in the Town of Brookhaven. Additionally, the 110.7 percent growth of those over 55 years of age in Rocky Point was 82.4 percent greater than the 60.7 percent growth rate of the same Town of Brookhaven demographic.

Table 2: Population By Age-2000-2017-The Aging of Brookhaven Town and Rocky Point

Age	Town of Brookhaven		Rocl	cy Point
	2000	<u>2017</u>	<u>2000</u>	<u> 2017</u>
Total Pop.	448,248 (100%)	487,731 (100%)	10,185 (100%)	13,094 (100%)
Under 5	31,871 (7.1%)	27,104 (5.6%)	933 (9.2%)	686 (5.2%)
5-54 Yrs	332,776 (74.2%)	326,303 (66.9%)	7,811 (76.7%)	9,371 (71.6%)
Over55	83,601 (18.7%)	134,324 (27.5%)	1,441 (14.1%)	3,037 (23.2%)
Median Age	35.2 Yrs	39.5Yrs (+12.2%)	33.3 Yrs	38.2 Yrs (+14.7%)

Source: U.S. Census-2000 Summary File 1; U.S. Census-American Community Survey 2013 -2017.

The loss of young people from Rocky Point is illustrated by the 14.7 percent increase in the median age of Rocky Point residents, as compared to the 12.2 percent median age increase in the Town of Brookhaven,

The senior citizens residing at On The Common at Rocky Point will not burden the Rocky Point School District, which as Table 3 illustrates, has experienced declining enrollment since 2005. Furthermore, On The Common will generate significant new property taxes above the current \$41,231.

#### ROCKY POINT SCHOOL DISTRICT: DECLINING STUDENT ENROLLMENT

Table 3 illustrates that the 2017 student enrollment at the Rocky Point Union Free School District decreased by 565 or 15.6 percent from the 2005-2006 school year. This is reflective of a combination of factors. The first is that the final wave of offspring from the baby boomers and their children are working their way through the Rocky Point Union Free School District, resulting in lower enrollments in all grades; the Kindergarten, grades 1-6, and grades 7-12. The other is that as shown in Table 2 there has been a 5.2 percent decrease in children under 5 years of age that would enroll in the Rocky Point Union Free School District. During this period of declining enrollments school budgets and Instructional Cost per Student have been increasing.

Table 3: Rocky Point Union Free School District Student Enrollment-Decreasing Since 2005

	<u>2000-2001</u>	<u>2005-2006</u>	<u>2009-2010</u>	<u>2016-2017</u>	Inc	5-2017 crease crease)
Total Enrollment	3,382(100%)	3,616 (100%)	3,433 (100%)	3,051(100%)	(565)	(15.6%)
Kindergarten	273 (8.1%)	282 (7.8%)	250 (7.3%)	172 (5.6%)	(110)	(39.0%)
Grades 1-6	1,742(51.5%)	1,719(47.5%)	1,583 (46.1%)	1,325(43.5%)	(394)	(22.9%)
Grades 7-12	1,367(40.4%)	1,615(44.7%)	1,600 (46.6%)	1,554(50.9%)	(61)	(3.8%)
Instructional Cost per Student	\$7,394.00	\$10,377.00 +40%	\$11,196.00 +8%	\$16,117.00 +44%		

Source: New York State Education Department School Report Cards.

Of greater interest is that since 2005 total enrollment have decreased by 15.6%, kindergarten by 39.0 percent, Grades 1-6 by 22.9 percent and Grades 7-12 by 3.8 percent. To maintain its teaching staff, parents of young children must be attracted to the Rocky Point Union Free School

District for enrollment in the early grades. While costs to educate students have increased, On The Common at Rocky Point, renting only to senior citizens, will not add students to the Rocky Point Union Free School District, in fact the school district will benefit from the new school property taxes paid from On The Common at Rocky Point without any additional students to educate.

Table 3 further illustrates that the year 2000 Instructional Cost per Student at the Rocky Point Union Free School District of \$7,394 grew by 118 percent to \$16,117 in 2017. As an over 55 residential community, the benefit of On The Common at Rocky Point is that there will not be any additional instructional costs to educate any children. However, there will be an increase in new school property taxes revenues from the current \$41,231, resulting in a net property tax benefit to the school district. In effect, On The Common at Rocky Point will be contributing to the public education of children from single-family homes attending the Rocky Point Union Free School District.

