

RESOLUTION OF THE TOWN OF BROOKHAVEN  
INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE  
ASSIGNMENT AND ASSUMPTION OF A CERTAIN  
INDUSTRIAL DEVELOPMENT FACILITY TO **GGSP  
INVESTMENTS, LLC**, A DELAWARE LIMITED LIABILITY  
COMPANY, AND/OR **GS AA VISTAS OWNER, LLC**,  
AND/OR ANY OF THE PRINCIPALS OF **GS AA VISTAS  
OWNER, LLC** AND/OR OTHER ENTITIES FORMED OR TO  
BE FORMED ON BEHALF OF ANY OF THE FOREGOING,  
AND APPROVING THE FORM, SUBSTANCE AND  
EXECUTION OF RELATED DOCUMENTS.

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 The Vistas of Port Jefferson LLC, a New York limited liability company (the “**Original Company**”), in connection with (a) the acquisition and construction of a senior housing rental community with approximately 244 senior citizen rental housing units and appurtenances (the “**Improvements**”), located or to be located on an approximately 27.324 acre parcel of land situated at Bicycle Path, Port Jefferson Station, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 0200-229.00-01.00-002.16 (formerly, 0200-229.00-01.00-002.11 through 002.15 and 0200-206.00-05.00-040.001)) (the “**Land**”), and (b) the acquisition and installation thereof of equipment and other personal property (the “**Equipment**”) (the Land, Improvements and Equipment may be collectively referred to as the “**Facility**”), which Facility is presently leased by the Agency to the Original Company for sublease of the rental units by the Original Company to qualified senior residents of at least 55 years of age (the “**Project**”), and

WHEREAS, the Agency previously acquired a leasehold interest in the Land and Improvements pursuant to a certain Company Lease Agreement, dated as of July 1, 2018 (the “**Original Company Lease**”), by and between the Original Company and the Agency, and a memorandum of such Original Company Lease was recorded in the Suffolk County Clerk’s office; and

WHEREAS, the Agency previously acquired title to the Equipment pursuant to a certain Bill of Sale, dated July 24, 2018 (the “**Bill of Sale**”), from the Original Company to the Agency; and

WHEREAS, the Agency currently subleases the Land and Improvements and leases the Equipment to the Original Company pursuant to a certain Lease and Project Agreement, dated as of July 1, 2018, as amended by a certain Amendment of Lease Agreement, dated January 9, 2019, a certain Second Amendment of Lease Agreement, dated July 17, 2019, and a certain Third Amendment of Lease Agreement, dated September 1, 2020 (collectively, the “**Original**

**Lease Agreement**”), by and between the Agency, as lessor, and the Original Company, as lessee, and a memorandum of such Lease and Project Agreement, dated as of July 1, 2018, was recorded in the Suffolk County Clerk’s office; and

WHEREAS, GGSP Investments, LLC, a Delaware limited liability company, on behalf of itself and/or GS AA Vistas Owner, LLC and/or the principals of GS AA Vistas Owner, LLC and/or entity formed or to be formed on behalf of the foregoing (collectively, the “**Assignee**”), has submitted its application for financial assistance (the “**Application**”) to the Agency in the form of (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$76,700,000.00, but not to exceed \$80,000,000.00, and (ii) the continued abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A), and requested the Agency’s consent to the assignment by the Original Company of all of its rights, title, interest and obligations under the Original Company Lease, the Original Lease Agreement, and certain other agreements in connection with the Facility, to the Assignee, and the assumption by the Assignee of all of such rights, title, interest and obligations of the Original Company, and the release of the Original Company from any future liability incurred after the date of the assignment with respect to the Facility subject to certain requirements of the Agency, all pursuant to the terms of an Assignment and Assumption Agreement, to be dated as of August 1, 2021 or such other date as may be determined by the Chairman, Chief Executive Officer or counsel to the Agency (the “**Assignment and Assumption Agreement**”); and

WHEREAS, the Original Company Lease will be assigned by the Original Company to the Assignee pursuant to the Assignment and Assumption Agreement and the Original Company Lease will be amended and restated pursuant to a certain Amended and Restated Company Lease, to be dated as of August 1, 2021 or such other date as the Chairman, Chief Executive Officer of the Agency or counsel to the Agency shall agree (the “**Company Lease**”) pursuant to which the Agency will lease from the Assignee the Land and Improvements for the remaining term of the Original Company Lease, and a memorandum of such Company Lease, as assigned and amended, shall be recorded in the Suffolk County Clerk’s office; and

WHEREAS, the Original Lease Agreement will be assigned by the Original Company to the Assignee pursuant to the Assignment and Assumption Agreement, and the Original Lease Agreement will be amended and restated pursuant to a certain Amended and Restated Lease and Project Agreement, to be dated as of August 1, 2021 or such other date as the Chairman, Chief Executive Officer of the Agency or counsel to the Agency shall agree (the “**Lease Agreement**”) pursuant to which the Agency will lease to the Assignee the Facility for the remaining term of the Original Lease Agreement, and a memorandum of such Lease Agreement, as assigned and amended, shall be recorded in the Suffolk County Clerk’s office; and

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

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

WHEREAS, subject to the execution and delivery of the Assignment and Assumption Agreement, the Company Lease, the Lease Agreement, and the other required Assignment Documents, the Agency will consent to the assignment by the Original Company and the assumption by the Assignee of the Original Company's interests in the Facility and the Agency will thereafter lease and sublease the Facility to the Assignee; 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 that it will provide financial assistance to the Assignee, consistent with the policies of the Agency, in the form of the continued abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof) pursuant to the terms of the Lease Agreement and as assigned by the Original Company to the Assignee in accordance with the Assignment and Assumption Agreement, all consistent with the policies of the Agency; and

WHEREAS, as security for a loan or loans (the "**Loan**"), the Agency and the Assignee will execute and deliver to a lender or lenders not yet determined (collectively, the "**Lender**"), a mortgage or mortgages and/or a security agreement or security agreements (the "**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 July 27, 2021, so that all persons with views in favor of, or opposed to, either the financial assistance contemplated by the Agency or the location or nature of the Facility, could be heard; and

WHEREAS, notice of the 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 requests of the Assignee; and

WHEREAS, the Agency has given due consideration to the application of the Assignee and to the representations by the Assignee that the proposed transfer of real estate is an inducement to the Assignee and to maintain or expand the Facility in the Town of Brookhaven or is necessary to maintain the competitive positions of the Assignee in its industry; and

WHEREAS, the Assignee 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 Assignee.

