

Date: August 16, 2017

At a meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), held on the 16th day of August, 2017 at 8:00 a.m. local time, Town of Brookhaven, 1 Independence Hill, 3rd Floor, Farmingville, New York 11738, the following members of the Agency were:

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

Recused:

Absent: Scott Middleton

Also Present: Lisa M. G. Mulligan, Chief Executive Officer

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on a proposed mortgage financing and the execution of related loan documents in connection with a certain industrial development facility more particularly described below (American Capital Energy-Holtsville, LLC 2016 Facility) and approving the execution and delivery of related documents.

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

Voting Aye

Braun
Callahan
Grucci
Kelly
Pollakusky
Scheidt

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING
MORTGAGE FINANCING AND THE EXECUTION AND
DELIVERY OF LOAN DOCUMENTS IN CONNECTION
THEREWITH FOR THE AMERICAN CAPITAL ENERGY-
HOLTSVILLE, LLC 2016 FACILITY AND APPROVING THE
FORM, SUBSTANCE, EXECUTION AND DELIVERY OF
SUCH RELATED DOCUMENTS

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

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

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

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

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

WHEREAS, as security for a Loan or Loans (as such term is defined in the Lease Agreement), the Agency and the Company will execute and deliver to The Provident Bank (the “**Lender**”), a mortgage 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, pursuant to a resolution adopted on November 18, 2015, the Agency authorized the provision of financial assistance to the Company consistent with the policies of the Agency, in the form of exemptions from mortgage recording taxes, to the fullest extent permitted by law, securing the principal amount presently estimated to be \$1,500,000 but not to exceed \$2,000,000 in connection with the financing or refinancing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating and equipping the Facility; and

WHEREAS, the Company has now requested financial assistance from the Agency in the form of exemptions from mortgage recording taxes, to the fullest extent permitted by law, securing the principal amount presently estimated to be \$2,277,635 but not to exceed \$2,500,000; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company consistent with the policies of the Agency, in the form of exemptions from mortgage recording taxes, to the fullest extent permitted by law, securing the principal amount presently estimated to be \$2,277,635 but not to exceed \$2,500,000 in connection with the financing or refinancing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating and equipping the Facility; and

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

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the financing or refinancing of the Facility and the continued leasing and subleasing of the Facility.

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

Section 1. The Agency hereby finds and determines:

- (a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act.
- (b) The Facility continues to constitute a “project” as such term is defined in the Act.
- (c) The financing or refinancing of the acquisition, construction and equipping of the Facility will promote and maintain the job opportunities, health, general

prosperity and economic welfare of the citizens of the Town of Brookhaven, Suffolk County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act.

- (d) The financing or refinancing of the acquisition, construction and equipping of the Facility as contemplated in this resolution is reasonably necessary to maintain the competitive position of the Company in its industry.
- (e) Based upon representations of the Company and counsel to the Company, the Facility continues to conform with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local land use plans for the area in which the Facility is located.
- (f) It is desirable and in the public interest for the Agency to assist in the refinancing of the acquisition, renovation and equipping of the Facility.
- (g) The Loan Documents will be effective instruments whereby the Agency and the Company agree to secure the Loan and assign to the Lender their respective rights under the Lease Agreement (except the Agency's Unassigned Rights as defined therein).

Section 2. In consequence of the foregoing, the Agency hereby determines to:
(i) grant a mortgage or mortgages on and security interest in and to the Facility pursuant to certain mortgages and security agreements for the benefit of the Lender (the "**Mortgage**"),
(ii) execute, deliver and perform the Mortgage, and (iii) execute, deliver and perform the Loan Document to which the Agency is a party, as may be necessary or appropriate to effect the Loan or any subsequent refinancing of the Mortgage.

Section 3. Subject to the provisions of this resolution and the Lease Agreement, the Agency is hereby authorized to do all things necessary or appropriate for the execution, delivery and performance of the Loan Documents and the Mortgage, and such other related documents as may be necessary or appropriate to effect the Loan, or any subsequent refinancing of the Loan, and all acts heretofore taken by the Agency with respect to such financing or refinancing are hereby approved, ratified and confirmed. The Agency is hereby further authorized to execute and deliver any future documents in connection with any future refinancing or permanent financing of such costs of acquiring, constructing and equipping of the Facility without need for any further or future approvals of the Agency.

Section 4. Subject to the provisions of this resolution and the Lease Agreement, the Agency hereby authorizes and approves the following economic benefits to be granted to the Company in the form of exemptions from mortgage recording taxes, to the fullest extent permitted by law, securing the principal amount presently estimated to be \$2,277,635 but not to exceed \$2,500,000 in connection with the financing or refinancing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating and equipping the Facility.

Section 5.

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

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

Section 6. Subject to the provisions of this resolution and the Lease Agreement, the officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 7. Any expenses incurred by the Agency with respect to the transactions contemplated herein shall be paid by the Company.

Section 8. This resolution shall take effect immediately.

ADOPTED: August 16, 2017

Date: August 16, 2017

At a meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), held on the 16th day of August, 2017 at 8:00 a.m. local time, Town of Brookhaven, 1 Independence Hill, 3rd Floor, Farmingville, New York 11738, the following members of the Agency were:

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

Recused:

Absent: Scott Middleton

Also Present: Lisa M. G. Mulligan, Chief Executive Officer

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on a proposed mortgage financing and the execution of related loan documents in connection with a certain industrial development facility more particularly described below (American Capital Energy-Manorville, LLC 2016 Facility) and approving the execution and delivery of related documents.