Additionally, research by the Urban Land Institute (ULI) concluded that higher-density housing with fewer families with children, such as On The Common, puts less demand on schools and other public services as compared to low density housing such as single-family homes. ULI research also noted that higher-density development generates less traffic than low-density development such as single-family homes and puts less stress on emergency fire and police services.

#### ROCKY POINT HOUSEHOLDS: GROWTH EXCEEDS TOWN OF BROOKHAVEN

Table 4: Occupied Households-Town of Brookhaven and Rocky Point.

Household Size	Town of Brookhaven		Rocky Point	
	<u>2000</u>	<u> 2017</u>	<u>2000</u>	<u>2017</u>
Average Household Size	2.97	3.03	2.86	2.90
Total Households	146,828	160,864	3,557	4,517
H/H Increase 2000-2017		+9.56%		+26.99%

Source: U.S.Census-2000 Table DP01; U. S. Census American Community Survey 2012-2017 Tables DP01, DP03.

As presented in Table 4, there has been a notable 26.99 percent increase in Rocky Point households between 2000 and 2017 from 3,557 to 4,517. This exceeds the 9.56 percent increase

in Town of Brookhaven households during the same period. Additionally, the size of Rocky Point households has increased by 1.4 percent between 2000 and 2017, as compared to the 2.0 percent growth in the size of Town of Brookhaven households.

## HOUSEHOLD INCOME: ROCKY POINT EXCEEDS TOWN OF BROOKHAVEN

Table 5 illustrates how the growth of household income in Rocky Point compared to the household income growth in the Town of Brookhaven.

Table 5: Household Income-Town of Brookhaven and Rocky Point.

	Town of Brookhaven		Rocky Point	
	<u>2000</u>	<u>2017</u>	<u>2000</u>	<u>2017</u>
Median Household Income	\$62,475	\$89,594	\$52,463	\$94,589
" Increase 2000-2017		+43.4 %		+80.3%
Inflation adj Median H/H Inc	\$62,475	\$60,657	\$52,463	\$64,039
" Dec/Inc 2000-2017		-2.9%		+22.1%
Mean Household Income	\$72,619	\$108,666	\$61,529	\$111,483
" Increase 2000-2017		+49.6%		+81.2%
Inflation adj Mean H/H Inc.	\$72,619	\$ 73,569	\$61,529	\$75,476
" Decrease 2000-2017		+1.3%		+22.7 %

Source: U.S.Census-2000 Table DP-3; U. S. Census American Community Survey 2012-2017Table DP03.
Inflation adjusted median and mean Household Incomes in 2017 expressed in year 2000 dollars and based on CPI 1982-84=100 for New York Metropolitan Statistical Area.

The nominal (not adjusted for inflation) Town of Brookhaven average or mean household income increased by 49.6 percent between 2000 and 2017 from \$72,619 to \$108,666, as compared to the 81.2 percent growth in Rocky Point's 2000 mean household income of \$61,529 to \$111,483 in 2017. Similarly, the nominal median household income in the Town of Brookhaven grew by 43.4 percent between 2000 and 2017, 54.1 percent less than Rocky Point's 80.3 percent median household income growth.

When adjusted for inflation, as compared to the Town of Brookhaven, the real Rocky Point mean and median household incomes fared better between 2000 and 2017. Adjusting for inflation is the expression of the 2017 nominal household income in 2000 dollars by using changes in the Consumer Price Index. This allows for comparison of increases and decreases in median and mean household incomes using the same dollar basis.

Rocky Point's real inflation adjusted median household income decreased by 22.1 percent between 2000 and 2017, while the Town of Brookhaven's real median household income decreased by 2.9 percent. Similarly, in the change between 2000 and 2017 of the inflation adjusted real mean household income, Rocky Point households increased by 22.7 percent, nearly 18 times greater than the 1.3 percent increase in Town of Brookhaven real mean household income.

#### ON THE COMMON BRINGS NEW ECONOMIC ACTIVITY TO ROCKY POINT

As presented in Table 6, the 38 units at On The Common at Rocky Point will create 47 construction jobs with a direct payroll of \$2.35 million. The primary construction jobs will in turn generate 70 secondary jobs with a projected payroll of \$2.45 million. Also, generated by the construction activity will be nearly \$259,000 in new Suffolk County sales tax revenues.

