

Date: June 14, 2017

At a meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), held on the 14th day of June, 2017 at 12:00 p.m. local time, the Town of Brookhaven Media Room, 1 Independence Hill, 2<sup>nd</sup> Floor, Farmingville, New York 11738, the following members of the Agency were:

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

Recused:

Absent:

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 the transfer of the ownership of the Company in connection with a certain industrial development facility more particularly described below (American Capital Energy-Holtsville, LLC 2016 Facility).

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

Voting Aye

Braun  
Callahan  
Grucci  
Kelly  
Middleton  
Pollakusky  
Scheidt

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY CONSENTING TO THE TRANSFER OF OWNERSHIP OF AMERICAN CAPITAL ENERGY-HOLTSVILLE, LLC TO AGILITAS ENERGY, LLC AND TO THE CONTINUED LEASING OF THE FACILITY TO AMERICAN CAPITAL ENERGY-HOLTSVILLE, LLC.

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

WHEREAS, the Agency previously provided assistance to American Capital Energy-Holtsville, LLC, a Delaware business corporation authorized to transact business in the State of New York (the "**Company**"), in the acquisition of a long term leasehold interest in an approximately 5.7 acre parcel of land located at 249 Buckley Road, Holtsville, New York 11742 (the "**Land**") and all buildings and other structure located thereon (the "**Improvements**") owned by the Town of Brookhaven (the "**Town**"), and the construction of an approximately 4.5 acre solar array thereon and equipping thereof, including, but not limited to, approximately 5,080 ground-mounted 345-watt solar modules, racking systems supported by ballasted foundations, and thirty-two (32) 36 kilowatt inverters and two (2) 28 kilowatt inverter (the "**Equipment**"; and together with the Land and the Improvements, the "**Facility**"), which Facility is to be leased by the Agency to the Company and used by the Company as a solar electric generating facility (the "**Project**"); and

WHEREAS, the Agency previously acquired subleasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of August 1, 2016 (the "**Company Lease**"), by and between the Company and the Agency, a memorandum of which Company Lease was to be recorded in the office of the Suffolk County Clerk;

WHEREAS, the Agency previously acquired title to the Equipment pursuant to a certain Bill of Sale, dated August 30, 2016 (the "**Bill of Sale**"), from the Company to the Agency; and

WHEREAS, the Agency is currently sub-subleasing and leasing the Facility to the Company, pursuant to a certain Lease and Project Agreement, dated as of August 1, 2016 (the "**Lease Agreement**"), by and between the Agency and the Company; and

WHEREAS, the Agency previously consented to the acquisition of up to one hundred percent (100%) interest in the Company by Greenwood Energy Holdings, LLC, a Delaware limited liability company ("**Greenwood Energy**"), and Greenwood Energy Solar Holdings 4, LLC, a Delaware limited liability company ("**Greenwood 4**"; and together with Greenwood Energy, "**Greenwood**"); and

WHEREAS, pursuant to Section 8.3 of the Lease Agreement, the Company may not transfer ownership of the Company without the prior written consent of the Agency; and

WHEREAS, Agilitas Energy, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of Agilitas Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, "**Agilitas**"), has now applied to the Agency for the Agency's consent to the acquisition by Agilitas of up to one hundred percent (100%) interest in the Company; and

WHEREAS, the Company has requested the Agency's consent to transfer up to one hundred percent (100%) of the interest in the Company to Agilitas, pursuant to Section 8.3 the Lease Agreement; and

WHEREAS, the Agency will consent to the transfer of ownership of the Company pursuant to this resolution and a certain Consent of Agency to Change in Ownership of Company, dated as of June 1, 2017 or such other date as may be determined by the Chairman, CEO and counsel to the Agency (the "**Consent**"); and

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

WHEREAS, the Company and Agilitas have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the transfer of ownership of the Company and the continued leasing and sub-subleasing of the Facility.

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

Section 1. The Agency hereby finds and determines:

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

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

(c) The transfer of ownership of the Company and of its subleasehold and leasehold interest in the Facility to Agilitas will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The transfer of ownership of the Company and of its subleasehold and leasehold interest in the Facility to Agilitas 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 its counsel, the Facility continues to conform with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local land use plans for the area in which the Facility is located; and

(f) It is desirable and in the public interest for the Agency to consent to the transfer of ownership of the Company and of its subleasehold and leasehold interest in the Facility to Agilitas; and

(g) The Consent will be an effective instrument whereby the Agency will provide its consent to the transfer of ownership of the Company, including its interests in the Facility, to Agilitas.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) consent to the transfer of ownership of the Company to Agilitas; (ii) execute, deliver and perform the Consent, and (iii) execute, deliver and perform such related documents as may be, in the judgment of the Chairman, Vice Chairman, Chief Executive Officer or counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution.

Section 3. Subject to the provisions of this resolution, the Lease Agreement and the Consent, the Agency hereby consents to the transfer of ownership of the Company to Agilitas and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such transfer of ownership of the Company to Agilitas are hereby approved, ratified and confirmed.

Section 4.

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

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

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

cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 6. Any expenses incurred by the Agency with respect to the transactions contemplated herein shall be paid by the Company and Agilitas. By acceptance hereof, the Company and Agilitas agree to pay such expenses and further agree to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility. The Consent of the Agency to the acquisition of up to one hundred percent (100%) of the equity ownership in the Company by Agilitas is subject to the payment of all outstanding invoices of the Agency, the Agency's general counsel, Annette Eaderesto, Esq. and the Agency's general counsel, Nixon Peabody, LLP.