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 execution and delivery of the Assignment and Assumption Agreement, the acquisition of the Facility, the leasing and subleasing of the Facility to the Assignee, the financial assistance to the Assignee within the meaning of the Act, and the mortgages on, and security interests in, the Facility, 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. Based upon the representations of the Assignee:

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 acquisition of the Facility and the provision for financial assistance in the form of exemptions from mortgage recording taxes and the continued abatement of real property taxes are reasonably necessary to induce the Assignee to maintain and expand its operations within the State of New York, and shall not result in the removal of a facility or plant of the Assignee 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 Assignee; and

e. It is desirable and in the public interest for the Agency to lease and sublease the Facility to the Assignee.

f. It is desirable and in the public interest for the Agency to consent to the execution and delivery of the Assignment and Assumption Agreement providing for the assignment by the Original Company of all of its rights, title, interest, duties, liabilities and obligations under the Original Company Lease, the Original Lease Agreement and the Facility to the Assignee and the assumption by the Assignee of all of such rights, title, interest, duties, liabilities and obligations of the Original Company under the Original Company Lease, the Original Lease Agreement and the Facility.

g. The Assignment and Assumption Agreement, the Company Lease, the Lease Agreement and the other Assignment Documents, will be effective

instruments whereby the Original Company will assign all of its rights, title, interest, duties, liabilities and obligations under the Original Company Lease, the Original Lease Agreement and the Facility to the Assignee, and the Assignee will assume all of such rights, title, interest, duties, liabilities and obligations of the Original Company under the Original Company Lease, the Original Lease Agreement and the Facility with the consent of the Agency, the Agency leases the Land and Improvements from the Assignee, and the Agency leases and subleases the Facility to the Assignee.

h. The Loan Documents to which the Agency is a party will be effective instruments whereby the Agency and the Assignee agree to secure the Loan made to the Assignee by the Lender.

Section 2. The Agency has assessed all material information included in connection with the Assignee's application for financial assistance, as amended, 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 Assignee.

Section 3. In consequence of the foregoing, the Agency is hereby authorized and determines to, in furtherance of the purposes of the Act, (i) consent to the assignment by the Original Company to, and the assumption of the Facility by, the Assignee, pursuant to the Assignment and Assumption Agreement, (ii) execute, deliver and perform the Assignment and Assumption Agreement, (iii) lease the Land and Improvements from the Assignee pursuant to the Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) lease and sublease the Facility to the Assignee pursuant to the Lease Agreement, (iv) execute, deliver and perform the Lease Agreement, (v) grant mortgage lien(s) and security interest(s) in the Facility pursuant to the Loan Documents, and (vi) execute, deliver and perform the Loan Documents to which the Agency is a party.

Section 4. 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 financial benefits to be granted to the Assignee in connection with the acquisition, construction and equipping of the Facility: the continued abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof) pursuant to the terms of the Lease Agreement, consistent with the policies of the Agency

Section 7. 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 the Assignment and Assumption Agreement, Company Lease, Lease Agreement, the other Assignment Documents, and the Loan Documents to which the Agency is a party, 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 8. The Chairman, the Chief Executive Officer of the Agency or any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 9. The Assignee hereby agrees, and shall confirm such agreement in the Lease Agreement, to comply with Section 875 of the Act. The Assignee further agrees that the tax exemptions and abatements provided by the Act are subject to termination and recapture of benefits pursuant to Sections 859-a and 875 of the Act.

Section 10. Weinberg Gross & Pergament LLP are hereby appointed Transaction Counsel to the Agency, and is authorized and directed to work with counsels to the Original Company, the Assignee and others, to prepare, for submission to the Agency, all documents necessary to effect the transaction described in these resolutions.

Section 11. 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 12. 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 13. Any expenses incurred by the Agency with respect to or in connection with the assignment of the Facility shall be paid by the Original Company and the Assignee. By acceptance hereof, the Original Company and the Assignee, jointly and severally, 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 assignment of the Facility.

Section 14. 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 Original Company and the Assignee, 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 15. 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 Original Company or the Assignee.

Adopted: July 28, 2021

Accepted: \_\_\_\_\_, 2021

GGSP Investments, LLC

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

GS AA Vistas Owner, LLC

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

Accepted: \_\_\_\_\_, 2021

The Vistas of Port Jefferson, LLC

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

EXHIBIT A

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

<u>Tax Year</u>	<u>PILOT Amount</u>
2020/2021	\$51,928.00
2021/2022	\$52,967.00
2022/2023	\$54,026.00
2023/2024	\$89,906.00
2024/2025	\$190,423.00
2025/2026	\$315,453.00
2026/2027	\$471,910.00
2027/2028	\$655,730.00
2028/2029	\$854,564.00
2029/2030	\$1,055,557.00
2030/2031	\$1,252,293.00
2031/2032	\$1,445,900.00
2032/2033	\$1,516,043.00



RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ADVANCEMENT OF THE COMMENCEMENT OF CERTAIN PILOT PAYMENTS PERTAINING TO A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY LEASED TO **THE VISTAS OF PORT JEFFERSON LLC** AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT OF THE LEASE AND PROJECT AGREEMENT AND RELATED DOCUMENTS

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 has previously granted, in accordance with the Agency’s resolutions adopted on October 25, 2017, as amended by resolutions adopted February 21, 2018, July 11, 2018, and January 9, 2019 (collectively the “**Prior Resolutions**”), to **THE VISTAS OF PORT JEFFERSON LLC**, a New York limited liability company (the “**Company**”), assistance in connection with: (a) the acquisition and construction of a senior housing rental community with approximately 244 senior citizen rental housing units and appurtenances (the “**Improvements**”), located or to be located on an approximately 27.324 acre parcel of land situated at Bicycle Path, Port Jefferson Station, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 0200-229.00-01.00-002.16 (formerly, 0200-229.00-01.00-002.11 through 002.15 and 0200-206.00-05.00-040.001)) (the “**Land**”), and (b) the acquisition and installation thereof of equipment and other personal property (the “**Equipment**”) (the Land, Improvements and Equipment may be collectively referred to as the “**Facility**”), which Facility is initially leased by the Agency to the Company for sublease of the rental units by the Company to qualified senior residents of at least 55 years of age (the “**Project**”); and

WHEREAS, the Agency leases from the Company the Land and Improvements under a certain Company Lease Agreement, dated as of July 1, 2018 (the “**Company Lease Agreement**”), a memorandum of which Company Lease Agreement was to be recorded in the Suffolk County Clerk’s Office; and

WHEREAS, the Agency subleases and leases the Facility to the Company under a certain Lease and Project Agreement, dated as of July 1, 2018 (the “**Lease Agreement**”), a memorandum of which Lease Agreement was to be recorded in the Suffolk County Clerk’s Office,

WHEREAS, pursuant to the requests of the Company, the Agency previously increased the sales and use tax exemption benefits granted by the Agency to the Company under the Lease Agreement by reason of the increased costs of the construction and equipping of the Project pursuant to a certain Amendment of Lease, dated as of January 9,