Table 6: Economic Activity From On The Common for the Rocky Point Community

·	Temporary E	conomic Activity	Recurring Economic Activity		
	From Construction Activity		From New Residents On The Common		
	Primary Secondary		Primary	Secondary	
Jobs	. 47	70	16	8	
Direct Payroll	\$2,350,000	\$2,450,000	\$586,782	\$293,391	
Constr.Materials	\$2,975,000	\$1,487,500		· · · · · · · · · · · · · · · · · · ·	
Sales Taxes	\$ 1 34,630	\$ 130,900	\$ 28,775	\$ 12,469	
Household Inc.			\$1,466,957		

Note: Household income is net of income taxes; Sales taxes computed on Suffolk County rate of 4.25%.

The permanent and recurring economic activity generated by the residents of On The Common will generate new economic activity lost since the Great Recession. The residents of On The Common will bring a minimum aggregate gross household income of nearly \$2.26 million, net

economic activity of \$1.47 million, which will generate 24 primary and secondary jobs and their associated \$1.35 million in permanent and secondary recurring economic activity. The projected consumer activity of the permanent residents of On The Common, and the new jobs created, will generate over \$41,244 annually in new Suffolk County sales taxes.

### CONCLUSION

On The Common at Rocky Point will bring much needed economic activity to the Rocky Point community and the Town of Brookhaven that will financially benefit the Rocky Point Union Free School District while not impacting student enrollment. The nearly 117 primary construction and secondary jobs as well as the 24 permanent primary and secondary jobs will result in approximately \$2.7 million of direct and secondary payroll, generate over \$300,000 in new Suffolk County sales tax revenues, and provide new school property tax revenues for the Rocky Point Union Free School District above the current \$41,231.

On The Common, as an age 55 and over residential community, will not increase student enrollment in the Rocky Point Union Free School District since there will be no school age children living at On The Common. In fact, On The Common will be sending new school property taxes to the Rocky Point Union Free School District without a corresponding instructional cost to educate the children; a net financial gain for the Rocky Point Union Free School District.

Taking all these factors into consideration, On The Common will have a positive socioeconomic impact on the Rocky Point community and the Rocky Point Union Free School District.

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Martin R. Cantor has a Bachelor of Science Degree in Accounting from Brooklyn College of the City University of New York, a Master of Arts Degree in Interdisciplinary Studies from Hofstra University focusing on the socio-economic relationships between education, household income, community and workforce development, and a Doctor of Education Degree from Dowling College. He has served as Suffolk County Economic Development Commissioner (New York State's largest suburban county), brought Computer Associates to Suffolk County, and created over 23,000 jobs with an estimated \$1.4 billion annual payroli economic impact. He has served as: Vice-Chair-Suffolk County Industrial Development Agency; Chief Economist-New York State Assembly Subcommittee for the Long Island Economy; Senior Fellow at the White Plains, New York based Institute for Socioeconomic Studies - a public policy think tank concentrating on poverty in America and senior citizen quality of life; Chair and Chief Economist of the Long Island Development Corp; Chief Economist for Destination LI; a building trades labor/management arbitrator; a consultant to the Nassau Interim Financial Authority; a faculty member in the Brooklyn College Department of Economics; Executive Director of the Patchogue Village Business Improvement District; and Director of Economic Development and Chief Economist for Sustainable Long Island, and the Long Island Fund for Sustainable Development, providing financial, technical assistance to businesses and not-for-profit organizations His work is included in the National Tax Rebate-A New America With Less Government, and has prepared downtown revitalization plans for Long Island and New York City neighborhoods featuring arts districts, economic restructuring, waterfront projects and community organizing. He was the architect of the Nassau County Comptroller's debt restructuring plan for resolving Nassau County's fiscal crisis; has been a columnist for Long Island Business Journal and Networking Newspaper for Women; has authored: federal, state and local legislation; economic impact analyses; analysis of Long Island's economic, demographic, employment, tax, and educational bases; a convention center feasibility study; an analyses of taxpayer costs of acquiring open space and health care reform; and Director of Dowling College's Long Island Economic and Social Policy Institute; and an Adjunct Associate Professor of Economics