Section 7. This resolution shall take effect immediately.

**ADOPTED:** June 14, 2017

**ACCEPTED:** \_\_\_\_\_, 2017

**AMERICAN CAPITAL ENERGY-HOLTSVILLE, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**AGILITAS ENERGY, LLC**

By: \_\_\_\_\_  
Name:  
Title:

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

I, the undersigned Secretary of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on the 14th day of June, 2017, 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 14th day of June, 2017.

By   
Secretary

Date: June 14, 2017

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

Recused:

Absent:

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 the transfer of the ownership of the Company in connection with a certain industrial development facility more particularly described below (American Capital Energy-Manorville, LLC 2016 Facility).

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

Voting Aye

Braun  
Callahan  
Grucci  
Kelly  
Middleton  
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Scheidt

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY CONSENTING TO THE TRANSFER OF OWNERSHIP OF AMERICAN CAPITAL ENERGY-MANORVILLE, LLC TO AGILITAS ENERGY, LLC AND TO THE CONTINUED LEASING OF THE FACILITY TO AMERICAN CAPITAL ENERGY-MANORVILLE, LLC.

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

WHEREAS, the Agency previously provided assistance to American Capital Energy-Manorville, LLC, a Delaware business corporation authorized to transact business in the State of New York (the "**Company**"), in the acquisition of a long term leasehold interest in an approximately 4.8 acre parcel of land located at 2 Paper Mill Road, Manorville, New York 11950 (the "**Land**") and all buildings and other structures located thereon (the "**Improvements**") owned by the Town of Brookhaven (the "**Town**") and the construction of an approximately 3.5 acre solar array thereon and the equipping thereof, including, but not limited to, approximately 3,908 ground-mounted 345-watt solar modules, racking systems supported by ballasted foundations, and twenty-five (25) 36 kilowatt inverters and one (1) 28 kilowatt inverter (collectively, the "**Equipment**"; and together with the Land and the Improvements, the "**Facility**"), which Facility is currently leased by the Agency to the Company and used by the Company as a solar electric generating facility (the "**Project**"); and

WHEREAS, the Agency previously acquired subleasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of August 1, 2016 (the "**Company Lease**"), by and between the Company and the Agency, a memorandum of which Company Lease was to be recorded in the office of the Suffolk County Clerk;

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LLC, a Delaware limited liability company ("**Greenwood 4**"; and together with Greenwood Energy, "**Greenwood**"); and

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

(c) The transfer of ownership of the Company and of its subleasehold and leasehold interest in the Facility to Agilitas will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The transfer of ownership of the Company and of its subleasehold and leasehold interest in the Facility to Agilitas 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 its counsel, the Facility continues to conform with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local land use plans for the area in which the Facility is located; and

(f) It is desirable and in the public interest for the Agency to consent to the transfer of ownership of the Company and of its subleasehold and leasehold interest in the Facility to Agilitas; and

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Section 5. Subject to the provisions of this resolution and the Lease Agreement, the officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional

certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 6. Any expenses incurred by the Agency with respect to the transactions contemplated herein shall be paid by the Company and Agilitas. By acceptance hereof, the Company and Agilitas agree to pay such expenses and further agree to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility. The Consent of the Agency to the acquisition of up to one hundred percent (100%) of the equity ownership in the Company by Agilitas is subject to the payment of all outstanding invoices of the Agency, the Agency's general counsel, Annette Eaderesto, Esq. and the Agency's general counsel, Nixon Peabody, LLP.

Section 7. This resolution shall take effect immediately.

**ADOPTED:** June 14, 2017

**ACCEPTED:** \_\_\_\_\_, 2017

**AMERICAN CAPITAL ENERGY-MANORVILLE, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**AGILITAS ENERGY, LLC**

By: \_\_\_\_\_  
Name:  
Title:

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

I, the undersigned Secretary of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the "**Agency**"), including the resolutions contained therein, held on the 14th day of June, 2017, 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 14th day of June, 2017.

By   
Secretary

Date: June 14, 2017

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

Recused:

Absent:

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 (Yaphank AVR Boulevard Chelsea LLC 2017 Facility) and the leasing of the facility to Yaphank AVR Boulevard Chelsea LLC.

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

Voting Aye

Braun  
Callahan  
Grucci  
Kelly  
Middleton  
Pollakusky  
Scheidt

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN  
INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE  
APPOINTMENT OF YAPHANK AVR BOULEVARD  
CHELSEA LLC, A NEW YORK LIMITED LIABILITY  
COMPANY, ON BEHALF OF ITSELF AND/OR THE  
PRINCIPALS OF YAPHANK AVR BOULEVARD CHELSEA  
LLC AND/OR AN ENTITY FORMED OR TO BE FORMED ON  
BEHALF OF ANY OF THE FOREGOING AS AGENT OF THE  
AGENCY FOR THE PURPOSE OF ACQUIRING,  
CONSTRUCTING AND EQUIPPING THE FACILITY,  
APPROVING THE ACQUISITION, CONSTRUCTION AND  
EQUIPPING OF SUCH INDUSTRIAL DEVELOPMENT  
FACILITY AND MAKING CERTAIN FINDINGS AND  
DETERMINATIONS WITH RESPECT TO THE FACILITY  
AND APPROVING THE FORM, SUBSTANCE AND  
EXECUTION OF RELATED DOCUMENTS

