

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY AMENDING THE AGENCY'S AUTHORIZING RESOLUTION PERTAINING TO THE FACILITY FOR **TOPGOLF USA HOLTSVILLE, LLC** AND/OR ANY OF THE PRINCIPALS OF **TOPGOLF USA HOLTSVILLE, LLC** AND/OR OTHER ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING.

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, **TOPGOLF USA HOLTSVILLE, LLC**, a Delaware limited liability company authorized to conduct business in the State of New York, on behalf of itself and/or the principals of **TOPGOLF USA HOLTSVILLE, LLC** and/or an entity formed or to be formed on behalf of any of the foregoing (the "**Company**"), previously applied to the Agency for assistance in connection with the acquisition of an approximately 25.32 acre parcel of land located at Sandy Hollow Road, Farmingville, and Morris Avenue, Holtsville, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 0200-728.00-05.00-009.00 and 0200-729.00-01.0-016.00) (the "**Land**"), the construction of an approximately 60,000 square foot building and other improvements to be located thereon (the "**Improvements**"), including multi-level, climate controlled hitting bays, full service restaurant, bar and lounge, and event space, and the acquisition and installation therein of certain equipment (the "**Equipment**"; together with the Land and Improvements, the "**Facility**"), all to be leased by the Agency to the Company for use as a recreation entertainment facility with golf driving range, restaurant, event space and accessory recreational uses (the "**Project**"); and

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

WHEREAS, the Agency contemplates it will acquire a leasehold interest in the Land and Improvements under a certain Company Lease Agreement, dated as of December 1, 2019 or such other date as the Chairman, the Chief Executive Officer of the Agency or counsel to the Agency shall agree (the "**Company Lease Agreement**"), by and between the Company and the Agency, and

WHEREAS, the Agency contemplates that it will lease and sublease the Facility to the Company under a certain Lease and Project Agreement, dated as of December 1, 2019 or such other date as the Chairman, the Chief Executive Officer of the Agency or 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, consistent with the policies of the Agency, in the form of (i) exemptions from sales and use taxes on the acquisition, construction and equipping of the Facility, including fixtures, furniture and equipment to be installed in the Facility or in connection with the purchase or lease of equipment, building materials, services or other personal property part of or to become part of the Facility, in an amount not to exceed \$3,000,000.00, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached to the Authorizing Resolution (defined below), all consistent with the policies of the Agency; and

WHEREAS, the Agency required the Company to provide to the Agency a feasibility report, prepared by Nelson, Pope & Voorhis, LLP ("**NPV**"), dated September 16, 2019 (the "**Feasibility Study**"), 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

WHEREAS, the Facility will be used for recreational use as a golf entertainment complex by the general public as spectators or participants for recreational activities and would be considered a "recreational facility" as defined in Section 854(9) of the Act and a facility described in Section 862(2)(b) of the Act, and based upon the representations and warranties of the Company in the application for financial assistance filed by the Company, as amended and supplemented (the "**Application**"), including the Feasibility Study, the Facility will provide goods and services not reasonably accessible to the residents of the Town of Brookhaven;

WHEREAS, by a confirmation to be executed prior to the closing of the transactions described herein (the "**Confirmation**"), the Town Supervisor of the Town of Brookhaven, New York (the "**Town**"), will have confirmed the Agency's findings and determinations with respect to the Facility that the Facility qualifies as a "project" under the Act and that the Facility satisfies all other requirements of the Act; and

WHEREAS, a public hearing (the "**Hearing**") was held on November 12, 2019, so that all persons with views in favor of, or opposed to, either the financial assistance contemplated by the Agency or the location or nature of the Facility, could be heard; and

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

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

WHEREAS, the Agency, after due consideration of, among other things, the application of the Company and the representations by the Company that the proposed transfer of real estate is either an inducement to the Company to maintain or expand the Facility in the Town of Brookhaven or is necessary to maintain the competitive position of the Company in its industry, by resolution duly adopted on November 20, 2020 (the "**Authorizing Resolution**"), authorized the acquisition, construction and equipping of the Facility, the execution and

delivery of the Agency Documents (as defined therein), and determined that the action relating to the acquisition, construction, equipping and operation of the Facility is a “Type I” action, as that term is defined under SEQRA), and will not have a “significant effect” on the environment and an environmental impact statement will not be required; and

WHEREAS, the Company, by its counsel’s letter of March 17, 2020, advised the Agency that in connection with the financing of the Facility, the Company shall convey the Land to VEREIT Operating Partnership, L.P. or subsidiary thereof, and shall hold a leasehold interest in and to the Land under a certain ground lease to be entered into between VEREIT Operating Partnership, L. P. or subsidiary thereof, and the Company (the “**Leasehold Structure**”).