He is a Certified Public Accountant in private practice; Director of the Long Island Center for Socio-Economic Policy, a consulting economist and economic development consultant to public officials, counties, towns, villages, Industrial Development Agencies, and communities; and Chairman of the Suffolk County Judicial Facilities Agency which financed the acquisition of the Cohalan State Court Complex, oversaw the construction of the Suffolk County Jail in Yaphank and financed the \$70 million purchase/leaseback of the Dennison Building to Suffolk County. He provides economic and business commentary on television and radio; was Co-host of Focus 55, a public affairs program on Channel 55, is a columnist for the Long Island Business News, Long Island's largest business weekly, has appeared in the New York Times, Newsday, and LI Pulse, and has been syndicated nationally by Newsday, Bridge News and Knight-Ridder/Tribune News Service. He is an Honorary Member of Delta Mu Delta - The National Honor Society in Business Administration and has been recognized by the National Association of Counties for innovative uses of Industrial Revenue Bonds, for international trade promotion initiatives, for downtown revitalization policies, and for minority business incubator initiatives. He was invited by Dr. William Julius Wilson of Harvard University's John F. Kennedy School of Government to present his paper entitled Race Neutral Sustainable Economic Development. He is the author of Long Island, The Global Economy and Race: The Aging of America's First Suburb, and his paper Retention of Long Island Millennials at a Community College: Are They College Ready? appeared in the international peer-reviewed Journal for Leadership and Instruction.



### EXHIBIT D-2

- 1. A. Letter from Rocky Point Lions Club, dated October 23, 2019;
  - B. Letter from Rocky Point Civic Association, dated October 23, 2019;
  - C. Letter from RPSB Chamber of Commerce, undated;
  - D. Letter from Rocky Point Historical Society, dated October 23, 2019;
  - E. Letter from Rocky Point Veterans of Foreign Wars of the United States, dated October 23, 2019;
  - F. Letter from Helen Piacenti, dated August 31, 2017;
  - G. Letter from JoAnn Alfaro, dated August 31, 2017;
  - H. Letter from Herbert and Colleen Hain, dated August 28, 2017;
  - I. Letter from Rocky Point Historical Society, dated August 28, 2017;
  - J. Letter from Kevin T. McCarrick, dated August 25, 2017;
  - K. Letter from Albo Agency, dated August 25, 2017;
  - L. Letter from Rocky Point Lions Club, dated August 24, 2017;
  - M. Letter from Rocky Point Rotary Club, dated August 24, 2017;
  - N. Letter from Janet Jeelosi, dated August 18, 2017;
  - O. Letter from Elaine P. Cappitella, dated August 18, 2017;
  - P. Letter from J. Biehe, dated August 16, 2017;
  - Q. Letter from Catherine Mager, undated;
  - R. Letter from Joan Collier, dated August 18, 2017;
  - S. Letter from Loni Gook, dated August 24, 2017;
  - T. Letter from Madeline Giannuno, dated August 23, 2017;
  - U. Letter from Susan Kiefer, dated August 23, 2017;
  - V. Letter from Terry Windus, dated August 23, 2017;
  - W. Letter from Marie-Elana and Tim Wong;
  - X. Letter from Elizabeth Hoffmann, dated August 22, 2017;
  - Y. Letter from Ingrid Vessie, dated August 21, 2017;
  - Z. Letter from Mrs. Francis Mongioni, dated August 18, 2017;
  - aa. Letter from Joan Collier, dated August 18, 2017;
  - bb. Letter from Irene Dixon, dated August 27, 2017.

the state of the s Mrtmrs. Herbert Hain 18 Walnut Dr and the second of the second o Shoreham NY11786 August 28, 2017

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Town of Brookhaven Town Board One endependence Hill Larmingdale, ny 11738

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To Whom elt May Concern:

my name is Herbert Hain and I am 72 years old and I am a veteran Cid # RA/2673725), I am applying for the "on the commons" apartmento coming to Kocky Point in the near future. The reasons that I am applying for the housing are: Since I need a walker to get around because stairs would be difficult for me to navigate, therefor I would need a ground floor apartment. Eventually, I will be inable to drive which makes "on the Commoro" an ideal place ocated within walking distances to the commons. Since owning house and making repairs is difficult on a fixed income, these partments would make our golden years more enjoyable to ayon Long Island since we have lived here for 36 years of ir mained life. These apartments are very much needed.