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

WHEREAS, Yaphank AVR Boulevard Chelsea 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 Yaphank AVR Boulevard Chelsea LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "**Company**"), has applied to the Agency for assistance in connection with (i) the acquisition of an approximately 3.33 acre parcel of land located at the southwest corner of The Boulevard West and Park Drive, Yaphank, Town of Brookhaven, New York (more particularly described as SCTM# 0200-583.00-02.00-003.002) (the "**Land**"), (ii) the construction of two (2) buildings, totaling approximately 99,492 square feet, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the "**Improvements**"), and (iii) the acquisition and installation therein of certain equipment and personal property, including but not limited to furniture, office equipment, computers and kitchen equipment (the "**Equipment**"; and, together with the Land and the Improvements, the "**Facility**"), which Facility will be leased by the Agency to the Company, and used by the Company as an assisted living facility consisting of a special needs unit with seventy-seven (77) beds and a supportive care unit with forty-one (41) beds (the "**Project**"), including the following as they relate to the acquisition, construction and equipping of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, construction and equipping of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the acquisition, construction and equipping of the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery and other

tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under such Facility; 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 June 1, 2017 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 June 1, 2017 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 sales and use taxes in an amount not to exceed \$817,965, 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), consistent with the policies of the Agency; 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 June 5, 2017 and notice of the Hearing was given and such notice (together with proof of publication) together with the minutes of the Hearing are in substantially in the form annexed hereto as Exhibits A and B respectively; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed Facility is either an inducement to the Company to maintain and expand the Facility in the Town of Brookhaven or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, the Agency required the Company to provide to the Agency a feasibility report (the “**Feasibility Study**”), together with such letters or reports from interested parties and governmental agencies or officials (the “**Letters of Support**”) (the Feasibility Study and the Letters of Support are collectively, the “**Requisite Materials**”) to enable the Agency to make findings and determinations that the Facility qualifies as a “project” under the Act and that the Facility satisfies all other requirements of the Act, and such Requisite Materials are listed below and attached as Exhibit E hereof:

1. Economic Impact Analysis and Assessment of Project Benefits, dated March 29, 2011 by Nelson, Pope & Voorhis, LLC (NPV);
2. Addendum to Economic Impact Analysis – The Boulevard Assisted Living Facility, dated April 21, 2017 by NPV;
3. Commercial Market Analysis – The Meadows at Yaphank PDD, dated March 29, 2011 by NPV;
4. Revised Tax Impact/School District Analysis – As of Right Development versus the Meadows at Yaphank PDD, dated January 2010 by Pearl M. Kamer, Ph.D.;
5. Longwood Central School District Letter, dated March 29, 2017;
6. Newsday Article, Printed Newspaper Version from May 5, 2017;
7. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
8. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.; and

WHEREAS, the Agency’s Uniform Tax Exemption Policy (“**UTEP**”), which such UTEP is annexed hereto as Exhibit F, provides for the granting of financial assistance by the Agency for unusual projects pursuant to Sections 3(B), 8(A) and 8(C); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “**SEQR Act**” or “**SEQR**”), the Agency constitutes a “State Agency”; and

WHEREAS, the Facility is part of a larger Action, specifically, the Meadows at Yaphank Planned Development District; and

WHEREAS, the Applicant and/or its predecessor in interest submitted a request for rezoning to Planned Development District to the Brookhaven Town Board (“**Town Board**”) for the Meadows at Yaphank Planned Development district (the “**Action**”); and

WHEREAS, the Town Board coordinated review of the application with Involved Agencies under the provisions of SEQR, and determined that the Meadows at Yaphank Planned Development District was a Type 1 Action; and



WHEREAS, the Town Board declared itself Lead Agency for purposes of review of the Action, and on April 12, 2011 determined that the Draft Generic Environmental Impact Statement (“**DGEIS**”) for the Action was adequate for public review; and

WHEREAS, following public comment, the Town Board accepted a Final Generic Environmental Impact Statement (“**FGEIS**”), on August 16, 2011; and

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

WHEREAS, by resolution dated September 17, 2014, the Agency concurred with the Findings Statement of the Lead Agency and adopted the Lead Agency’s Findings Statement as its own Findings Statement under SEQR; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company;

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

Section 1. The Agency previously reviewed the Facility as part of the Meadows at Yaphank Planned Development District, and by resolution dated September 17, 2014, adopted a Findings Statement for the Action. Therefore, no further SEQR review of the Facility is required.