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 approves of the Leasehold Structure.

Section 2. The Agency hereby ratifies and confirms all terms contemplated by the Authorizing Resolution, including the economic benefits as stated therein, as amended by this Amended Authorizing Resolution.

Section 3. This amended resolution shall take effect immediately:

Adopted: March 25, 2020

Accepted: March __, 2020

TOPGOLF USA HOLTSVILLE, LLC

By: _____
Its: _____,

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN FACILITY AND TAKING OFFICIAL ACTION AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF AGREEMENTS AND TAKING OF CERTAIN OTHER ACTION PERTAINING TO THE FACILITY FOR **TOPGOLF USA HOLTSVILLE, LLC** AND/OR ANY OF THE PRINCIPALS OF **TOPGOLF USA HOLTSVILLE, LLC** AND/OR OTHER ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING, INCLUDING APPOINTING **TOPGOLF USA HOLTSVILLE, LLC** AND/OR ANY OF THE FOREGOING PERSONS AND/OR ENTITIES AS AGENT OF THE AGENCY FOR THE PURPOSE OF ACQUIRING, CONSTRUCTION AND EQUIPPING THE FACILITY.

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, **TOPGOLF USA HOLTSVILLE, LLC**, a Delaware limited liability company authorized to conduct business in the State of New York, on behalf of itself and/or the principals of **TOPGOLF USA HOLTSVILLE, LLC** and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), has applied to the Agency for assistance in connection with the acquisition of an approximately 25.32 acre parcel of land located at Sandy Hollow Road, Farmingville, and Morris Avenue, Holtsville, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 0200-728.00-05.00-009.00 and 0200-729.00-01.0-016.00) (the “**Land**”), the construction of an approximately 60,000 square foot building and other improvements to be located thereon (the “**Improvements**”), including multi-level, climate controlled hitting bays, full service restaurant, bar and lounge, and event space, and the acquisition and installation therein of certain equipment (the “**Equipment**”; together with the Land and Improvements, the “**Facility**”), all to be leased by the Agency to the Company for use as a recreation entertainment facility with golf driving range, restaurant, event space and accessory recreational uses (the “**Project**”); and

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

WHEREAS, the Agency contemplates it will acquire a leasehold interest in the Land and Improvements under a certain Company Lease Agreement, dated as of December 1,

2019 or such other date as the Chairman, the Chief Executive Officer of the Agency or counsel to the Agency shall agree (the "**Company Lease Agreement**"), by and between the Company and the Agency, and

WHEREAS, the Agency contemplates that it will lease and sublease the Company Facility to the Company under a certain Lease and Project Agreement, dated as of December 1, 2019 or such other date as the Chairman, the Chief Executive Officer of the Agency or 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, consistent with the policies of the Agency, in the form of (i) exemptions from sales and use taxes on the acquisition, construction and equipping of the Facility, including fixtures, furniture and equipment to be installed in the Facility or in connection with the purchase or lease of equipment, building materials, services or other personal property part of or to become part of the Facility, in an amount not to exceed \$3,000,000.00, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof), all consistent with the policies of the Agency; and

WHEREAS, the Agency required the Company to provide to the Agency a feasibility report, prepared by Nelson, Pope & Voorhis, LLP ("**NPV**"), dated September 16, 2019 (the "**Feasibility Study**"), 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

WHEREAS, the Facility will be used for recreational use as a golf entertainment complex by the general public as spectators or participants for recreational activities and would be considered a "recreational facility" as defined in Section 854(9) of the Act and a facility described in Section 862(2) of the Act, however, based upon the representations and warranties of the Company in the application for financial assistance filed by the Company, as amended and supplemented (the "**Application**"), including the Feasibility Study, the Facility will provide goods and services not reasonably accessible to the residents of the Town of Brookhaven;

WHEREAS, by a confirmation to be executed prior to the closing of the transactions described herein (the "**Confirmation**"), the Town Supervisor of the Town of Brookhaven, New York (the "**Town**"), will have confirmed the Agency's findings and determinations with respect to the Facility that the Facility qualifies as a "project" under the Act and that the Facility satisfies all other requirements of the Act; and