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

Voting Aye

Braun
Callahan
Grucci
Kelly
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Scheidt

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING
MORTGAGE FINANCING AND THE EXECUTION AND
DELIVERY OF LOAN DOCUMENTS IN CONNECTION
THEREWITH FOR THE AMERICAN CAPITAL ENERGY-
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FORM, SUBSTANCE, EXECUTION AND DELIVERY OF
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WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as may be amended from time to time (collectively, the "**Act**"), the Town of Brookhaven Industrial Development Agency (the "**Agency**") was created with the authority and power, among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

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

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

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

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

WHEREAS, as security for a Loan or Loans (as such term is defined in the Lease Agreement), the Agency and the Company will execute and deliver to The Provident Bank (the "**Lender**"), a mortgage 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, pursuant to a resolution adopted on November 18, 2015, the Agency authorized the provision of financial assistance to the Company consistent with the policies of the Agency, in the form of exemptions from mortgage recording taxes, to the fullest extent permitted by law, securing the principal amount presently estimated to be \$1,800,000 but not to exceed \$2,000,000 in connection with the financing or refinancing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating and equipping the Facility; and

WHEREAS, the Company has now requested financial assistance from the Agency in the form of exemptions from mortgage recording taxes, to the fullest extent permitted by law, securing the principal amount presently estimated to be \$1,721,941 but not to exceed \$2,000,000; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company consistent with the policies of the Agency, in the form of exemptions from mortgage recording taxes, to the fullest extent permitted by law, securing the principal amount presently estimated to be \$1,721,941 but not to exceed \$2,000,000 in connection with the financing or refinancing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating and equipping the Facility; and

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

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the financing or refinancing of the Facility and the continued leasing and subleasing of the Facility.

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

Section 1. The Agency hereby finds and determines:

- (a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act.
- (b) The Facility continues to constitute a “project” as such term is defined in the Act.

- (c) The financing or refinancing of the acquisition, construction and equipping of the Facility will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven, Suffolk County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act.
- (d) The financing or refinancing of the acquisition, construction and equipping of the Facility as contemplated in this resolution is reasonably necessary to maintain the competitive position of the Company in its industry.
- (e) Based upon representations of the Company and counsel to the Company, the Facility continues to conform with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local land use plans for the area in which the Facility is located.
- (f) It is desirable and in the public interest for the Agency to assist in the refinancing of the acquisition, renovation and equipping of the Facility.
- (g) The Loan Documents will be effective instruments whereby the Agency and the Company agree to secure the Loan and assign to the Lender their respective rights under the Lease Agreement (except the Agency's Unassigned Rights as defined therein).

Section 2. In consequence of the foregoing, the Agency hereby determines to:
(i) grant a mortgage or mortgages on and security interest in and to the Facility pursuant to certain mortgages and security agreements for the benefit of the Lender (the "**Mortgage**"),
(ii) execute, deliver and perform the Mortgage, and (iii) execute, deliver and perform the Loan Document to which the Agency is a party, as may be necessary or appropriate to effect the Loan or any subsequent refinancing of the Mortgage.

Section 3. Subject to the provisions of this resolution and the Lease Agreement, the Agency is hereby authorized to do all things necessary or appropriate for the execution, delivery and performance of the Loan Documents and the Mortgage, and such other related documents as may be necessary or appropriate to effect the Loan, or any subsequent refinancing of the Loan, and all acts heretofore taken by the Agency with respect to such financing or refinancing are hereby approved, ratified and confirmed. The Agency is hereby further authorized to execute and deliver any future documents in connection with any future refinancing or permanent financing of such costs of acquiring, constructing and equipping of the Facility without need for any further or future approvals of the Agency.

Section 4. Subject to the provisions of this resolution and the Lease Agreement, the Agency hereby authorizes and approves the following economic benefits to be granted to the Company in the form of exemptions from mortgage recording taxes, to the fullest extent permitted by law, securing the principal amount presently estimated to be \$1,721,941 but not to exceed \$2,000,000 in connection with the financing or refinancing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating and equipping the Facility.

Section 5.

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

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

Section 6. Subject to the provisions of this resolution and the Lease Agreement, the officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 7. Any expenses incurred by the Agency with respect to the transactions contemplated herein shall be paid by the Company.

Section 8. This resolution shall take effect immediately.

ADOPTED: August 16, 2017

Date: August 16, 2017

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held on the 16th day of August, 2017 at 7:45 a.m., at the Town of Brookhaven Department of Economic Development, 1 Independence Hill, 3rd Floor, Farmingville, New York 11738, the following members of the Issuer were:

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

Recused:

Absent: Scott Middleton

Also Present: Lisa M. G. Mulligan, Chief Executive Officer

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of a leasehold interest in and title to a certain industrial development facility more particularly described below (American Organic Energy, LLC Facility) and the leasing of the facility to American Organic Energy, LLC.