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

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

(b) Such lack of senior assisted living 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 assisted living housing will enable persons to remain in the Town of Brookhaven and thereby to support the businesses, retailers, banks, and other financial institutions, insurance companies, health care and legal services providers and other merchants in the Town of Brookhaven which will increase the economic health and well- being of the residents of the Town of Brookhaven, help preserve and increase permanent private sector jobs in furtherance of the Agency’s public purposes as

set forth in the Act, and therefore the Agency finds and determines that the Facility is a commercial project within the meaning of Section 854(4) of the Act;

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

Section 3. The Agency hereby finds and determines:

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

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

(c) The acquisition, construction and equipping of the Facility and the leasing of the Facility to the Company, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Town of Brookhaven, and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The acquisition, construction and equipping of the Facility is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

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

(f) It is desirable and in the public interest for the Agency to lease the Facility to the Company; and

(g) The Company Lease will be an effective instrument whereby the Agency leases the Land and the Improvements from the Company; and

(h) The Lease Agreement will be an effective instrument whereby the Agency leases the Facility to the Company, the Agency and the Company set forth the terms and conditions of their agreement regarding payments-in-lieu of taxes, the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will describe the circumstances in which the Agency may recapture some or all of the benefits granted to the Company; and

(i) The Loan Documents to which the Agency is a party will be effective instruments whereby the Agency and the Company agree to secure the Loan made to the Company by the Lender.

Section 4. The Agency has assessed all material information included in connection with the Company's application for financial assistance, including but not limited to, the cost-benefit analysis prepared by the Agency and such information has provided the Agency a reasonable basis for its decision to provide the financial assistance described herein to the Company.

Section 5. In consequence of the foregoing, the Agency hereby determines to: (i) lease the Land and the Improvements from the Company pursuant to the Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) lease and sublease the Facility to the Company pursuant to the Lease Agreement, (iv) execute, deliver and perform the Lease Agreement, (v) grant a mortgage on and security interest in and to the Facility pursuant to the Loan Documents, and (vi) execute, deliver and perform the Loan Documents to which the Agency is a party.

Section 6. The Agency is hereby authorized to acquire the real property and personal property described in Exhibit A and Exhibit B, respectively, to the Lease Agreement, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 7. The Agency is hereby authorized to acquire the Facility 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 8. 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 sales and use taxes in an amount not to exceed \$817,965, 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), consistent with the policies of the Agency.

Section 9. Subject to the provisions of this resolution, the Company is herewith and hereby appointed the agent of the Agency to acquire, construct and equip the Facility. The Company is hereby empowered to delegate its status as agent of the Agency to its agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to acquire, construct and equip the Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency solely for purposes of making sales or leases of goods, services and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agent of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. This agency appointment expressly excludes the purchase by the Company of any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The Company shall indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen,

vendors and/or suppliers and the Company, as agent of the Agency. The aforesaid appointment of the Company as agent of the Agency to acquire, construct and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which the Company has received exemptions from sales and use taxes in an amount not to exceed \$817,965 in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time. The aforesaid appointment of the Company is subject to the completion of the transaction and the execution of the documents contemplated by this resolution.

Section 10. The Company hereby agrees to comply with Section 875 of the Act. The Company further agrees that the exemption of sales and use tax provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this Authorizing Resolution is subject to termination and recapture of benefits pursuant to Section 875 of the Act and the recapture provisions of the Lease Agreement.

Section 11. 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 12.

(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 13. 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 14. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further agree to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility.

Section 15. This resolution shall take effect immediately.

ADOPTED: JUNE 14, 2017

ACCEPTED: \_\_\_\_\_, 2017

**YAPHANK AVR BOULEVARD  
CHELSEA LLC**

By: \_\_\_\_\_

Name:

Title:

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

I, the undersigned Secretary of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the "**Agency**"), including the resolutions contained therein, held on the 14th day of June, 2017, 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 14th day of June, 2017.

By:  \_\_\_\_\_  
Secretary

EXHIBIT A

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NOTICE OF PUBLIC HEARING

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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 5<sup>th</sup> day of June, 2017, at 11:00 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:

Yaphank AVR Boulevard Chelsea 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 Yaphank AVR Boulevard Chelsea LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "**Company**"), has applied to the Agency for assistance in connection with (i) the acquisition of an approximately 3.33 acre parcel of land located at the southwest corner of The Boulevard West and Park Drive, Yaphank, Town of Brookhaven, New York (more particularly described as SCTM# 0200-583.00-02.00-003.002) (the "**Land**"), (ii) the construction of two (2) buildings, totaling approximately 99,492 square feet, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the "**Improvements**"), and (iii) the acquisition and installation therein of certain equipment and personal property, including but not limited to furniture, office equipment, computers and kitchen equipment (the "**Equipment**"; and, together with the Land and the Improvements, the "**Facility**"), which Facility will be leased by the Agency to the Company, and used by the Company as an assisted living facility consisting of a special needs unit with seventy-seven (77) beds and a supportive care unit with forty-one (41) beds. The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment and lease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility, exemptions from sales and use taxes in connection with the construction and equipping of the Facility and exemption of real property taxes consistent with the policies of the Agency.

A representative of the Agency will at the above-stated time and place hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the Facility. At the hearing, all persons will have the opportunity to review the application for financial assistance filed by the Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Dated: May 25, 2017

TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY

By: Lisa MG Mulligan  
Title: Chief Executive Officer

MINUTES OF PUBLIC HEARING HELD ON  
June 5, 2017

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY  
(YAPHANK AVR BOULEVARD CHELSEA LLC 2017 FACILITY)

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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:

Yaphank AVR Boulevard Chelsea 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 Yaphank AVR Boulevard Chelsea LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "**Company**"), has applied to the Agency for assistance in connection with (i) the acquisition of an approximately 3.33 acre parcel of land located at the southwest corner of The Boulevard West and Park Drive, Yaphank, Town of Brookhaven, New York (more particularly described as SCTM# 0200-583.00-02.00-003.002) (the "**Land**"), (ii) the construction of two (2) buildings, totaling approximately 99,492 square feet, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the "**Improvements**"), and (iii) the acquisition and installation therein of certain equipment and personal property, including but not limited to furniture, office equipment, computers and kitchen equipment (the "**Equipment**"; and, together with the Land and the Improvements, the "**Facility**"), which Facility will be leased by the Agency to the Company, and used by the Company as an assisted living facility consisting of a special needs unit with seventy-seven (77) beds and a supportive care unit with forty-one (41) beds. The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment and lease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility, exemptions from sales and use taxes in connection with the construction and equipping of the Facility and



exemption of real property taxes consistent with the policies of the Agency.