2019 (the “**First Amendment of Lease**”) and a certain Second Amendment of Lease Agreement, dated as of July 17, 2019 (the “**Second Amendment of Lease**”); and

WHEREAS, the Company has requested the Agency’s assistance in the form of advancing the commencement of the abatement from real estate taxes previously granted by the Agency to the Company under the Lease Agreement, as amended; and

WHEREAS, the Agency contemplates that it will provide additional financial assistance to the Company, consistent with the policies of the Agency, by advancing the commencement of the abatement from real estate taxes previously granted by the Agency to the Company under the Lease Agreement, as amended, from the 2022/23 Tax Year to the 2020/21 Tax Year, and continuing the abatement of real estate taxes thereafter in accordance with the amended schedules of PILOT Payments annexed to this resolution as Exhibits C and C-1, pursuant to a Third Amendment to the Lease Agreement (the “**Third Amendment of Lease**”); 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, a public hearing (the “**Hearing**”) was held on July 10, 2020 with respect to the Project and the financial assistance contemplated by the Agency, 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, as amended, and to the representations by the Company that the Facility 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;

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 confirms its findings, determinations, authorizations, approvals and resolutions set forth in the Prior Resolutions, as amended hereby.

Section 2. The Agency hereby finds and determines:

i. 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;

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

iii. The continued leasing and subleasing of the Facility by the Agency to the Company, the acquisition, construction, and equipping of the Facility, and the providing of 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;

iv. 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 are located;

v. The Facility and the operations conducted therein does not have a significant effect on the environment, as determined in accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder;

vi. The Agency has determined that the proposed advancement of the commencement of the abatement from real estate taxes previously granted by the Agency to the Company under the Lease Agreement, as amended, will promote and further the purposes of the Act;

vii. It is desirable and in the public interest for the Agency to advance the commencement of the abatement from real estate taxes previously granted by the Agency to the Company under the Lease Agreement, as amended, and to continue to lease the Facility to the Company for further subleasing of the rental units by the Company to qualified senior residents of at least 55 years of age; and

viii. The Third Amendment of Lease will be an effective instrument whereby the Agency and the Company agree to advance the commencement of the abatement from real estate taxes previously granted by the Agency to the Company under the Lease Agreement, as amended, from the 2022/23 Tax Year to the 2020/21 Tax Year, and continuing the abatement of real estate taxes thereafter in accordance with the amended schedules of PILOT Payments annexed to this resolution as Exhibits C and C-1.

Section 3. Subject to the provisions of this resolution, the Agency hereby

determines to advance the commencement of the abatement from real estate taxes previously granted by the Agency to the Company under the Lease Agreement, as amended, from the 2022/23 Tax Year to the 2020/21 Tax Year, and continuing the abatement of real estate taxes thereafter in accordance with the amended schedules of PILOT Payments annexed to this resolution as Exhibits C and C-1; and

Section 4. 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 Third Amendment of the Lease, and other certificates, agreements, instruments and documents, as above contemplated or in furtherance of the foregoing, in such form and substance 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 5. 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 6. The documents, including the proposed Third Amendment of Lease, 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 7. 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 agrees 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 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 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.

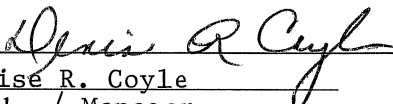
Section 9. This resolution shall take effect immediately, and, unless sooner rescinded or amended, shall be deemed rescinded at the expiration of three (3) months

after the date of the adoption of this resolution if the execution and delivery of the Third Amendment of Lease, and such other instruments as required by the Agency, has not occurred prior to such expiration, subject to extension at the discretion of the Agency upon the written request of the Company.

Adopted: July 15, 2020

Accepted: 9/23, 2020

THE VISTAS OF PORT JEFFERSON LLC

By:   
Denise R. Coyle  
Member / Manager

## EXHIBIT C

### PILOT Schedule

<u>Tax Year</u>	<u>PILOT Amount</u>
2020/2021	\$ 51,928.00
2021/2022	\$ 52,967.00
2022/2023	\$ 54,026.00
2023/2024	\$ 89,906.00
2024/2025	\$ 190,423.00
2025/2026	\$ 315,453.00
2026/2027	\$ 471,910.00
2027/2028	\$ 655,730.00
2028/2029	\$ 854,564.00
2029/2030	\$1,055,557.00
2030/2031	\$1,252,293.00
2031/2032	\$1,445,900.00
2032/2033	\$1,516,043.00

Thereafter, 100% of all taxes and assessments, including special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located) which are or may be for special improvements or special district improvements, that the Company would pay without exemption as if the Facility was owned by the Company exclusive of the Agency's leasehold interest therein.

In addition, at all times, 100% of all special ad valorem levies, special assessments, special district taxes and service charges levied (or would be levied if the Facility were owned by the Company exclusive of the Agency's leasehold interest therein) against the Facility for special improvements or special district improvements.

## EXHIBIT C-1

### Alternate PILOT Schedule

<u>Tax Year</u>	<u>PILOT Amount</u>
2020/2021	\$ 51,928.00
2021/2022	\$ 52,967.00
2022/2023	\$ 54,026.00
2023/2024	\$ 89,906.00
2024/2025	\$ 190,423.00
2025/2026	\$ 315,453.00
2026/2027	\$ 471,910.00
2027/2028	\$ 655,730.00
2028/2029	\$ 854,564.00
2029/2030	\$1,055,557.00

Thereafter, 100% of all taxes and assessments, including special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located) which are or may be for special improvements or special district improvements, that the Company would pay without exemption as if the Facility was owned by the Company exclusive of the Agency's leasehold interest therein.

In addition, at all times, 100% of all special ad valorem levies, special assessments, special district taxes and service charges levied (or would be levied if the Facility were owned by the Company exclusive of the Agency's leasehold interest therein) against the Facility for special improvements or special district improvements.