WHEREAS, a public hearing (the "**Hearing**") was held on November 12, 2019, so that all persons with views in favor of, or opposed to, either the financial assistance contemplated by the Agency or the location or nature of the facility, could be heard; and

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

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

WHEREAS, the Agency has given due consideration to the application of the Company and to the representations by the Company that the proposed transfer of real estate is either an inducement to the Company to maintain or expand the Facility in the Town of Brookhaven or is necessary to maintain the competitive position of the Company in its industry; 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 “SEQRA”), 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 Town of Brookhaven Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

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, and the completion by the Agency of Parts 2 and 3 of the full Environmental Assessment Form, and review of the criteria for making a determination of significance comparing these criteria to identified impacts, the Agency determines that action relating to the acquisition, construction, equipping and operation of the Facility is a “Type I” action, as that term is defined in the State Environmental Quality Review Act (“SEQRA”) (Article 8 of the Environmental Conservation Law), and, as of the date of this resolution, determines that the action will not have a “significant effect” on the environment and, therefore, an environmental impact statement will not be required. This determination constitutes a negative declaration for the purposes of SEQRA. Notice of this determination shall be filed to the extent required by the applicable regulations under SEQRA or as may be deemed advisable by the Chairman, Chief Executive Officer of the Agency or counsel to the Agency.

Section 2. 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 will be a Recreational Facility as defined in Section 854(9) of the Act and will be used in making retail sales to customers who personally visit the Facility under Section 862 of Act; however, based upon the representations and warranties of the Company in the Application, including the Feasibility Study, the predominant purpose of the Facility will be to provide certain goods and services which would not, but for the Facility be reasonably accessible to the residents of the Town of Brookhaven because of a lack of reasonably accessible retail trade facilities offering such goods and services.

c. The Facility constitutes a "project", as such term as defined in the Act; and

d. The Facility preserves the public purposes of the Act by preserving or increasing the number of permanent private sector jobs in the Town of Brookhaven. The Company has represented to the Agency that it will provide approximately eighty five (85) full-time employees within two (2) years of project completion; and

e. The acquisition, construction and equipping of the Facility, the leasing and subleasing of the Facility to the Company, and the financial assistance to the Company within the meaning of the Act, 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

f. 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

g. Based upon the representations of the Company:

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

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

iii The Agency approves the location of the site of the Facility; and

iv The financial assistance of the Agency and the transactions contemplated hereby are reasonably necessary to induce the Company to maintain and expand its operations within the State of New York, and to preserve the competitive positions of the Company, and shall not result in the removal of a facility or plant of the Company from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the Company located within the State except, as set forth in the

Company's application, for the purpose of discouraging the Company from removing such other plant or facility to a location outside the State or to preserve the competitive position of the Company in its industry; and

h. It is desirable and in the public interest for the Agency to lease and sublease the Facility to the Company; and

i. The Company Lease will be an effective instrument whereby the Agency leases the Land and the Improvements from the Company; and

j. 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.

Section 3. The Agency has assessed all material information included in connection with the Company's application for financial assistance, as amended, including but not limited to, the Feasibility Study, and 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 4. In consequence of the foregoing, the Agency is hereby authorized and determines to, and shall, in furtherance of the purposes of the Act, lease the Land and Improvements from the Company pursuant to the Company Lease, execute, deliver and perform the Company Lease, acquire, construct, equip, repair and maintain the Company Facility, lease and sublease the Facility to the Company pursuant to the Lease Agreement, and execute, deliver and perform the Lease Agreement.

Section 5. The Agency is hereby authorized to acquire the real property and personal property described in the Lease Agreement, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 6. The Agency hereby authorizes and approves of the following economic benefits to be granted or inure to the benefit of the Company: (i) exemptions from sales and uses taxes on the acquisition, construction, renovation and equipping of the Company Facility, including fixtures, furniture and equipment to be installed in the Company Facility or in connection with the purchase or lease of equipment, building materials, services or other personal property part of or to become part of the Company Facility, in an amount not to exceed \$3,000,000.00, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof), consistent with the policies of the Agency.