Section 4. The hearing officer then opened the hearing for comments from the floor for or against the proposed transfer of real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility. The following is a listing of the persons heard and a summary of their views:

David Curry, Farrell Fritz – no comment

Longwood Central School District sent a letter supporting the project (see attached).

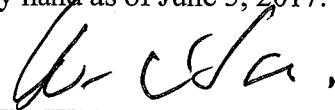
Section 5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at 11:30 a.m.

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 June 5, 2017, at 11:00 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 June 5, 2017.



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Assistant Secretary

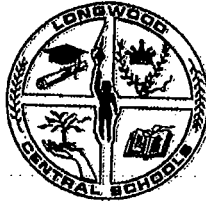
# LONGWOOD CENTRAL SCHOOLS

35 YAPHANK-MIDDLE ISLAND ROAD • MIDDLE ISLAND, NEW YORK 11953-2373

**MICHAEL R. LONERGAN, DSW**  
Superintendent of Schools  
631-345-2172 ~ Fax 631-345-2166

**DEBRA WINTER**  
Assistant Superintendent Student & Community Services  
631-345-2163 ~ Fax 631-345-9286

**MARIA CASTRO, Ed. D.**  
Assistant Superintendent Instruction & Learning  
631-345-2791 ~ Fax 631-345-2166



**JANET M. BRYAN**  
Assistant Superintendent District Operations  
631-345-2782 ~ Fax 631-345-2166

**RICHARD A. KOLLAR**  
Interim Assistant Superintendent for Human Resources  
631-345-5896 ~ Fax 631-345-2178

March 29, 2017

**RECEIVED**  
MAR 31 2017  
TOWN OF BROOKHAVEN  
ECONOMIC DEVELOPMENT

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

Dear Members of the IDA Board,

On Tuesday March 28, 2017, our superintendent of schools and board leadership team had an outstanding update meeting with Mr. Brian Ferruggiari from AVR Realty regarding the status of the Boulevard Project in Yaphank. As you are aware this needed economic development project is vital to not only our school district and community, but also for the benefit of the entire Long Island region. Mr. Ferruggiari discussed the current progress and future plans of the project. There is no question this critical economic development will provide vital assistance for our community's tax base and become an important driver to stabilize property taxes for residents of the various taxing districts. Our school district is in full support of the developer's application for a tax abatement schedule for the hotel and assisted living facility as it will allow them to move the project along toward their goal of full build out. We also realize how important the creation of good paying permanent jobs these projects will provide is to the region. We thank you for your good work in guiding the way for the economic growth of our town and appreciate your support.

Sincerely,

*Daniel Tomaszewski*

Daniel Tomaszewski  
Longwood Board of Education President

*Michael R. Lonergan*

Michael R. Lonergan, DSW  
Superintendent of Schools

## 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), Longwood School District, Suffolk County and Appropriate Special Districts

<u>Tax Year</u>	<u>PILOT Payment Amount</u>
1	\$31,376.00
2	\$32,004.00
3	\$32,644.00
4	\$37,722.00
5	\$80,868.00
6	\$137,178.00
7	\$210,495.00
8	\$298,534.00
9	\$394,391.00
10	\$490,877.00
11	\$584,394.00
12	\$675,551.00
13	\$708,515.00

EXHIBIT D

SEQR Findings Statement

EXHIBIT E

**Requisite Materials**

EXHIBIT E-1

Economic Impact Analysis and Assessment of Project Benefits

EXHIBIT E-2

Addendum to Economic Impact Analysis – The Boulevard Assisted Living Facility



EXHIBIT E-3

Commercial Market Analysis – The Meadows at Yaphank PDD

EXHIBIT E-4

Revised Tax Impact/School District Analysis – As of Right Development versus the  
Meadows at Yaphank PDD

EXHIBIT E-5

Longwood Central School District Letter

EXHIBIT E-6

Newsday Article, Printed Newspaper Version from May 5, 2017

EXHIBIT E-7

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

EXHIBIT E-8

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

## EXHIBIT F

### Town of Brookhaven Industrial Development Agency Uniform Tax Exemption Policy

RESOLUTIONS OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE CONVEYANCE TO **MCRS BROOKHAVEN LLC** OF CERTAIN EQUIPMENT AND AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF AGREEMENTS PERTAINING THERETO, APPROVING THE SALE OF A CERTAIN FACILITY BY **MCRS BROOKHAVEN LLC** TO **AMERICAN HOTEL INCOME PROPERTIES REIT INC.** AND/OR **AHIP NY BELLPORT PROPERTIES LLC** AND/OR **AHIP NY BELLPORT ENTERPRISES LLC** AND/OR **ONE NY BELLPORT 2 MANAGEMENT LLC** AND/OR THE PRINCIPALS OF ANY OF THE FOREGOING AND/OR OTHER ENTITIES TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING (COLLECTIVELY, THE “**APPLICANTS**”) AND AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF AGREEMENTS PERTAINING THERETO, AND APPROVING A MORTGAGE REFINANCING AND EXTENSIONS AND INCREASES THEREOF, AND THE EXECUTION, DELIVERY AND PERFORMANCE OF THE AGREEMENTS IN CONNECTION THEREWITH.