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ADVANCEMENT OF THE COMMENCEMENT OF CERTAIN PILOT PAYMENTS PERTAINING TO A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY LEASED TO **THE VISTAS OF PORT JEFFERSON LLC** AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT OF THE LEASE AND PROJECT AGREEMENT AND RELATED DOCUMENTS

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 has previously granted, in accordance with the Agency’s resolutions adopted on October 25, 2017, as amended by resolutions adopted February 21, 2018, July 11, 2018, and January 9, 2019 (collectively the “**Prior Resolutions**”), to **THE VISTAS OF PORT JEFFERSON LLC**, a New York limited liability company (the “**Company**”), assistance in connection with: (a) the acquisition and construction of a senior housing rental community with approximately 244 senior citizen rental housing units and appurtenances (the “**Improvements**”), located or to be located on an approximately 27.324 acre parcel of land situated at Bicycle Path, Port Jefferson Station, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 0200-229.00-01.00-002.16 (formerly, 0200-229.00-01.00-002.11 through 002.15 and 0200-206.00-05.00-040.001)) (the “**Land**”), and (b) the acquisition and installation thereof of equipment and other personal property (the “**Equipment**”) (the Land, Improvements and Equipment may be collectively referred to as the “**Facility**”), which Facility is initially leased by the Agency to the Company for sublease of the rental units by the Company to qualified senior residents of at least 55 years of age (the “**Project**”); and

WHEREAS, the Agency leases from the Company the Land and Improvements under a certain Company Lease Agreement, dated as of July 1, 2018 (the “**Company Lease Agreement**”), a memorandum of which Company Lease Agreement was to be recorded in the Suffolk County Clerk’s Office; and

WHEREAS, the Agency subleases and leases the Facility to the Company under a certain Lease and Project Agreement, dated as of July 1, 2018 (the “**Lease Agreement**”), a memorandum of which Lease Agreement was to be recorded in the Suffolk County Clerk’s Office,

WHEREAS, pursuant to the requests of the Company, the Agency previously increased the sales and use tax exemption benefits granted by the Agency to the Company under the Lease Agreement by reason of the increased costs of the construction and equipping of the Project pursuant to a certain Amendment of Lease, dated as of January 9,



2019 (the “**First Amendment of Lease**”) and a certain Second Amendment of Lease Agreement, dated as of July 17, 2019 (the “**Second Amendment of Lease**”); and

WHEREAS, the Company has requested the Agency’s assistance in the form of advancing the commencement of the abatement from real estate taxes previously granted by the Agency to the Company under the Lease Agreement, as amended; and

WHEREAS, the Agency contemplates that it will provide additional financial assistance to the Company, consistent with the policies of the Agency, by advancing the commencement of the abatement from real estate taxes previously granted by the Agency to the Company under the Lease Agreement, as amended, from the 2022/23 Tax Year to the 2020/21 Tax Year, and continuing the abatement of real estate taxes thereafter in accordance with the amended schedules of PILOT Payments annexed to this resolution as Exhibits C and C-1, pursuant to a Third Amendment to the Lease Agreement (the “**Third Amendment of Lease**”); 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, a public hearing (the “**Hearing**”) was held on July 10, 2020 with respect to the Project and the financial assistance contemplated by the Agency, 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, as amended, and to the representations by the Company that the Facility 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;

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 confirms its findings, determinations, authorizations, approvals and resolutions set forth in the Prior Resolutions, as amended hereby.

Section 2. The Agency hereby finds and determines:

i. 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;

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

iii. The continued leasing and subleasing of the Facility by the Agency to the Company, the acquisition, construction, and equipping of the Facility, and the providing of 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;

iv. 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 are located;

v. The Facility and the operations conducted therein does not have a significant effect on the environment, as determined in accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder;

vi. The Agency has determined that the proposed advancement of the commencement of the abatement from real estate taxes previously granted by the Agency to the Company under the Lease Agreement, as amended, will promote and further the purposes of the Act;

vii. It is desirable and in the public interest for the Agency to advance the commencement of the abatement from real estate taxes previously granted by the Agency to the Company under the Lease Agreement, as amended, and to continue to lease the Facility to the Company for further subleasing of the rental units by the Company to qualified senior residents of at least 55 years of age; and

viii. The Third Amendment of Lease will be an effective instrument whereby the Agency and the Company agree to advance the commencement of the abatement from real estate taxes previously granted by the Agency to the Company under the Lease Agreement, as amended, from the 2022/23 Tax Year to the 2020/21 Tax Year, and continuing the abatement of real estate taxes thereafter in accordance with the amended schedules of PILOT Payments annexed to this resolution as Exhibits C and C-1.

Section 3. Subject to the provisions of this resolution, the Agency hereby

determines to advance the commencement of the abatement from real estate taxes previously granted by the Agency to the Company under the Lease Agreement, as amended, from the 2022/23 Tax Year to the 2020/21 Tax Year, and continuing the abatement of real estate taxes thereafter in accordance with the amended schedules of PILOT Payments annexed to this resolution as Exhibits C and C-1; and

Section 4. 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 Third Amendment of the Lease, and other certificates, agreements, instruments and documents, as above contemplated or in furtherance of the foregoing, in such form and substance 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 5. 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 6. The documents, including the proposed Third Amendment of Lease, 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 7. 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 agrees 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 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 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 9. This resolution shall take effect immediately, and, unless sooner rescinded or amended, shall be deemed rescinded at the expiration of three (3) months

after the date of the adoption of this resolution if the execution and delivery of the Third Amendment of Lease, and such other instruments as required by the Agency, has not occurred prior to such expiration, subject to extension at the discretion of the Agency upon the written request of the Company.

Adopted: July 15, 2020

Accepted: July \_\_, 2020

THE VISTAS OF PORT JEFFERSON LLC

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

## EXHIBIT C

### PILOT Schedule

<u>Tax Year</u>	<u>PILOT Amount</u>
2020/2021	\$ 51,928.00
2021/2022	\$ 52,967.00
2022/2023	\$ 54,026.00
2023/2024	\$ 89,906.00
2024/2025	\$ 190,423.00
2025/2026	\$ 315,453.00
2026/2027	\$ 471,910.00
2027/2028	\$ 655,730.00
2028/2029	\$ 854,564.00
2029/2030	\$1,055,557.00
2030/2031	\$1,252,293.00
2031/2032	\$1,445,900.00
2032/2033	\$1,516,043.00

Thereafter, 100% of all taxes and assessments, including special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located) which are or may be for special improvements or special district improvements, that the Company would pay without exemption as if the Facility was owned by the Company exclusive of the Agency's leasehold interest therein.

In addition, at all times, 100% of all special ad valorem levies, special assessments, special district taxes and service charges levied (or would be levied if the Facility were owned by the Company exclusive of the Agency's leasehold interest therein) against the Facility for special improvements or special district improvements.

## EXHIBIT C-1

### Alternate PILOT Schedule

<u>Tax Year</u>	<u>PILOT Amount</u>
2020/2021	\$ 51,928.00
2021/2022	\$ 52,967.00
2022/2023	\$ 54,026.00
2023/2024	\$ 89,906.00
2024/2025	\$ 190,423.00
2025/2026	\$ 315,453.00
2026/2027	\$ 471,910.00
2027/2028	\$ 655,730.00
2028/2029	\$ 854,564.00
2029/2030	\$1,055,557.00

Thereafter, 100% of all taxes and assessments, including special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located) which are or may be for special improvements or special district improvements, that the Company would pay without exemption as if the Facility was owned by the Company exclusive of the Agency's leasehold interest therein.

In addition, at all times, 100% of all special ad valorem levies, special assessments, special district taxes and service charges levied (or would be levied if the Facility were owned by the Company exclusive of the Agency's leasehold interest therein) against the Facility for special improvements or special district improvements.