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

Voting Aye

Voting Nay

Braun
Callahan
Grucci
Kelly
Pollakusky
Scheidt

AMENDED AND RESTATED RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION TOWARD THE ISSUANCE OF TAX-EXEMPT SOLID WASTE DISPOSAL FACILITY BONDS OR TAXABLE SOLID WASTE DISPOSAL FACILITY BONDS OR A COMBINATION THEREOF IN AN AMOUNT SUFFICIENT TO FINANCE CERTAIN COSTS OF THE AMERICAN ORGANIC ENERGY, LLC FACILITY, AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE FACILITY AND REQUESTING THE SUPERVISOR OF THE TOWN OF BROOKHAVEN TO APPROVE THE ISSUANCE OF THE BONDS.

WHEREAS, on October 16, 2016, the Town of Brookhaven Industrial Development Agency (the “**Issuer**”), adopted an Inducement Resolution (the “**Inducement Resolution**”), in connection with an application received from American Organic Energy, LLC, a New York limited liability company, on behalf of itself and/or the principals of American Organic Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), requesting that the Issuer finance the acquisition, renovation and equipping of an industrial development facility through the issuance of its tax-exempt solid waste disposal facility bonds (the “**Tax-Exempt Bonds**”) pursuant to Section 142(a)(6) of the Internal Revenue Code of 1986, as amended (the “**Code**”) or its taxable solid waste disposal facility bonds (the “**Taxable Bonds**”) and together with the Tax-Exempt Bonds, collectively, the “**Bonds**”) or a combination thereof, which facility shall consist of the acquisition of a leasehold interest in an approximately 6.0 acre parcel of land that is encompassed as part of a larger 62.00 acre parcel of land located at 445 Horseblock Road, Yaphank, New York 11980, and the construction and equipping of an approximately 74,500 square foot building to be located thereon including, without limitation, pre-processing equipment, odor control, anaerobic digestion tanks, by-product processing, gas cleaning and compression engines, to be leased by the Issuer to the Company and used by the Company in its business as an anaerobic digester to process food waste, oils, greases and grass clippings to be converted to clean energy, clean water and soil products (the “**Facility**”); and

WHEREAS, subsequent to the adoption of the Inducement Resolution the Company amended its application dated, May 5, 2015 (the “**Application**”), requesting that the proposed estimated bond amount be increased to an amount presently expected to be \$55,000,000 but not to exceed \$60,000,000; and

WHEREAS, the Issuer desires to amend and restate the Inducement Resolution to provide its consent to the increase of financial assistance requested by the Company; and

WHEREAS, the Facility will be leased (with the obligation to purchase) or sold to the Company, or such other person as may be designated by the Company and agreed upon by the Issuer, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as the same may be amended from time to time (collectively, the “**Act**”); and

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

WHEREAS, in addition to the issuance of the Bonds, the Issuer contemplates that it will provide financial assistance to the Company in connection with the Facility, to be more particularly described in a Bond Resolution to be adopted by the Issuer prior to the issuance of the Bonds; and

WHEREAS, pursuant to Section 147(f) of the Code, interest on the Tax-Exempt Bonds will not be excluded from gross income for federal income tax purposes unless the issuance of the Tax-Exempt Bonds is approved by the “applicable elected representative” of the Town of Brookhaven, Suffolk County (the “**Town**”) after a public hearing has been held on the Facility and the issuance of the Tax-Exempt Bonds; and

WHEREAS, prior to the issuance of the Bonds and the granting of any tax benefits, public notice of the hearing will be given as required by the Code and the Act, a copy of which (together with proof of publication) is annexed hereto as Exhibit A, and such notice complies with all requirements of the Code; and

WHEREAS, a public hearing will be held to hear all persons interested in the issuance of the Bonds, and the granting of any tax benefits and the location and nature of the Facility, and any other financial assistance contemplated, the minutes of which will be annexed as Exhibit B.

WHEREAS, the Issuer has given due consideration to the application and to the representations by the Company that the issuance of the Bonds, is an inducement to the Company to construct and equip the Facility in the Town of Brookhaven or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, the Company reasonably expects that it will pay or incur certain capital expenditures in connection with the Facility prior to the issuance of the Bonds; and

WHEREAS, the Company may use funds from sources other than Bond Proceeds which are or will be available on a short-term basis to pay for preliminary expenditures and the acquisition, construction and equipping of the Facility; and

WHEREAS, the Company reasonably expect that it will reimburse themselves for the use of such funds with proceeds of indebtedness to be issued by the Issuer to finance the costs of the Facility; and

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

WHEREAS, to aid the Issuer in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Issuer 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 Issuer; and

WHEREAS, the Questionnaire has been reviewed by the Issuer; and

WHEREAS, the Issuer constitutes an “Involved Agency” (as defined in SEQR); and

WHEREAS, the construction and operation of the Facility is an “Action” under SEQR; and

WHEREAS, the Brookhaven Town Board (the “**Town Board**”), as an Involved Agency under SEQR, declared its intent to act as Lead Agency for purposes of review of the Facility under SEQR, and coordinated review with Involved and Interested Agencies; and

WHEREAS, no Involved Agency objected to the Town Board, acting as Lead Agency for purposes of review of the Facility under SEQR, and therefore, the Town Board, was the Lead Agency; and

WHEREAS, on October 1, 2015, the Lead Agency, following a coordinated review, determined that the Facility to be a Type I Action as identified under SEQR; and

WHEREAS, the Town Board has completed Parts 2 and 3 of the full Environmental Assessment Form, reviewed the criteria for making a determination of significance comparing these criteria to identified impacts and has made a determination that the proposed Facility will not result in significant adverse impacts to the environment for the Action; and

WHEREAS, the Company has agreed to indemnify the Issuer 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 Issuer to the Company;

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

Section 1. Based upon the Questionnaire completed by the Company and reviewed by the Issuer and other representations and information furnished by the Company, the Lead Agency, following coordinated review, determined that, based upon its review of the EAF, the appropriate criteria for determination of significance, and such other and further information which the Lead Agency felt necessary to review, the Facility will not result in significant adverse impacts to the environment and, therefore an environmental impact statement will not be prepared. That determination constitutes a negative declaration for purposes of SEQR, which is binding on the Issuer.