WHEREAS, the Town of Brookhaven Industrial Development Agency (the “**Agency**”) was created by Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York (collectively, the “**Act**”), with the authority and power to, among other things, acquire, construct, renovate and equip a project, provide financial assistance, and mortgage, lease, grant options with respect to and dispose of property; and

WHEREAS, the Agency previously provided its assistance to BRIAD LODGING GROUP YAPHANK, LLC (the “**Original Company**”) (i) in connection with the acquisition, construction and equipping of an approximately 60,115 square foot, 128-room hotel facility on approximately 4.6 acres of land (the “**Land**”) located at the intersection of Sawgrass Drive and Horseblock Road, Bellport New York 11713 (SCTM # 200-813-1-008.32) (the “**Original Facility**”), title to which was acquired by the Agency pursuant to a deed dated December 19, 2008, and leased by the Agency to the Original Company, with an obligation of the Original Company to purchase same, for use as a hotel facility that is a tourism destination, (ii) by granting of mortgage liens thereon and security interests therein, and (iii) by providing financial assistance within the meaning of the Act; and

WHEREAS, the Agency held a public hearing on August 21, 2008, so that all persons with views in favor of, or opposed to either the financial assistance for the Original Facility contemplated by the Agency or the location or nature of the Original Facility, could be heard; and

WHEREAS, on September 15, 2008, the Agency adopted its authorizing resolution, by which, among other matters, the Agency determined (i) that the action relating to the acquisition, construction, equipping and operation of the Original Facility is an “unlisted” action, as that term is defined in the State Environmental Quality Review Act (Article 8 of the



Environmental Conservation Law) and will not have a “significant effect” on the environment, such determination constituting a negative declaration for purposes of said law, (ii) based upon the representations of the Original Company and its representative, RK Consulting Service, Inc., that the Original Facility and its operations thereat constitutes a “tourism destination,” (iii) to proceed under the provisions of the Act to acquire, construct, equip, repair and maintain the Original Facility, lease the Original Facility to the Company (with an obligation to purchase), and to provide “financial assistance” within the meaning of the Act to the Company, including straight leases, exemptions from taxation in accordance with Section 874 of the Act, and (iv) to grant mortgages on, and/or security interest in, the Original Facility, including replacements, substitutions, extensions and additions to such mortgages and security interests; and

WHEREAS, the Agency acquired title to the Original Facility pursuant to a certain Bargain and Sale Deed, dated December 19, 2008 (the “**Bargain and Sale Deed**”) from the Original Company to the Agency; and

WHEREAS, the Agency leased the Original Facility to the Original Company pursuant to a certain Lease Agreement, dated as of December 1, 2008 (the “**Original Lease Agreement**”) by and between the Agency, as lessor, and the Original Company, as lessee; and

WHEREAS, in connection with the leasing of the Original Facility, the Agency and the Original Company entered into a certain PILOT Agreement, dated as of December 1, 2008 (the “**Original PILOT Agreement**”), whereby the Original Company agreed to make payments-in-lieu-of-taxes on the Original Facility; and

WHEREAS, in connection with the acquisition, construction and equipping of the Original Facility, the Agency entered into a certain Mortgage, Security Agreement and Fixture Filing, dated as of December 19, 2008 (the “**2008 Mortgage**”), from the Agency and the Original Company to Sun National Bank, securing the original principal amount of \$17,044,000.00, and the Agency provided its financial assistance in connection with said mortgage, inter alia, in the form of exemptions from mortgage recording tax;

WHEREAS, the Agency previously consented to the assignment of the Original Facility by the Original Company to MCRS BROOKHAVEN LLC (the “**Assignor Company**”) pursuant to a certain Assignment and Assumption of Lease Agreement and Consent, dated December 1, 2010 (the “**2010 Lease Assignment**”), and pursuant to a certain Assignment and Assumption of PILOT Agreement, dated December 1, 2010 (the “**2010 PILOT Assignment**”), both by and among the Agency, the Original Company, and the Assignor Company; and

WHEREAS, the Agency (i) entered into, and currently leases the Original Facility to the Assignor Company pursuant to, a certain Amended and Restated Lease Agreement, dated as of December 1, 2010 (the “**2010 Amended and Restated Lease Agreement**”), by and between the Agency and the Assignor Company, amending and restating the Original Lease Agreement, and (ii) entered into a certain Amended and Restated Payment-In-Lieu-of-Tax Agreement, dated as of December 1, 2010 (the “**2010 Amended and Restated PILOT Agreement**”), by and between the Agency and the Assignor Company, amending and restating the Original PILOT Agreement; and

WHEREASE, the Assignor Company subleased the Original Facility to MCRS Brookhaven Tenant LLC (the “**MCRS Subtenant**”), pursuant to a certain sublease agreement, dated as of December 1, 2010 (the “**Original Sublease Agreement**”), by and between the Assignor Company and the MCRS Subtenant; and