VanBRUNT, JUZWIAK & RUSSO, P.C.  
ATTORNEYS AT LAW

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January 5, 2018

JEFFREY M. JUZWIAK  
Retired  
RICHARD H. VanBRUNT  
1927 - 2006

Ms. Lisa M.G. Mulligan, Chief Executive Officer  
Brookhaven Town Industrial Development Agency  
One Independence Hill  
Farmingville, New York 11738

JAN 08 2018

RE: IDA Application -The Vistas at Port Jefferson LLC  
27.324 acres on Bicycle Path, Port Jefferson Station, New York  
SCTM #0200-229.00-01.00-002.011 through 002.015 and  
SCTM #0200-206.00-05.00-040.001

Dear Ms. Mulligan:

Enclosed herewith please find the July Resolution adopted by the Brookhaven Town Industrial Development Agency on October 25, 2017 executed by our client, Russell Mohr, Managing Member, The Vistas at Port Jefferson LLC, in connection with the above-referenced project. However, please be advised that our client has requested an amendment of the Resolution under "Section 15" as follows:

Section 15. This resolution shall take effect immediately, and, unless sooner rescinded or amended, shall be deemed rescinded at the expiration of **twelve (12) 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.

Please acknowledge that if this requested revision is acceptable by the Brookhaven Town Industrial Development Agency Board and provide our client and our office with a copy of the amended Resolution upon approval.

If you should have any further questions or require additional information, please do not hesitate to contact our office. Thank you.

Very truly yours,  
VanBrunt, Juzwiak & Russo, P.C.

Eric J. Russo

/rb

cc: Mr. R. Mohr (letter only)

Howard R. Gross, Esq. (letter only)

Via Federal Express

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO, AND APPROVING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF, A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY TO BE LEASED TO THE VISTAS AT PORT JEFFERSON LLC, AND TAKING OFFICIAL ACTION AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF AGREEMENTS PERTAINING TO 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, **THE VISTAS AT PORT JEFFERSON LLC**, a New York limited liability company on behalf of itself and/or the principals of **THE VISTAS AT PORT JEFFERSON LLC** and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company"), has applied to the Agency for assistance in connection with: (a) the acquisition and construction of a senior housing rental community with approximately 244 senior citizen rental housing units and appurtenances (the "Improvements"), including one and two bedroom apartments, a clubhouse and fitness center and other amenities, maintenance facilities, and a sewage pump station, located or to be located on an approximately 27.324 acre parcel of land situated at Bicycle Path, Port Jefferson Station, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 0200-229.00-01.00-002.11 through 002.15 and 0200-206.00-05.00-040.001) (the "Land"), and (b) the acquisition and installation thereof of equipment and other personal property (the "Equipment"), including appliances, furniture, fixtures, pool equipment and other equipment (the Land, Improvements and Equipment may be collectively referred to as the "Facility"), which Facility is to be initially leased by the Agency to the Company and the rental units subleased by the Company to qualified senior residents of at least 55 years of age (the "Project"), including the following as they relate to the acquisition, construction and equipping of the Facility, whether or not any materials 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 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, renovation 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 the Facility; and

WHEREAS, a public hearing (the "Initial Hearing") was held on August 28, 2017 with respect to the Project and the financial assistance contemplated by the Agency, 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 Initial 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 Initial Hearing having been filed with the records of this Agency; and

WHEREAS, thereafter the Company amended its application to the Agency for assistance; 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, based upon the application of the Company, as amended, 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 acquisition, installation, purchase or lease of the Equipment and equipment, building materials, services or other personal property part of or to become part of the Facility, in an amount not to exceed \$1,500,000.00, 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 contemplates that it will not provide financial assistance to the Company in the form of exemptions from mortgage recording taxes; and

WHEREAS, the Agency contemplates it will acquire a leasehold interest in the Land and Improvements under a certain Company Lease Agreement (the "Company Lease Agreement") for a term of approximately thirteen (13) years, by and between the Company and the Agency, and

WHEREAS, the Agency contemplates it will acquire title to the Equipment pursuant to a certain Bill of Sale (the "Bill of Sale"), from the Company to 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 (the "Lease Agreement") for a term of approximately thirteen (13) years, by and between the Agency and the Company, which Lease Agreement will provide, inter alia, for the Company's obligations regarding payments in lieu of taxes with respect to the Facility, and assurances of the Company with respect to the recapture of certain benefits, including sales and use tax exemptions, granted under or by virtue of the Lease Agreement and other agreements; and

WHEREAS, the Company will sub-sublease the rental units at the Facility to qualified senior residents of at least 55 years of age, of which at least thirty six (36) rental units will be affordable; and

WHEREAS, in order to finance a portion of the costs of the Project, the Company anticipates obtaining loans from a lender or lenders yet to be (collectively, the "Lender"), and in order to secure the obligations of the Company and/or others to the Lender, the Agency contemplates that, at the request of the Company, the Agency, the Company and/or others will execute and deliver a mortgage or mortgages or a security agreement or security agreements in favor of the Lender, including replacements, substitutions, extensions and additions to such mortgages), with a limitation of the Agency's liability thereunder (collectively, the "Mortgage") for the purpose of subjecting the Facility to the lien of the Mortgage; and

WHEREAS, a second public hearing (the "Second Hearing"; together with the Initial Hearing, the "Hearing") was held on October 18, 2017, so that all persons with views in favor of, or opposed to either the financial assistance contemplated by the Agency or the location or nature of the facility, could be heard; and

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

WHEREAS, the Agency has given due consideration to the application of the Company, as amended, and to the representations by the Company that the proposed Facility 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, the Agency required the Company to provide to the Agency a benefit analysis (the "Benefit 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, a copy of which has been filed with the records of the Agency; and

WHEREAS, the Agency's Uniform Tax Exemption Policy ("UTEP") provides for the granting of financial assistance by the Agency for unusual projects pursuant to Sections 3(B), 8(A) and 8(C) thereof; 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.

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 the Town of Brookhaven Planning Board (the "Lead Agency") and other representations and information furnished by the Company regarding the Facility, the Agency determines that action relating to the acquisition, construction, equipping and operation of the Facility is a "Unlisted" action, as that term is defined in the State Environmental Quality Review Act ("SEQRA") (Article 8 of the Environmental Conservation Law). An environmental review of the Facility pursuant to SEQRA was conducted by the Lead Agency and, on January 23, 2017, a negative declaration for purposes of SEQRA was adopted by the Lead Agency. The Agency concurs with the findings of the Lead Agency, 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 that Act or as may be deemed advisable by the Chairman, Chief Executive Officer of the Agency or counsel to the Agency.