Section2. Nothing herein shall be construed as committing the Issuer to approve the financing of the acquisition, construction and equipping of the Facility, through the issuance of the Bonds, until such time as all of the requirements of

SEQR have been satisfied. Rather, the actions undertaken pursuant to this resolution shall be limited to the publication of the public notice, the holding of the public hearing and contemporaneous environmental, engineering, economic, feasibility and other studies and preliminary planning necessary to formalize the Action as that term is defined under SEQR. No final action may be taken before the Issuer has complied with the requirements of SEQR.

Section 3.

(a) The acquisition, construction and equipping of the Facility and the financing thereof by the Issuer, through the issuance of the pursuant to the Act, and the provision of other financial assistance in connection therewith pursuant to the Act, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Town and the people of the State of New York and improve their standard of living, and thereby serve the public purposes of the Act, and the same is, therefore, approved; and

(b) It is desirable and in the public interest for the Issuer to issue the Bonds for the purpose of financing the costs of the acquisition, renovation and equipping of the Facility, together with necessary incidental expenses in connection therewith, as reflected in the Company's application to the Issuer, as amended from time to time prior to the issuance of the Bonds (or, the alternative, prior to the closing of the straight lease transaction). The currently estimated aggregate principal amount of the Bonds to be issued is approximately \$55,000,000, but not to exceed \$60,000,000.

Section 4.

Subject to approval of the issuance of the Tax-Exempt Bonds by Edward P. Romaine, Supervisor, Town of Brookhaven, Suffolk County, and the compliance with any other applicable provisions of the Code, the Issuer shall (i) issue the Tax-Exempt Bonds in an amount and with maturities, an interest rate, redemption terms and other terms and provisions to be determined by a further resolution of the Issuer, (ii) acquire, construct and equip the Facility, (iii) lease (with an obligation to purchase) the Facility to the Company pursuant to an agreement by and between the Issuer and the Company whereby the Company will be obligated, among other things, to make payments to or for the account of the Issuer in amounts and at times so that such payments will be adequate to pay the principal of, premium, if any, and interest on the Bonds, and (iv) secure the Bonds in such manner as the Issuer, the Company and the purchaser(s) of the Bonds mutually deem appropriate. If the proceeds of the sale of the Bonds are insufficient to finance completion of the acquisition, construction and equipping of the Facility, the Issuer will, subject to the terms and conditions to be agreed upon by the Issuer and the Company, and upon the request of the Company, take such actions and execute such documents as may be necessary to effect the issuance from time to time of additional bonds, whether on a parity with the Bonds or otherwise, for the purpose of paying the costs of completing the Facility.

Section 6.

The Company is hereby authorized to undertake the financing of the Facility with the Bonds.

Section 7. To the extent the Company has paid or incurred or will pay or incur preliminary expenditures or hard costs in connection with the Facility with current funds, it reasonably expects to reimburse itself with proceeds from the Bonds.

Section 8. To the extent the Company has paid or incurred or will pay or incur preliminary expenditures or hard costs in connection with the Facility with current funds, it reasonably expects to reimburse itself with proceeds from the Bonds. This resolution is intended to be a declaration of official intent under Treasury Regulation Section 1.150-2.

Section 9. The law firm of Nixon Peabody LLP is hereby appointed Bond Counsel to the Issuer in connection with the issuance of the Bonds.

Section 10. Counsel to the Issuer and Bond Counsel are hereby authorized to work with counsel to the Company and others to prepare, for submission to the Issuer, all documents necessary to effect the authorization, issuance and sale of the Bonds.

Section 11. The Chief Executive Officer of the Issuer is 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 12. The adoption of a final authorizing resolution for the Facility and the issuance of the Bonds and the granting of the benefits described herein, are subject to the Company obtaining, prior to the date of the public hearing, all necessary state, county, town and other governmental approvals and permits, including all required site plan and zoning approvals or variances, necessary to acquire, construct, equip and operate the Facility.

Section 13. The Chairman of the Issuer is hereby authorized and directed (i) to distribute copies of this resolution to the Company, (ii) to request Edward P. Romaine, Supervisor, Town of Brookhaven, Suffolk County to approve the issuance of the Tax-Exempt Bonds, (iii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 14. This resolution amended and restates the resolution adopted October 19, 2016.

Section 15. This resolution shall take effect immediately.

ADOPTED: August 16, 2017

ACCEPTED: _____

AMERICAN ORGANIC ENERGY, LLC

By: _____

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

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

I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the “**Agency**”), including the resolutions contained therein, held on the 16th day of August, 2017, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

The Application is in substantially the form presented to and approved at such meeting.