WHEREAS, the Assignor Company previously requested the Agency enter into a refinancing with The Washington Trust Company (the “**2012 Lender**”), with respect to the Original Facility, including a new mortgage in place of the 2008 Mortgage, and in furtherance thereof, the Agency entered into a certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of April 4, 2012 (the “**2012 Mortgage**”), from the Agency, the Assignor Company and MCRS Subtenant to the 2012 Lender, securing the original principal amount of \$10,350,000.00, and in place of the 2010 Mortgage, and the Agency provided its financial assistance in connection with said mortgage, inter alia, in the form of exemptions from mortgage recording tax;

WHEREAS, in connection with the 2012 Mortgage, the Agency and the Assignor Company amended the 2010 Amended and Restated Lease Agreement under a certain Amendment of Lease Agreement, dated as of April 4, 2012 (the “**2012 Lease Amendment**”); together with the 2010 Amended and Restated Lease Agreement, the “**MCRS Lease Agreement**”), by and between the Agency and the Assignor Company and countersigned by the MCRS Subtenant;

WHEREAS, the Assignor Company has requested that the Agency convey to the Assignor Company the Equipment (as defined under the MCRS Lease Agreement) other than fixtures affixed to and constituting a part of the building and structures on the Land (the “**Released Property**”); the Original Facility after the conveyance of the Released Property, may be referred to as the “**Facility**”) under the MCRS Lease Agreement (the “**Equipment Release**”); and

WHEREAS, the Assignor Company and AHIP NY Bellport Properties LLC (the “**Company**”) on its behalf and on behalf of American Hotel Income Properties REIT Inc. and/or AHIP NY Bellport Enterprises LLC (the “**Operator**”) and/or One NY Bellport 2 Management LLC (the “**Manager**”) and/or the principals of any of them and/or other entities to be formed on behalf of any them, has requested the Agency’s consent to sale of the Facility to the Company and the assignment by the Assignor Company to the Company of all of the Assignor Company’s rights, title and interest in, and the assumption by the Company of the Assignor Company’s obligations under, the MCRS Lease Agreement, the 2010 Amended and Restated PILOT Agreement and certain other agreements in connection with the Facility, and, in connection therewith, the Assignor Company will sell and convey the Released Equipment to the Operator (collectively, the “**Facility Sale**”); and

WHEREAS, the Company has requested the Agency’s consent to the refinancing of 2012 Mortgage, and increase in the amount secured thereby, in the aggregate amount of \$20,000,000.00, but not to exceed \$24,000,000.00, which refinancing and increase in amount secured thereby may be accomplished by the replacement of the 2012 Mortgage with a new mortgage in the aggregate amount of \$20,000,000.00, but not to exceed \$24,000,000.00, or

further encumbering the Facility with a new mortgage securing the approximate amount of \$10,000,000, but not to exceed \$14,000,000.00, to be consolidated with the 2012 Mortgage to secure the aggregate amount of \$20,000,000.00, but not to exceed \$24,000,000.00 (the “**Refinance**”); and

WHEREAS, the Company will sublease the Facility to the Operator pursuant to a certain sublease agreement (the “**Sublease Agreement**”) by and between Company, as sublessor, and the Operator, as sublessee; and

WHEREAS, the Facility will be managed by the Manager pursuant to a certain management agreement (the “**Management Agreement**”) by and among the Operator and the Manager; and

WHEREAS, the Agency, the Assignor Company, and others will enter such documents, upon advice of counsel, in both form and substance, as may be reasonably required to effectuate the Equipment Release, including a bill of sale, and such other documents as the Agency may require (the “**Release Documents**”); and

WHEREAS, the Agency, the Assignor Company, the Company, the Operator, the Manager and others will enter into such documents upon advice of counsel, in both form and substance, as may be reasonably required to effectuate the Facility Sale, including an assignment and assumption of the MCRS Lease Agreement and the 2010 Amended and Restated PILOT Agreement, an Amended and Restated Lease and Project Agreement, and such other documents as the Agency may require ( collectively, the “**Assignment Documents**”); and

WHEREAS, the Agency, the Company, the lender with respect to the Refinance, and others will enter into such documents upon advice of counsel, in both form and substance, as may be reasonably required to effectuate the Refinance, including a mortgage in the amount of \$10,000,000.00, but not to exceed \$14,000,000.00, and a consolidation, extension and modification agreement securing the aggregate sum of \$20,000,000.00, but not to exceed \$24,000,000.00, or a replacement mortgage in the amount of \$20,000,000.00, but not to exceed \$24,000,000.00, and such other such other documents as the Agency may approve (collectively, the “**Refinance Documents**”); and

WHEREAS, the Agency will not provide financial assistance in connection with the Equipment Release, the Facility Sale or the Refinance in the form of exemptions from mortgage recording taxes or sales or use taxes, or any additional abatement of real estate taxes; and

WHEREAS, the Agency has given due consideration to the representations of the Applicants that the transactions referred to herein are either an inducement to the Company to maintain the Facility in the Town of Brookhaven or are necessary to maintain the competitive position of the Company in its industry; and

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

WHEREAS, the Company, the Operator and Manager have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the Equipment Release, the Facility Sale and the Refinance.