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

a. Older adult residents of the Town of Brookhaven often need to sell their homes to decrease housing-related spending, and to reduce the need for home maintenance;

b. There is a lack of an adequate of senior rental housing, with an affordable component, in the Town of Brookhaven so as to permit older residents to remain within their communities after the sale of their local homes;

c. The lack of adequate opportunities for senior adults to relocate within the Town of Brookhaven to senior rental housing is likely to result 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;

d. The Facility, by providing such senior rental housing, with an affordable component, 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;

e. The Facility will increase the Town of Brookhaven's age-restricted rental housing opportunities.

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 as defined in the Act; and

c. The leasing of the Land and Improvements by the Agency from the Company, the acquisition, construction, and equipping of the Facility, the leasing and subleasing of the Facility to the Company, the providing of financial assistance to the Company within the meaning of the Act, and the granting of mortgages on, and security interests in, the Facility, 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 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 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, if 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 their respective industries;

v. The facilities and property that are primarily used in making retail sales of goods and services to customers who personally visit the Facility, if any, will not constitute more than one-third (1/3) of the total costs of the Facility; and

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

Section 4. 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 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. The Agency is hereby authorized to, and shall, in furtherance of the purposes of the Act, lease the Land and Improvements from the Company, acquire, construct, equip, repair and maintain the Facility, lease and sublease the Facility to the Company, authorize the Company to sublease rental units comprising the Facility to qualified senior residents of at least 55 years of age, of which at least thirty six (36) rental units will be affordable, and grant mortgage lien(s) and security interest(s) in the Facility.

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, and equipping of the Company 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, or appurtenant to, or used in connection with, the Facility, in an amount not to exceed \$1,500,000.00, 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 others persons as may be required by the Agency, and the acceptance by the Agency, of the Company Lease Agreement, Lease Agreement and such other documents 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 appointment hereunder shall expire upon the earliest of (a) the last day of the calendar month in which the expiration of three 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 \$1,500,000.00 or more, provided however, such appointment may be extended and the amount of the exemption 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 the 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 agent of the Agency. The aforesaid agency appointment 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 Agreement, Lease Agreement, Mortgage (including construction, permanent and refinancing mortgages, and replacements, substitutions, extensions and additions to such mortgages) with a limitation of the Agency's liability thereunder, and other certificates, agreements, instruments and documents, as above contemplated or in furtherance of the foregoing, in such form and substance 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 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 resolution is subject to termination and recapture of benefits pursuant to Section 875 of the Act, and the Lease Agreement.

Section 10. 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 11. 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 12. The documents, including the proposed Company Lease Agreement, Lease Agreement and 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 13. 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 agrees 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 14. 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 15. 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: October 25, 2017

Accepted: ~~October~~ 19, 2017

*December*

THE VISTAS AT PORT JEFFERSON LLC

By:

*R. A. Moller*  
*Russell A. Moller*, Member



EXHIBIT A

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

October \_\_, 2017

<u>Year</u>	<u>PILOT Amount</u>
1	\$51,928.00
2	\$52,967.00
3	\$54,026.00
4	\$89,906.00
5	\$190,423.00
6	\$315,453.00
7	\$471,910.00
8	\$655,730.00
9	\$854,564.00
10	\$1,055,557.00
11	\$1,252,293.00
12	\$1,445,900.00
13	\$1,516,043.00

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING AN INCREASE OF THE SALES AND USE TAX EXEMPTION BENEFITS PERTAINING TO A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY LEASED TO **THE VISTAS OF PORT JEFFERSON LLC** AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT OF THE LEASE AGREEMENT AND RELATED DOCUMENTS

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 has previously granted, in accordance with the Agency's resolutions adopted on October 25, 2017, as amended by resolutions adopted February 21, 2018 and July 11, 2018 (collectively the "**Prior Resolutions**"), to **THE VISTAS OF PORT JEFFERSON LLC**, a New York limited liability company (the "**Company**"), assistance in connection with: (a) the acquisition and construction of a senior housing rental community with approximately 244 senior citizen rental housing units and appurtenances (the "**Improvements**"), located or to be located on an approximately 27.324 acre parcel of land situated at Bicycle Path, Port Jefferson Station, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 0200-229.00-01.00-002.16 (formerly, 0200-229.00-01.00-002.11 through 002.15 and 0200-206.00-05.00-040.001)) (the "**Land**"), and (b) the acquisition and installation thereat of equipment and other personal property (the "**Equipment**") (the Land, Improvements and Equipment may be collectively referred to as the "**Facility**"), which Facility is initially leased by the Agency to the Company for sublease of the rental units by the Company to qualified senior residents of at least 55 years of age (the "**Project**"); and

WHEREAS, the Agency leases from the Company the Land and Improvements under a certain Company Lease Agreement, dated as of July 1, 2018 (the "**Company Lease Agreement**"), a memorandum of which Company Lease Agreement was to be recorded in the Suffolk County Clerk's Office, and

WHEREAS, the Agency subleases and leases the Facility to the Company under a certain Lease and Project Agreement, dated as of July 1, 2018 (the "**Lease Agreement**"), a memorandum of which Lease Agreement was to be recorded in the Suffolk County Clerk's Office, and

WHEREAS, the Company has requested an increase of \$400,000.00 in the sales and use tax exemption benefits granted by the Agency to the Company under the Lease Agreement by reason of the increased costs of the construction and equipping of the Project (the "**Sales and Use Tax Increase**"); and

WHEREAS, the Agency previously required the Company to provide to the Agency a benefit analysis (the “**Benefit 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, a copy of which has been filed with the records of the Agency; and

WHEREAS, the Agency’s Uniform Tax Exemption Policy (“**UTEP**”) provides for the granting of financial assistance by the Agency for unusual projects pursuant to Sections 3(B), 8(A) and 8(C) thereof; and

WHEREAS, the Agency contemplates that it will provide additional financial assistance to the Company, consistent with the policies of the Agency, in the form of an additional \$400,000.00 exemption from sales and use taxes on the acquisition, construction and equipping of the Facility, consistent with the policies of the Agency, pursuant to an Amendment to the Lease Agreement (the “**Amendment of Lease**”); 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, a public hearing (the “**Hearing**”) was held on January 9, 2019 with respect to the Project and the financial assistance contemplated by the Agency, 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, as amended, and to the representations by the Company that the Facility 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;

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 confirms its findings, determinations, authorizations, approvals and resolutions set forth in the Prior Resolutions, as amended hereby.