Section 7. Subject to, and conditioned upon, the execution and delivery by the Company and such other persons as may be required by the Agency of, and the acceptance by the Agency of, the Company Lease, Lease Agreement, and such other documents as may be required by the Agency, and the closing of the transactions contemplated hereby and thereby, the Company is hereby appointed the true and lawful agent of the Agency to acquire, construct, and

equip the Facility, and is authorized to delegate its status as agent of the Agency to the Company's agents, subagents, contractors, subcontractors, suppliers, vendors and other parties as the Company may choose for the purpose of acquiring, constructing, or equipping the Facility. The appointment described above includes the following activities as they relate to the acquiring, constructing, and equipping of the Facility, whether or not the materials, services or supplies described below are incorporated into or become an integral part of the Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquiring, constructing, and equipping the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with acquiring, constructing, and equipping 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 the Facility. This Agency appointment includes the power to make, execute, acknowledge and deliver any contracts, orders receipts writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and with the same validity as the Agency could do if acting on its own behalf. The Company's appointment hereunder shall expire upon the earliest of (a) the last day of the calendar month in which the expiration of two years after the commencement of the term of the Lease Agreement occurs, (b) completion of the initial acquisition, construction, and equipping of the Facility, and (c) the date on which the Company has realized exemptions from sales and use taxes by reason of the Agency's participation in the Project in an aggregate amount of \$3,000,000.00 or more; provided however, such appointment may be extended and the amount of the exemptions may be increased at the sole discretion of the Agency, upon the written request of the Company, if such activities and improvements are not completed by such time or additional sales and uses tax exemptions are necessary. 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 agents of the Agency. The aforesaid agency appointments expressly exclude the Company from purchasing 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.

Section 8. The Chairman, Chief Executive Officer and/or any other member of the Agency are hereby authorized and directed to, on behalf of and in the name of the Agency, execute, deliver and perform a Company Lease, Lease Agreement, and additional certificates, agreements, instruments and documents (collectively, the "Agency Documents"), in such form and containing such terms, conditions and provisions as the person executing same on behalf of the Agency shall deem necessary or desirable, and shall approve, such necessity, desirability, and approval, to be conclusively evidenced by his or her execution and delivery thereof. The Chairman, Chief Executive Officer and/or any other member of the Agency are hereby authorized and directed, on behalf of and in the name of the Agency, to pay all fees, charges and expenses incurred, to cause compliance with the terms, conditions and provisions of agreements binding upon the Agency, and to do all such further acts and things, in furtherance of the foregoing as such person shall deem necessary or desirable, and shall approve.

Section 9. 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 10. The Company hereby agrees, and shall confirm such agreement in the Lease Agreement, to comply with Section 875 of the Act. The Company further agrees that the tax exemptions and abatements provided by the Act and the appointment of the Company as agent of the Agency pursuant to this resolution is subject to termination and recapture of benefits pursuant to Sections 859-a and 875 of the Act.

Section 11. Weinberg Gross & Pergament LLP are hereby appointed Transaction Counsel to the Agency, and is authorized and directed to work with Counsel to the Company, and others, to prepare, for submission to the Agency, all documents necessary to effect the transaction described in these resolutions.

Section 12. 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 13. The Agency Documents, promptly following the execution, and delivery thereof, be identified by any of the Chairman, Chief Executive Officer or any member of the Agency by his or her endorsement thereon and when so identified be filed with the official records of the Agency.

Section 14. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. By acceptance hereof, the Company agree to pay such expenses and further agree to indemnify and hold harmless the Agency, its members, directors, employees and agents from and against all claims, suits, actions, proceedings, obligations, damages, liabilities, judgments, costs and expenses, including legal fees and expenses, incurred as a result of action or inaction taken by or on behalf of the Agency in good faith with respect to the Facility.

Section 15. 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 Company, 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 16. This resolution shall take effect immediately, and, unless sooner rescinded or amended, shall be deemed rescinded at the expiration of six (6) months after the date of the adoption of this resolution if the closing contemplated hereunder has not occurred prior to such expiration, subject to extension at the discretion of the Agency upon the written request of the Company.

Adopted: November 20, 2019

Accepted: November __, 2019

TOPGOLF USA HOLTSVILLE, LLC

By: _____
Its: _____,

EXHIBIT A

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

November 20, 2019

Year	PILOT
1	\$ 43,388
2	\$ 44,256
3	\$ 45,141
4	\$ 46,044
5	\$ 46,964
6	\$ 47,904
7	\$ 48,862
8	\$ 49,839
9	\$ 50,836
10	\$ 51,853