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

Section 1. The Agency hereby finds and determines:

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

b. The Facility constitutes a “project”, as such term as defined in the Act; and

c. The Equipment Release, the Facility Sale and the Refinance will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven, Suffolk County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

d. The Equipment Release, the Facility Sale and Refinance are reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

e. Based upon the representations of the Applicants, the Facility conforms with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local use plans for the area in which the Facility is located; and

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

g. It is desirable and in the public interest for the Agency to consent to and effectuate the Equipment Release, the Facility Sale and the Refinance.

Section 2. The Agency, subject to the resolutions herein, including the execution and delivery, and receipt, of such instruments and documents as may be required hereunder, in furtherance of the purposes of the Act, hereby consents to the Equipment Release, the Facility Sale and the Refinance.

Section 3. The Chairman, Chief Executive Officer, and/or any other member of the Agency are hereby authorized and directed to, on behalf of and in the name of the Agency, and in furtherance of these resolutions, (a) execute, deliver and perform, such agreements, modifications, amendments, approvals, notices, and other documents or instruments (including a Bill of Sale conveying the Released Equipment to the Assignor Company (the “**Bill of Sale**”), an Assignment and Assumption Agreement and Consent (the “**Assignment and Assumption Agreement and Consent**”) among the Agency, the Assignor Company and the Company, an Amended and Restated Lease and Project Agreement (the “**Amended and Restated Lease and Project Agreement**”) between the Agency and the Company, an Agency Compliance Agreement (the “**Operator Agency Compliance Agreement**”) between the Agency and the Operator, an Agency Compliance Agreement (the “**Manager Agency Compliance Agreement**”) between the Agency and the Manager, and a mortgage and/or mortgages and consolidation, extension and modification agreement(s) (collectively, the “**Mortgage**”) from or among the Agency, and the Company and/or the Operator, with or to lenders thereunder, in such form and containing such terms, conditions and provisions, as the person executing same or taking such action on behalf of the Agency shall deem necessary or desirable, and shall approve, such necessity or desirability and approval to be conclusively evidenced by his or her execution and delivery thereof, (b) require the Assignor Company to execute, deliver and perform, such agreements, modifications, amendments, approvals, notices, and other documents or instruments (including the Assignment and Assumption Agreement and Consent), in such form and containing such terms, conditions and provisions, and take such actions as the person acting on behalf of the Agency shall deem necessary or desirable, (c) require the Company, the Operator and/or the Manager to execute, deliver and perform, such agreements, modifications, amendments, approvals, notices, and other documents or instruments (including the Assignment and Assumption Agreement and Consent, the Amended and Restated Lease and Project Agreement, the Operator Agency Compliance Agreement, the Manager Agency Compliance Agreement, and the Mortgage), in such form and containing such terms, conditions and provisions, and take such actions as the person acting on behalf of the Agency shall deem necessary or desirable, and (d) take such further actions on behalf of the Agency as any of the Chairman, Chief Executive Officer and/or any other member of the Agency shall deem necessary or desirable.

Section 4. The Company, the Operator and the Manager hereby agree to comply with Section 875 of the Act. The Company, the Operator and the Manager further agree that the financial benefits provided pursuant to the Act are subject to termination and recapture of benefits pursuant to Section 875 of the Act and the recapture provisions of the Amended and Restated Lease and Project Agreement.

Section 5. Weinberg Gross & Pergament LLP are hereby appointed Transaction Counsel to the Agency, and is authorized and directed to work with Counsel to the Assignor Company, the Company, the Operator, the Manager, counsel to the lenders with respect to the Mortgages, and others, to prepare, for submission to the Agency, all documents necessary to effect the transaction described in these resolutions.

Section 6. Any and all acts, instruments, and other writings heretofore or hereafter performed and/or executed and delivered by any one or more of the Chairman, Chief Executive Officer or any member of the Agency, pursuant to the several foregoing resolutions,

for and on behalf of and in the name of the Agency, in connection with the transactions contemplated thereby, be and the same hereby are, in all respects ratified, confirmed and approved.

Section 7. The documents, including the Bill of Sale, the Assignment and Assumption Agreement and Consent, the Amended and Restated Lease and Project Agreement, the Operator Agency Compliance Agreement, the Manager Agency Compliance Agreement, and the Mortgage, promptly following the execution, and delivery thereof, be identified by any of the Chairman, Chief Executive Officer or any member of the Agency by his or her endorsement thereon and when so identified be filed with the official records of the Agency.

Section 8. The Chairman, Chief Executive Officer, Counsel to the Agency or any member of the Agency are hereby authorized and directed (i) to distribute copies of this resolution to the Assignor Company, the Company, the Operator, the Managers, and others, and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 9. Any expenses incurred by the Agency with respect to the Facility or the transactions contemplated hereby shall be paid by the Company, the Operator and/or the Manager. By acceptance hereof, the Company, the Operator and the Manager 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 or the transactions contemplated hereby.

Section 10. This resolution shall take effect immediately.

Adopted: June 14, 2017

Accepted: June \_\_, 2017

AHIP NY Bellport Properties LLC

By: \_\_\_\_\_,  
\_\_\_\_\_

AHIP NY Bellport Enterprises LLC

By: \_\_\_\_\_,  
\_\_\_\_\_

One NY Bellport 2 Management LLC

By: \_\_\_\_\_,  
\_\_\_\_\_