Section 2. The Agency hereby finds and determines:

i. 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;

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

iii. The continued leasing and subleasing of the Facility by the Agency to the Company, the acquisition, construction, and equipping of the Facility, and the providing of 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;

iv. 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 are located;

v. The Facility and the operations conducted therein does not have a significant effect on the environment, as determined in accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder;

vi. The Agency has determined that the proposed Sales and Use Tax Increase will promote and further the purposes of the Act;

vii. It is desirable and in the public interest for the Agency to grant the Sales and Use Tax Increase and to continue to lease the Facility to the Company for further subleasing of the rental units by the Company to qualified senior residents of at least 55 years of age;

viii. The Amendment of Lease will be an effective instrument whereby the Agency and the Company agree to increase the sales and use tax exemption benefits applicable to the Project by \$400,000.00 for a maximum aggregate amount of the sales and use tax exemption benefits of \$1,900,000.00, and the Agency will continue to lease the Facility to the Company and the Company will further sublease the Facility's rental units to qualified senior residents of at least 55 years of age; and

Section 3. Subject to the provisions of this resolution, the Agency hereby determines to grant an increase of the sales and use tax exemption benefits applicable to the Project by \$400,000.00 for a maximum aggregate amount of the sales and use tax exemption benefits of \$1,900,000.00 pursuant to the Amendment of Lease; and

Section 4. Subject to, and conditioned upon, the execution and delivery by the Company and such other persons as may be required by the Agency, and the acceptance by the Agency, of the Amendment of Lease and such other documents required by the Agency, 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 appointment hereunder shall expire upon the earliest of (a) the last day of the calendar month in which the expiration of three 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 \$1,900,000.00 or more, provided however, such appointment may be extended and the amount of the exemption 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 the 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 agent of the Agency. The aforesaid agency appointment expressly excludes 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 5. 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 resolution is subject to termination and recapture of benefits pursuant to Section 875 of the Act, and the Lease Agreement, as amended.

Section 6. 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 an Amendment of the Lease, and other certificates, agreements, instruments and documents, as above contemplated or in furtherance of the foregoing, in such form and substance 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 7. 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 8. The documents, including the proposed Amendment of Lease, 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 9. 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 agrees 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 10. 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 11. 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 execution and delivery of the Amendment of Lease, and such other instruments as required by the Agency, has not occurred prior to such expiration, subject to extension at the discretion of the Agency upon the written request of the Company.

Adopted: January 9, 2019

Accepted: January 9, 2019

THE VISTAS OF PORT JEFFERSON LLC

By:   
Denise R. Coyle, Manager

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY EXTENDING EXPIRATION OF AUTHORIZING RESOLUTION PERTAINING TO A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY TO BE LEASED TO THE VISTAS AT PORT JEFFERSON LLC.

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 VISTAS AT PORT JEFFERSON LLC**, a New York limited liability company on behalf of itself and/or the principals of **THE VISTAS AT PORT JEFFERSON LLC** and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “Company”), has applied to the Agency for assistance in connection with: (a) the acquisition and construction of a senior housing rental community with approximately 244 senior citizen rental housing units and appurtenances (the “Improvements”), including one and two bedroom apartments, a clubhouse and fitness center and other amenities, maintenance facilities, and a sewage pump station, located or to be located on an approximately 27.324 acre parcel of land situated at Bicycle Path, Port Jefferson Station, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 0200-229.00-01.00-002.11 through 002.15 and 0200-206.00-05.00-040.001) (the “Land”), and (b) the acquisition and installation thereof of equipment and other personal property (the “Equipment”), including appliances, furniture, fixtures, pool equipment and other equipment (the Land, Improvements and Equipment may be collectively referred to as the “Facility”), which Facility is to be initially leased by the Agency to the Company and the rental units subleased by the Company to qualified senior residents of at least 55 years of age (the “Project”), including the following as they relate to the acquisition, construction and equipping of the Facility, whether or not any materials 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 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, renovation 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 the Facility; and

WHEREAS, a public hearing (the “Initial Hearing”) was held on August 28, 2017 with respect to the Project and the financial assistance contemplated by the Agency, 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 Initial 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 Initial Hearing having been filed with the records of this Agency; and

WHEREAS, thereafter the Company amended its application to the Agency for assistance; 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, based upon the application of the Company, as amended, 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 acquisition, installation, purchase or lease of the Equipment and equipment, building materials, services or other personal property part of or to become part of the Facility, in an amount not to exceed \$1,500,000.00, 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 contemplates that it will not provide financial assistance to the Company in the form of exemptions from mortgage recording taxes; and

WHEREAS, the Agency contemplates it will acquire a leasehold interest in the Land and Improvements under a certain Company Lease Agreement (the "Company Lease Agreement") for a term of approximately thirteen (13) years, by and between the Company and the Agency, and

WHEREAS, the Agency contemplates it will acquire title to the Equipment pursuant to a certain Bill of Sale (the "Bill of Sale"), from the Company to 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 (the "Lease Agreement") for a term of approximately thirteen (13) years, by and between the Agency and the Company, which Lease Agreement will provide, inter alia, for the Company's obligations regarding payments in lieu of taxes with respect to the Facility, and assurances of the Company with respect to the recapture of certain benefits, including sales and use tax exemptions, granted under or by virtue of the Lease Agreement and other agreements; and

WHEREAS, the Company will sub-sublease the rental units at the Facility to qualified senior residents of at least 55 years of age, of which at least thirty six (36) rental units will be affordable; and

WHEREAS, in order to finance a portion of the costs of the Project, the Company anticipates obtaining loans from a lender or lenders yet to be identified (collectively, the “Lender”), and in order to secure the obligations of the Company and/or others to the Lender, the Agency contemplates that, at the request of the Company, the Agency, the Company and/or others will execute and deliver a mortgage or mortgages or a security agreement or security agreements in favor of the Lender, including replacements, substitutions, extensions and additions to such mortgages), with a limitation of the Agency’s liability thereunder (collectively, the “Mortgage”) for the purpose of subjecting the Facility to the lien of the Mortgage; and

WHEREAS, a second public hearing (the “Second Hearing”; together with the Initial Hearing, the “Hearing”) was held on October 18, 2017, so that all persons with views in favor of, or opposed to either the financial assistance contemplated by the Agency or the location or nature of the facility, could be heard; and

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

WHEREAS, the Agency has given due consideration to the application of the Company, as amended, and to the representations by the Company that the proposed Facility 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, the Agency required the Company to provide to the Agency a benefit analysis (the “Benefit 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, a copy of which has been filed with the records of the Agency; and

WHEREAS, the Agency’s Uniform Tax Exemption Policy (“UTEP”) provides for the granting of financial assistance by the Agency for unusual projects pursuant to Sections 3(B), 8(A) and 8(C) thereof; 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 Agency duly adopted on October 25, 2017, its authorizing resolution making certain findings and determinations pertaining to the Project, approving the acquisition, construction and equipping of the Facility and authorizing the execution, delivery and performance of agreements pertaining to the Facility (the “2017 Resolution”); and

WHEREAS, the 2017 Resolution is deemed rescinded at the expiration of six (6) months after the date of the adoption of the 2017 Resolution (the “Expiration Date”), if the closing contemplated thereunder has not occurred prior to such expiration, subject to extension at the discretion of the Agency upon written request of the Company; and

WHEREAS, the Company, by its counsel’s letter of January 5, 2018, has requested the date of expiration of the 2017 Resolution as above described be extended.