Trucky Colleen Hain



### Rocky Point Historical Society

Post Office Box 1720 Rocky Point, N. Y. 11778
Tel: (631) 255-4304 E-mail: nataliast@aol.com

Website: www.rockypointhistoricalsociety.org 501 (c) 3 Non-Profit Organization

Officers
Natalie Aurucci Stiefel, President
Jim Higgins, Vice President
Linda Cathcart, Treasurer & Membership
Joseph Santoriello, Recording Secretary
Rory Rubino, Corresponding Secretary

Trustees:
Janice Bambara, Jeff Davis
Joan Depken, Walter Depken
Pete Falcetta, Mike Levonick
Edith Mahler, Robert Rizzotto

Past Presidents: Peter Carroll, Daria Cwik, Kenny Blinn, Suzanne Johnson Honorary Members: Mark Baisch, Richard Johannesen, James Keegan, Robert T. Lundquist (RCA Transmitting Station Chief Engineer)

Anne Hallock Tuthill Potta, Thomas Samuel Hallock Tuthill

August 28, 2017

Mr. Mark Baisch Landmark Properties 475 Route 25A Rocky Point, NY 11778

Dear Mr. Baisch

The Rocky Point Historical Society supports your efforts to establish "The Commons", a senior housing at Rocky Point. The downtown area of Rocky Point is in need of revitalization and pedestrian activity. This would enhance the area and bring much need aid to the local businesses.

It is an ideal location for seniors to be within walking distance to various business establishments, restaurants, barber shops, beauty parlors and churches.

Your plans for saving the former Long Island Rail Road Station building as a museum demonstrates your concern to preserve our local history. It is much appreciated.

Rocky Point Historical Society Board of Trustees August 25, 2017

Brookhaven Town Supervisor Edward Romaine and Town Council Members

RE: Change of Zone B1 &J2/J6 to Multifamily Residence District in Rocky Point

I write this letter today in full support of the application. Being a member of a family business here in Rocky Point for 71 years we have seen many stores come and go. Rocky Point like many of our downtowns in Brookhaven Town have had to deal with their share of challenges. No major anchor store or center but a collection of small retail and service business trying to compete with the big box stores and internet sales that are slowly chipping away at all brick and mortar retail. In addition to the unlikely possibility of selling a downtown business in this new economy they also have to face the reality of the diminished value of the real estate they all own that is very often for most, their entire retirement savings.

The application before you will jumpstart many of the struggling businesses in the area. New residents will immediately become consumers in the downtown. This will also attract new business. It will bring added value to the empty storefronts and ultimately increase real estate values for struggling property owners. One only has to look to our south to Patchogue to see what an improvement introducing a residential component to a downtown can make.

Rocky Point has an aging population that occupies an aging variety of small houses that were built as summer bungalows then converted to permanent residences in the back hills of North Shore Beach. Many of our senior citizen population that occupy these homes lack the resources to maintain them in a manner that is suitable for senior living. Winter driving conditions and Emergency services become difficult for all involved.

Approval of this application will improve the current and future businesses in the downtown area. It will offer a safe and affordable housing alternative to shopping and bus service for our senior population, and will free up housing stock for our first time home buyers who would like to make Rocky Point their home. We are fortunate to have Landmark Properties make this investment in our community, I look forward to this start of this revitalization.

Sincerely

Kevin T. Mc Carrick

Int Ullin



514 Route 25A, Rocky Point, NY 11778

631-744-4500 Fax: 631-744-4599

August 25, 2017

Town of Brookhaven Supervisor Edward P. Romaine and Town of Brookhaven Board Members

Re: "On the Commons" @ Rocky Point

Dear Supervisor Romaine and Members of the Brookhaven Town Board:

I am Linda Albo, owner Broker of Albo Real Estate Agency since 1979 and very familiar with our community. The proposed development "On the Commons" @ Rocky Point is much needed as housing for seniors is very limited. Many seniors came to Rocky Point as summer residents and are firmly rooted in the community and wish to 'stay put'. The "Commons" will give them an affordable residence 'out of the hills' and close to shopping and houses of worship.

The "Commons" is well planned and very attractive and Mark Baisch of Landmark Properties is an outstanding builder. He addresses every detail and delivers a residence of the highest quality.

The "Commons" will be an asset to the downtown Rocky Point revitalization effort. I thoroughly support the Commons not only as a business owner but also as a long time resident of Rocky Point.

Please use your good offices to expedite approval of this premier and worthy project.

Thank you for your consideration.

Linda L. Albo

Sincerely.

Licensed Real Estate Broker



### **Rocky Point Lions Club**

PO Box 323, Rocky Point, New York 11778

Serving the Communities of Mount Sinai, Miller Place, Sound Beach, Rocky Point, Shoreham and Wading River Since 1955.

August 24, 2017

To Whom It May Concern,

Ref: On the Commons @ Rocky Point

I'm writing on behalf of the Rocky Point Lions Club. The Rocky Point Lions Club has been serving Rocky Point and the surrounding communities for 61 years. Our organization currently has 37 Business owners/members.