I FURTHER CERTIFY that (i) all members of the Issuer had due notice of said meeting, (ii) pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections 103a and 104, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 16th day of August, 2017.

Secretary

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the “**Code**”) and Title 1 of Article 18-A of the New York State General Municipal Law (the “**Act**”) will be held by the Town of Brookhaven Industrial Development Agency (the “**Issuer**”) on the ____ day of _____, 2017, at ____ __.m., local time, at the [_____] in connection with the following matters:

The Issuer proposes to issue its tax-exempt solid waste disposal facility bonds in an amount not to exceed \$[_____] (the “**Tax-Exempt Bonds**”), pursuant to Section 142(a)(6) of the Internal Revenue Code of 1986, as amended (the “**Code**”) or its taxable solid waste disposal facility bonds in an amount not to exceed \$[_____] (the “**Taxable Bonds**”) and together with the Tax-Exempt Bonds, collectively, the “**Bonds**”), or a combination thereof, in an estimated aggregate principal amount of \$55,000,000 but not to exceed \$60,000,000 to finance the acquisition of a leasehold interest in an approximately 6.0 acre parcel of land that is encompassed as part of a larger 62.00 acre parcel of land located at 445 Horseblock Road, Yaphank, New York 11980, and the construction and equipping of an approximately 74,500 square foot building to be located thereon including, without limitation, pre-processing equipment, odor control, anaerobic digestion tanks, by-product processing, gas cleaning and compression engines (the “**Facility**”), all to be used by American Organic Energy, LLC, a New York limited liability company, on behalf of itself and/or the principals of American Organic Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), to be leased by the Issuer to the Company and used by the Company in its business as an anaerobic digester to process food waste, oils, greases and grass clippings to be converted to clean energy, clean water and soil products. The Facility will be initially owned, operated and/or managed by the Company.

The Issuer will acquire a leasehold interest in the Facility and will sublease the Facility to the Company. At the end of the lease term, the Company will purchase the Facility from the Issuer. In addition to the issuance of the Bonds, the Issuer also contemplates that it will provide financial assistance to the Company in the form of exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Issuer.

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

Minutes of the hearing will be made available to Edward P. Romaine, Supervisor, Town of Brookhaven. Approval of the issuance of the Tax-Exempt Bonds, by the Town of Brookhaven, through Edward P. Romaine, Supervisor, Town of Brookhaven, is necessary in order for the interest on the Tax-Exempt Bonds to be excluded from gross income for federal income tax purposes.

Dated: _____, 2017

**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**

By: Lisa MG Mulligan

Title: Chief Executive Officer

EXHIBIT B

FORM OF MINUTES OF PUBLIC HEARING HELD ON
_____, 2017

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
SOLID WASTE DISPOSAL FACILITY BONDS
(AMERICA ORGANIC ENERGY, LLC FACILITY)

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

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

3. The hearing officer then described the proposed transfer of the real estate, the other financial assistance proposed by the Issuer and the location and nature of the Facility as follows:

The Issuer proposes to issue its tax-exempt solid waste disposal facility bonds in an amount not to exceed \$[_____] (the “**Tax-Exempt Bonds**”), pursuant to Section 142(a)(6) of the Internal Revenue Code of 1986, as amended (the “**Code**”) or its taxable solid waste disposal facility bonds in an amount not to exceed \$[_____] (the “**Taxable Bonds**”) and together with the Tax-Exempt Bonds, collectively, the “**Bonds**”), or a combination thereof, in an estimated aggregate principal amount of \$55,000,000 but not to exceed \$60,000,000 to finance the acquisition of a leasehold interest in an approximately 6.0 acre parcel of land that is encompassed as part of a larger 62.00 acre parcel of land located at 445 Horseblock Road, Yaphank, New York 11980, and the construction and equipping of an approximately 74,500 square foot building to be located thereon including, without limitation, pre-processing equipment, odor control, anaerobic digestion tanks, by-product processing, gas cleaning and compression engines (the “**Facility**”), all to be used by American Organic Energy, LLC, a New York limited liability company, on behalf of itself and/or the principals of American Organic Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), to be leased by the Issuer to the Company and used by the Company in its business as an anaerobic digester to process food waste, oils, greases and grass clippings to be converted to clean energy, clean water and soil products. The Facility will be initially owned, operated and/or managed by the Company.

The Issuer will acquire a leasehold interest in the Facility and will sublease the Facility to the Company. At the end of the lease term, the Company will purchase the Facility from the Issuer. In addition to the issuance of the Bonds, the Issuer also contemplates that it will provide financial assistance to the Company in the form of

exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Issuer.

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

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

Secretary

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

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

That I have compared the foregoing copy of the minutes of a public hearing held by the Town of Brookhaven Industrial Development Agency (the "Issuer") on _____, 2017, at _____ a.m. local time, at the Town of Brookhaven Department of Economic Development, 1 Independence Hill, 2nd Floor, Farmingville, New York 11738, with the original thereof on file in the office of the Issuer, and that the same is a true and correct copy of the minutes in connection with such matter.

IN WITNESS WHEREOF, I have hereunto set my hand as of _____, 2017.