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 confirms its findings, determinations, authorizations, approvals and resolutions set forth in the 2017 Resolution, as amended hereby.

Section 2. The Agency hereby amends and restates Section 15 of the 2017 Resolution as follows:

“Section 15. This resolution shall take effect immediately, and, unless sooner rescinded or amended, shall be deemed rescinded on November 30, 2018 if the closing contemplated hereunder has not occurred prior to such date, subject to extension at the discretion of the Agency upon the written request of the Company.”

Section 3. This resolution shall take effect immediately.

Adopted: February 1, 2018

Accepted: February \_\_, 2018

THE VISTAS AT PORT JEFFERSON LLC

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

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING AN INCREASE OF THE SALES AND USE TAX EXEMPTION BENEFITS PERTAINING TO A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY LEASED TO **THE VISTAS AT PORT JEFFERSON LLC** AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT OF THE LEASE AGREEMENT AND RELATED DOCUMENTS

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 has previously granted, in accordance with the Agency’s resolutions adopted on October 25, 2017, as amended by resolutions adopted February 21, 2018, July 11, 2018, and January 9, 2019 (collectively the “**Prior Resolutions**”), to **THE VISTAS AT PORT JEFFERSON LLC**, a New York limited liability company (the “**Company**”), assistance in connection with: (a) the acquisition and construction of a senior housing rental community with approximately 244 senior citizen rental housing units and appurtenances (the “**Improvements**”), located or to be located on an approximately 27.324 acre parcel of land situated at Bicycle Path, Port Jefferson Station, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 0200-229.00-01.00-002.16 (formerly, 0200-229.00-01.00-002.11 through 002.15 and 0200-206.00-05.00-040.001)) (the “**Land**”), and (b) the acquisition and installation thereat of equipment and other personal property (the “**Equipment**”) (the Land, Improvements and Equipment may be collectively referred to as the “**Facility**”), which Facility is initially leased by the Agency to the Company for sublease of the rental units by the Company to qualified senior residents of at least 55 years of age (the “**Project**”); and

WHEREAS, the Agency leases from the Company the Land and Improvements under a certain Company Lease Agreement, dated as of July 1, 2018 (the “**Company Lease Agreement**”), a memorandum of which Company Lease Agreement was to be recorded in the Suffolk County Clerk’s Office; and

WHEREAS, the Agency subleases and leases the Facility to the Company under a certain Lease and Project Agreement, dated as of July 1, 2018 (the “**Lease Agreement**”), a memorandum of which Lease Agreement was to be recorded in the Suffolk County Clerk’s Office, as amended by an Amendment of Lease, dated as of January 9, 2019 (the “**First Amendment of Lease**”); and

WHEREAS, the Company has requested an increase of \$750,000.00 in the sales and use tax exemption benefits granted by the Agency to the Company under the Lease Agreement, as amended, by reason of the increased costs of the construction and equipping of the Project (the “**Sales and Use Tax Increase**”); and

WHEREAS, the Agency previously required the Company to provide to the Agency a benefit analysis (the “**Benefit 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, a copy of which has been filed with the records of the Agency; and

WHEREAS, the Agency’s Uniform Tax Exemption Policy (“**UTEP**”) provides for the granting of financial assistance by the Agency for unusual projects pursuant to Sections 3(B), 8(A) and 8(C) thereof; and

WHEREAS, the Agency contemplates that it will provide additional financial assistance to the Company, consistent with the policies of the Agency, in the form of an additional \$750,000.00 exemption from sales and use taxes on the acquisition, construction and equipping of the Facility, consistent with the policies of the Agency, pursuant to a Second Amendment to the Lease Agreement (the “**Second Amendment of Lease**”); 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, a public hearing (the “**Hearing**”) was held on July 9, 2019 with respect to the Project and the financial assistance contemplated by the Agency, 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, as amended, and to the representations by the Company that the Facility 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;

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 confirms its findings, determinations, authorizations, approvals and resolutions set forth in the Prior Resolutions, as amended hereby.

Section 2. The Agency hereby finds and determines:

i. 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;

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

iii. The continued leasing and subleasing of the Facility by the Agency to the Company, the acquisition, construction, and equipping of the Facility, and the providing of 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;

iv. 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 are located;

v. The Facility and the operations conducted therein does not have a significant effect on the environment, as determined in accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder;

vi. The Agency has determined that the proposed Sales and Use Tax Increase will promote and further the purposes of the Act;

vii. It is desirable and in the public interest for the Agency to grant the Sales and Use Tax Increase and to continue to lease the Facility to the Company for further subleasing of the rental units by the Company to qualified senior residents of at least 55 years of age;

viii. The Second Amendment of Lease will be an effective instrument whereby the Agency and the Company agree to increase the sales and use tax exemption benefits applicable to the Project by \$750,000.00 for a maximum aggregate amount of the sales and use tax exemption benefits of \$2,650,000.00, and the Agency will continue to lease the Facility to the Company and the Company will further sublease the Facility’s rental units to qualified senior residents of at least 55 years of age; and

Section 3. Subject to the provisions of this resolution, the Agency hereby determines to grant an increase of the sales and use tax exemption benefits applicable to the Project by \$750,000.00 for a maximum aggregate amount of the sales and use tax exemption benefits of \$2,650,000.00 pursuant to the Second Amendment of Lease; and

**Section 4.** Subject to, and conditioned upon, the execution and delivery by the Company and such others persons as may be required by the Agency, and the acceptance by the Agency, of the Second Amendment of Lease and such other documents required by the Agency, 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 appointment hereunder shall expire upon the earliest of (a) the last day of the calendar month in which the expiration of three 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 \$2,650,000.00 or more, provided however, such appointment may be extended and the amount of the exemption 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 the 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 agent of the Agency. The aforesaid agency appointment expressly excludes 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 5.** 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 resolution is subject to termination and recapture of benefits pursuant to Section 875 of the Act, and the Lease Agreement, as amended.

**Section 6.** 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 Second Amendment of the Lease, and other certificates, agreements, instruments and documents, as above contemplated or in furtherance of the foregoing, in such form and substance 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 7. 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 8. The documents, including the proposed Second Amendment of Lease, 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 9. 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 agrees 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 10. 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 11. 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 execution and delivery of the Second Amendment of



Lease, and such other instruments as required by the Agency, has not occurred prior to such expiration, subject to extension at the discretion of the Agency upon the written request of the Company.

Adopted: July 17, 2019

Accepted: July 17, 2019

THE VISTAS AT PORT JEFFERSON LLC

By: , Member