Over the last several years as a business organization we have seen how Broadway has suffered from the Bypass. We believe that a walkable residential component would go a long way to start bringing back retail and service based business to Broadway and downtown Rocky Point.

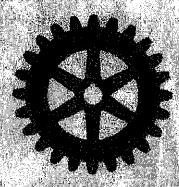
In addition as we service senior homebound residents in Rocky Point and Sound Beach we recognize that this concept would benefit these residents greatly.

In closing we are in full support of this project and would welcome any questions.

Very truly yours,

Wendy A. Stapon

Past President and Director



August 24, 2017

Re: On the Common at Rocky Point Senior Housing Project

Dear Brookhaven Town Board Members,

As a community based organization, my members and I are always in support of local projects that assist local seniors in reducing their financial burdens. Therefore, when Mr. Balsch introduced a plan to construct affordable senior housing on the former site of Thurber Lumber, my members and I were extremely delighted.

Lam writing this letter in supermost the project on the personal first only securing conseniors out the businesses as well. Please done he hereits considering and this life as a few parties.

Se vice always self

Yours Truly,

Adam Heller

8/18/17 To Whom it May Concern, This letter is to be addressed to the Jour of Brokhauen Board. It is very important to pay attention to the serier community in our area. Wany of us, negrelf kneluded, do not have family we can live with and cannot find reasonable housing that is afforbable. We haven't contributed one share of taken for many years It would be workerful to have a serior development for our active serior who gan live on their own lent cannot afford a luxury apartment complex. Thankyn for the opportunity to share my thoughts being a 63 yr old swoman living along and looking forward to senior Sweerele Janet Gello Ti partment living at a easonable fost?

Elaine P. Cappitella 18 Philips Court Mt. Sinai, NY 11766

August 18, 2017

Brookhaven Town Board One Independence Hill Farmingville, NY 11738

Re: "On the Commons" - proposed Senior Citizen apartments in Rocky Point

I am a 78 year old resident of the Town of Brookhaven and when I heard of the proposed new senior citizen apartments to be built in Rocky Point I was thrilled. I have spinal stenosis and find it difficult to keep up financially and physically with the upkeep of a house. We desperately need affordable apartments for this segment of the population so that we can stay in the area where we have friends, doctors, shopping and St. Anthony's Parish.

I look forward to this project being approved as soon as possible.

Sincerely,

Elaine P. Cappitella

Dear Brookhaven Town Board,

I am writing this letter in support of the On the Common senior citizen community currently in development by Landmark Properties in Rocky Point.

I have been searching for some time for affordable housing options in and around Brookhaven Township in order to be closer to my children and grandchildren. As a 58-year-old single occupant with a busy schedule, I have little need for a full house, and even less time to maintain a typical property with a lawn and the additional maintenance that comes with it. As such, a single bedroom unit in an apartment community would suit me and my needs perfectly.

Until now, I have not come across such a community that is the right fit for me in terms of location, affordability, etc. and I was very excited to hear about what On the Common plans to offer for it's prospective tenants. This development would afford me the opportunity to spend more time with, and be more of a part of my grandchildren's lives.

Therefore, I fully support this proposed plan and look forward to this project's completion.

Sincerely

Catherine Mager

## To whom it May Concern

I'm writing this letter in hopes that the Town of Brookhaven passes the construction of the future "On the Commons" rental properties in the town of Rocky Point, New York. 25 as single women in my ENLY 60'S Its very important to be able to find an affordable place to live the cost of apartments on Long Island are so expensue and I don't want to have to leave long Island the only place I have lived all my life. I truly hope you pass the building of this facility as its much needed in our community. Thank you in advence for Your consideration.

	·····································
	Madeline Bearins
	POB 0x 1475
	Bocky Point N. Y. 11718
	(631-744-9636)
	August 23, 2017
	**************************************
	To the Town of Brookhauen, Town Board.
	Councilwoman Valerie M. Contright Councilman Nichael A Boqueri
	Council woman Jane Borne Council man New Foley
	Council man, I cevin & Ba Valle Council man Daniel Parico
**************************************	Donna hent, Town Clerk hours Marcoccrastelleum of Taxe
	Dan haguadus, superintendent of Hishways.
<del></del>	Dear Supervisor Idward P Romaine:
	Jun supplication & amazica 1 Hornouxo,
	My prance is Madeline Granius, Dam 66 years ald and
	a Brookhaven resident since 1973.
F-2	I am rotered from the Town of Brookhaven for over
****	6 years now I worked for the benior Citizen Duicions
	adult Day Care Drogram.
	In working with this program and now being a beauti
	Citizen myself I come to realized even more so the importance
	of having Serior Complexes, such as the one band whark
	properties is Willing to provide for us desions. Dalas
· · · · · · · · · · · · · · · · · · ·	Know that there are als more seniore who are lung
	in the Town of Brookhaven who have retired here to
	be close to their family and friends.