Secretary

Date: August 16, 2017

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738, on the 16th day of August, 2017, the following members of the Agency were:

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

Recused:

Absent: Scott Middleton

Also Present: Lisa M. G. Mulligan, Chief Executive Officer

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of a leasehold interest in and title to a certain industrial development facility more particularly described below (Selden Commercial Center, LLC 2017 Facility) and the leasing of the facility to Selden Commercial Center, LLC.

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

Voting Aye

Voting Nay

Braun
Callahan
Grucci
Kelly
Pollakusky
Scheidt

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY TAKING
OFFICIAL ACTION TOWARD ACQUIRING AND
EQUIPPING THE FACILITY, MAKING CERTAIN
FINDINGS AND DETERMINATIONS WITH RESPECT TO
THE FACILITY AND APPROVING THE FORM,
SUBSTANCE AND EXECUTION OF RELATED
DOCUMENTS

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

WHEREAS, the Agency has previously assisted Selden Commercial Center, LLC, a New York limited liability company (the “**Company**”), in the renovation and equipping of a mixed-use industrial development facility consisting of (i) the acquisition of a leasehold interest in an approximately 6.84 acre parcel of land located at 635 Middle Country Road, Coram, Town of Brookhaven, New York (and further identified as Section 474 Block 2 Lot 1) (the “**Land**”), and an existing approximately 63,754 square foot facility located thereon (the “**Existing Building**”), which consisted of a vacant supermarket, vacant restaurant space and a day care center, (ii) the renovation of approximately 50,000 square feet of the Existing Building (the “**Renovated Space**”), (iii) the expansion of the ceiling height of the Renovated Space to be approximately 50 feet (clauses (i), (ii) and (iii) collectively referred to as the “**Improvements**”), and (iv) the acquisition, equipping and furnishing of the Renovated Space including landscaping, repaving of the existing parking area (collectively, the “**Equipment**”; and, together with the Land and the Improvements, the “**Original Facility**”), to be leased by the Agency the Company for further sublease by the Company to various tenants (collectively, the “**Sublessees**”), for use as a mixed-use facility indoor sports complex including, but not limited to, space for hosting leagues, clinics and regional tournament play, a day care center and future restaurants; and

WHEREAS, the Agency acquired a leasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of November 1, 2013 (the “**Company Lease**”), between the Company and the Agency; and

WHEREAS, the Agency acquired title to the Equipment pursuant to a certain Bill of Sale, dated November 12, 2013 (the “**Bill of Sale**”), from the Company to the Agency; and

WHEREAS, the Agency currently leases the Original Facility to the Company pursuant to a certain Lease Agreement, dated as of November 1, 2013 (the “**Original Lease Agreement**”), by and between the Agency and the Company; and

WHEREAS, the Agency and the Company previously entered into a certain Payment-in-Lieu-of-Tax Agreement, dated as of November 1, 2013 (the “**PILOT Agreement**”), whereby the Company agreed to make certain payments-in-lieu-of-taxes to the Taxing Authorities (as defined therein); and

WHEREAS, the Agency and the Company previously entered into a certain Recapture Agreement, dated as of November 1, 2013 (the “**Recapture Agreement**”), by and between the Agency and the Company; and

WHEREAS, the Agency and the Company previously entered into a certain Environmental Compliance and Indemnification Agreement, dated as of November 1, 2013 (the “**Environmental Compliance and Indemnification Agreement**”), by and between the Agency and the Company; and

WHEREAS, the Company has now requested the Agency’s assistance with respect to the acquisition and installation of approximately 1323 solar panels to be installed by the Company on the roof of the Facility and certain equipment generating approximately 430 kW of electricity in connection therewith (the “**2017 Facility**”); and

WHEREAS, the Company has also requested that an approximately 2,700 square foot portion of the Original Facility currently being subleased to Crossfit 631 (the “**Excluded Premises**”), be excluded from the Facility (the Original Facility, together with the 2017 Facility, less the Excluded Premises, shall be known as the “**Facility**”); and

WHEREAS, such Excluded Premises shall be excluded from the Facility, not subject to the terms and conditions of the Lease Agreement and will not receive any abatement of real property taxes; and

WHEREAS, pursuant to Section 8.10 of the Lease Agreement, all Equipment and other property of whatever nature affixed or attached to the Land or used or to be used by the Company in connection with the Land or the Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, therefore, upon completion of the acquisition and installation of the 2017 Facility, the 2017 Facility shall be incorporated into the Facility; and

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

WHEREAS, in connection with the 2017 Facility, 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 in an amount not to exceed \$74,175, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the 2017 Facility, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof), all consistent with the policies of the Agency; and

WHEREAS, in connection with the 2017 Facility, the Agency will continue to lease the Facility to the Company pursuant to a certain Amended and Restated Lease and Project Agreement, dated as of August 1, 2017, or such other date as may be determined by the Chairman, Chief Executive Officer and counsel to the Agency (the “**Amended and Restated Lease Agreement**”); and together with the Original Lease Agreement, the “**Lease Agreement**”), by and between the Agency and the Company; and

WHEREAS, the PILOT Agreement will be amended and restated pursuant to the Amended and Restated Lease Agreement; and

WHEREAS, the Recapture Agreement will be amended and restated pursuant to the Amended and Restated Lease Agreement; and

WHEREAS, the Environmental Compliance and Indemnification Agreement will be amended and restated pursuant to the Amended and Restated Lease Agreement; and

WHEREAS, a public hearing (the “**Hearing**”) was held on August 16, 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 Hearing was given on August 6, 2017, and such notice (together with proof of publication), was substantially in the form annexed hereto as Exhibit A; and

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

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

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

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

Section 1. The Agency hereby finds and determines:

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

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

(c) The acquisition and equipping of the 2017 Facility and the continued leasing of the Facility to the Company, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Town of Brookhaven, and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The acquisition and equipping of the 2017 Facility is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

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

(f) The Facility and the operations conducted therein do 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; and

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

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

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) continue leasing the Facility to the Company pursuant to the Amended and Restated Lease Agreement, and (ii) execute, deliver and perform the Amended and Restated Lease Agreement.

Section 3. The Agency is hereby authorized to acquire the 2017 Facility, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 4. The Agency hereby authorizes and approves the following economic benefits to be granted to the Company in connection with the acquisition and equipping of the 2017 Facility in the form of (i) exemptions from sales and use taxes in an amount not to exceed \$74,175, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the 2017 Facility, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof), all consistent with the policies of the Agency.

Section 5. Subject to the provisions of this resolution, the Company is herewith and hereby appointed the agent of the Agency to acquire, install and equip the 2017 Facility. The Company is hereby empowered to delegate its status as agent of the Agency to its agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to acquire, install and equip the 2017 Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency solely for purposes of making sales or leases of goods, services and supplies to the 2017 Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agents of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the 2017 Facility. This agency appointment expressly excludes the purchase by the Company of any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The Company shall indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Agency. The aforesaid appointment of the Company as agent of the Agency to acquire, install and equip the 2017 Facility shall expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which the Company has received exemptions from sales and use taxes in an amount not to exceed \$74,175 in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time. The aforesaid appointment of the Company is subject to the completion of the transaction and the execution of the documents contemplated by this resolution.

Section 6. The Company hereby agrees to comply with Section 875 of the Act. The Company further agrees that the tax exemptions and abatements provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this Authorizing Resolution are subject to termination and recapture of benefits pursuant to Sections 859-a and 875 of the Act and the recapture provisions of the Lease Agreement.

Section 7. The form and substance of the Amended and Restated Lease Agreement (in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 8.

(a) The Chairman, Chief Executive Officer or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Amended and Restated Lease Agreement, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Chief Executive Officer or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively

called the “**Agency Documents**”). The execution thereof by the Chairman, Chief Executive Officer or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Chief Executive Officer 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 Amended and Restated Lease Agreement).

Section 9. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 10. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company.

Section 11. This resolution shall take effect immediately.

ADOPTED: August 16, 2017

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

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

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the “**Agency**”), including the resolutions contained therein, held on the 16th day of August, 2017, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

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

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 16th day of August, 2017.

By: _____
Secretary

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York State General Municipal Law will be held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on the 16th day of August, 2017, at 8:30 a.m. local time, at the Town of Brookhaven Division of Economic Development, 2nd Floor, One Independence Hill, Farmingville, New York 11738, in connection with the following matters:

The Agency has previously assisted to Selden Commercial Center, LLC, a New York limited liability company (the “**Company**”), in the renovation and equipping of a mixed-use industrial development facility consisting of (i) the acquisition of a leasehold interest in an approximately 6.84 acre parcel of land located at 635 Middle Country Road, Coram, Town of Brookhaven, New York (and further identified as Section 474 Block 2 Lot 1) (the “**Land**”), and an existing approximately 63,754 square foot facility located thereon (the “**Existing Building**”), which consisted of a vacant supermarket, vacant restaurant space and a day care center, (ii) the renovation of approximately 50,000 square feet of the Existing Building (the “**Renovated Space**”), (iii) the expansion of the ceiling height of the Renovated Space to be approximately 50 feet (clauses (i), (ii) and (iii) collectively referred to as the “**Improvements**”), and (iv) the acquisition, equipping and furnishing of the Renovated Space including landscaping, repaving of the existing parking area (collectively, the “**Equipment**”; and, together with the Land and the Improvements, the “**Original Facility**”), to be leased by the Agency the Company for further sublease by the Company to various tenants (collectively, the “**Sublessees**”), for use as a mixed-use facility indoor sports complex including, but not limited to, space for hosting leagues, clinics and regional tournament play, a day care center and future restaurants.

The Company has now requested the Agency’s assistance with respect to the acquisition and installation of approximately 1323 solar panels to be installed by the Company on the roof of the Facility and certain equipment generating approximately 430 kW of electricity in connection therewith (the “**2017 Facility**”; and together with the Original Facility, the “**Facility**”). The 2017 Facility will be initially owned, operated and/or managed by the Company.

The Agency will provide financial assistance to the Company in connection with the acquisition and installation of the 2017 Facility and lease or sell the 2017 Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from sales and use taxes in connection with the acquisition and installation of the 2017 Facility and abatement of real property taxes, consistent with the policies of the Agency.

A representative of the Agency will at the above-stated time and place hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the 2017 Facility.

Dated: August 6, 2017

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT B

[FORM OF MINUTES OF PUBLIC HEARING HELD ON
August 16, 2017]

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(SELDEN COMMERCIAL CENTER, LLC 2017 FACILITY)

Section 1. James M. Tullo, Deputy Director of the Town of Brookhaven Industrial Development Agency (the “**Agency**”) called the hearing to order.