The Commentes are building up with more berion ther lefore. Suring on a fixed income, is very difficult to live on your own if you coun a home. and maintain, is just impossible to Rup it up bexious lan't afford to pay people to their home and properti In working with begions, I feel there won't exough Servin Complexes in the Town of Basokhauer once of them wer have the Jamila members which make I am alos disable so expenses for medication is also a factor. I have alone, support my suffand take Care of myself. Howing this serior Complexe will make my L. DD much easier. Make frunds and help is Rocky Point with all amendities is distance is a plus. Thank you for taking this time to Concider my little and understanding the recessities. bincerly yours madeline Granino

Sison Refer Apt. A 2110 Ulstel Place Coron NY 11727 8/23/2017

To: The Town of Brookhaveen:

I am writing to you to imporm you that I have an interest in renting, an apartment, in the near buture from Land-mark Reality. Properties, a prospective housing Project, Known as on the Commons. I am a 64 year all, single female, who

who has been employed at a local mursing home, for 16 years. I currently rent a one bedroom Sorden aportment, in corona, NY, who was recently bought out by Fairfield Properties, the new awners are making major renovations to the property, which of Course will in turn raise all up the tenonts rent, when their current lease is up

Current lease is up.

Presently I am struggling binancially, trying to keep up tuith my rent and ather bills. It believe the prospective housing Project would help me in my situation, as every things is included in the rent, which starts at 1,250.00

Thonk you for your attention in this matter Suson Krefer

August 23, 2017

Brookhaven Town Hall

1 Independence Hill

Farmingville, NY 11738

Re: On the Commons, Rocky Point, New York

Dear Town Board,

I am a 62 year- old woman who will be retiring in two years from working for the County of Suffolk. I want to continue to live in New York but will not be able to strictly on a pension. I will have to leave New York in order to afford to live off my pension and eventual social security.

This topic is very important to take seriously as Long Island is so expensive and many people are having a difficult time living here. The rents are getting impossible to afford for seniors and young couples with children. I am urging my daughter and her family to leave Long Island because they are having a very hard time affording the rent they are forced to pay. They work three jobs and still can't make it.

When landlords don't receive their rent on time we are all at their mercy. The landlords drag apartment dwellers into court and sue us for a ridiculous amount that makes it difficult to pay the next month's rent.

I am urging and begging the Town Board to allow On the Commons to offer senior housing at an affordable rate. If not, I will need to move out of state to live off my pension.

Thank you for reading this letter and taking it into consideration.

Sincerely,

Terry Windus

59 Misty Pond Circle, Apt. 2

) LXQU

Moriches, NY 11955

Brookhaven Town Board One Independence Hill Farmingville, NY 11738

August 23, 2017

To the Members of the Board:

Although we were previous homeowners for 29 years, we have been renting for the last 17 years. We look forward to having the opportunity to apply for an apartment in Rocky Point built by Landmark. We are writing this letter to let you know how important this senior complex means to so many Long Islanders. There are far too few places to live that are affordable for seniors who live independently. Prices on all fronts skyrocket but Social Security & or pensions basically remain the same. More affordable senior housing is absolutely necessary. Relocating out of state for less expensive housing poses all kinds of challengers for seniors. We are at a time in our lives where we are comfortable with our surroundings, health care, friends & family.

Sincerely,

Marie-Elena & Tim Wong

S.

Elizabeth Hoffmann 14 Sunburst Dr. Rocky Point, NY 11778 C: 516-382-2164

August 22, 2017

Town Board of Brookhaven One Independence Hill Farmingville, New York 11738

Re: On the Common, Rocky Point

Dear Town Board:

I am writing in support of the On the Common project proposed for Rocky Point for several reasons. First and foremost, I am an over-60 single person trying to downsize from a house, and am having trouble finding affordable apartments in Brookhaven Town in a location convenient to both my job and my personal life. Secondly, right now, the sight is an eyesore. I have seen the proposed plans for the complex and think it will be a major upgrade to the area. I feel that if the tenants are properly vetted, it will do nothing but improve the Rocky Point downtown area, and may even encourage more small business in the area within walking distance of the complex.

I urge you to support this project.

Very truly yours,

To: Brookhaven Town Board.

I am writing to let you know how urgently we need more affordable senior housing on Long Island, and the project for On the Common at Rocky Point fits this need perfectly.

I am approaching 80 years old and have been a Long Island resident all my life. Within the coming year or two, I am going to have to sell my home in Sayville because I can no longer keep it up by myself. I really want to stay on Long Island and be close to my daughter, who has lived in Rocky Point for 14 years, and my granddaughters. On the Common would provide exactly the size space I need at a price I can afford, and I would be near my family, too.

On the Common would also help the area look more presentable, and with its close proximity to town, it would be convenient for seniors to access stores and restaurants, and I'm sure it would even lead to greater success for the local businesses in the area.

The population of our country is aging. There are more people over the age of 65 than ever before. We want to remain independent as long as we can, and we need more affordable housing on Long Island. On the Common at Rocky Point would be an excellent asset to the community.

Sincerely,

Ingrid Vessie

Angid Vessie

### August 18, 2017

Brookhaven Town Board One Independence Hill Farmingville, NY 11738

Re: Senior Citizen apartments to be built in Rocky Point

I am a 73 year old resident of the Town of Brookhaven and I hope that the project known as "on the Commons" will be approved as soon as possible. We need affordable apartments where the senior citizen population who can no longer keep up with the cost and constant upkeep of their current homes can move to and continue to enjoy living here on Long Island.

Yours truly,

Mrs Franco Mangioria

Dear Brookhaven Town Board,

My name is Joan Collier. I am 82 years young and a Brookhaven resident. I am excited to hear about On The Common in Rocky Point. My children live in Rocky Point and I would like to live closer to them. My dream is to one day live in a beautiful, affordable senior apartment close to my children. On the Common in Rocky Point is the perfect solution for me and I'm sure many others who find it difficult to meet their bills.

Thank you for your time,

Joan Collier

To whom it may concern:

August 17, 2017

I am a 68 year old resident of Rocky Point. I have applied for an opening in the planned "On The Commons" project. I am retired and living on Social Security. The current cost for any apartment here and the surrounding towns has risen for seniors to an out of reach prospect. We need help all around just to survive. If we had approval for this project it would go a long way in helping the few citizens that are given the opportunity to live there. We appreciate the chance Landmark Property has given us.

Irene Divon

Ä,



### EXHIBIT D-3

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

# New York Law Journal Real Estate Trends

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

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An **ALM** Publication

WEDNESDAY, MARCH 22, 2017

VOLUME 257-NO. 54

ZONING AND LAND USE PLANNING

# Eligibility of Residential Developments for IDA Benefits

By Anthony S. Guardino



thas 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.

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 riauppauge 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 multiphase revitalization project that was planned to include additional mixeduse 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.

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### EXHIBIT D-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

PRESENT: HON. JEFFREY S. BROWN
JUSTICE

In the Matter of DONALD L. RYAN, FLAVIA IANNACCONE, JAMES DENON, JOHN M. WILLAMS, REGINAL LUCAS and ROBERT DeBREW, JR.,

Petitioners,

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

TRIAL/IAS PART 13

INDEX # 5324/16

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

XXX

-against-

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY, RENAISSANCE DOWNTOWNS URBANAMERICA, LLC, and RDUA PARCEL I LLC,

ν	Respondents.
	ХХ

The following papers were read on this motion:

Papers Numbered

Notice of Petition, Affidavits, Exhibits, Memorandum Annexed

Verified Answers

3,4,5

Opposing Affidavits

6,7,8,9,10,11,12

Reply Affidavits

13, 14

Sur-Reply Affidavit

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 1 of the multi-phase Village of Hempstead downtown revitalization project! 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 Idus. Dev. Agency, 52 Misc 3d 533 [Sup Ct, Seneca County 2016 Falvey, J.]; Dudley v. Kerwick, 52 NY2d 542 [1981]; cf.

<sup>&</sup>lt;sup>1</sup>The 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,<sup>2</sup> 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

<sup>&</sup>lt;sup>2</sup>As 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

EFFREY S. BROWN

J.S.C.

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