Section 2. James M. Tullo then appointed himself the hearing officer of the Agency, to record the minutes of the hearing.

Section 3. The hearing officer then described the proposed transfer of the real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility as follows:

The Agency has previously assisted to Selden Commercial Center, LLC, a New York limited liability company (the “**Company**”), in the renovation and equipping of a mixed-use industrial development facility consisting of (i) the acquisition of a leasehold interest in an approximately 6.84 acre parcel of land located at 635 Middle Country Road, Coram, Town of Brookhaven, New York (and further identified as Section 474 Block 2 Lot 1) (the “**Land**”), and an existing approximately 63,754 square foot facility located thereon (the “**Existing Building**”), which consisted of a vacant supermarket, vacant restaurant space and a day care center, (ii) the renovation of approximately 50,000 square feet of the Existing Building (the “**Renovated Space**”), (iii) the expansion of the ceiling height of the Renovated Space to be approximately 50 feet (clauses (i), (ii) and (iii) collectively referred to as the “**Improvements**”), and (iv) the acquisition, equipping and furnishing of the Renovated Space including landscaping, repaving of the existing parking area (collectively, the “**Equipment**”; and, together with the Land and the Improvements, the “**Original Facility**”), to be leased by the Agency the Company for further sublease by the Company to various tenants (collectively, the “**Sublessees**”), for use as a mixed-use facility indoor sports complex including, but not limited to, space for hosting leagues, clinics and regional tournament play, a day care center and future restaurants.

The Company has now requested the Agency’s assistance with respect to the acquisition and installation of approximately 1323 solar panels to be installed by the Company on the roof of the Facility and certain

equipment generating approximately 430 kW of electricity in connection therewith (the “**2017 Facility**”; and together with the Original Facility, the “**Facility**”). The 2017 Facility will be initially owned, operated and/or managed by the Company.

The Agency will provide financial assistance to the Company in connection with the acquisition and installation of the 2017 Facility and lease or sell the 2017 Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from sales and use taxes in connection with the acquisition and installation of the 2017 Facility and abatement of real property taxes, consistent with the policies of the Agency.

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

5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at 9:00 a.m.

EXHIBIT C

Proposed PILOT Schedule

Schedule of payments-in-lieu-of-taxes: Town of Brookhaven, (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Middle Country Central School District, Suffolk County and Appropriate Special Districts

<u>Year</u>	<u>Tax Year</u>	<u>Payment</u>
1.	2017/2018	\$ 161,303
2.	2018/2019	\$ 164,529
3.	2019/2020	\$ 167,819
4.	2020/2021	\$ 171,176
5.	2021/2022	\$ 174,599
6.	2022/2023	\$ 178,091
7.	2023/2024	\$ 181,653
8.	2024/2025	\$ 185,286
9.	2026/2027 and thereafter	100% of full taxes and assessments on the Facility

Date: August 16, 2017

At a meeting of the Town of Brookhaven Industrial Development Agency (the “**Agency**”), held on the 16th day of August, 2017, at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738, the following members of the Agency were:

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

Recused:

Absent: Scott Middleton

Also Present: Lisa M. G. Mulligan, Chief Executive Officer

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of a leasehold interest in and title to a certain industrial development facility more particularly described below (Overbay, LLC 2017 Facility) and the leasing of the facility to Overbay, LLC

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

Voting Aye

Voting Nay

Braun
Callahan
Grucci
Kelly
Pollakusky
Scheidt

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING
THE HOLDING OF A PUBLIC HEARING FOR THE
OVERBAY, LLC 2017 FACILITY AND APPROVING THE
FORM AND SUBSTANCE OF THE PILOT SCHEDULE

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

WHEREAS, Overbay, LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of Overbay, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with (i) the acquisition of an approximately 1.84 acre parcel of land located at 217 West Broadway, Port Jefferson, New York 11777 (the “**Land**”), (ii) the demolition of two (2) existing buildings, totaling approximately 15,000 square feet located thereon and the construction thereon of an approximately 54,000 square foot building, consisting of approximately 52 apartments, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (iii) the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility will be leased by the Agency to the Company, and used by the Company as a residential apartment building to be subleased to various residential tenants; and

WHEREAS, prior to the closing of the transaction described herein, a public hearing (the “**Hearing**”) will be held 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 can be heard; and

WHEREAS, notice of the Hearing will be given prior to the closing of the transaction described herein, and such notice (together with proof of publication) will be substantially in the form annexed hereto as Exhibit A; and

WHEREAS, the minutes of the Hearing are or will be annexed hereto as Exhibit B; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of (i) exemptions from mortgage recording taxes for one or more mortgages securing the principal amount presently estimated to be \$9,866,000 but not to exceed \$11,500,000 in connection with the financing of the acquisition, demolition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, demolishing, constructing and equipping of the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$277,380, in connection

with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof), consistent with the policies of the Agency; and

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

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

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

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

Section 1. The Agency hereby finds and determines:

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

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

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

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

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

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

Section 2. The Agency authorizes the holding of the Hearing.

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York State General Municipal Law will be held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on the ___ day of August, 2017, at ___:___ a.m. local time, at Port Jefferson Village Hall, 121 West Broadway, First Floor Conference Room, Port Jefferson, New York 11777, in connection with the following matters:

Overbay, LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of Overbay, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with (i) the acquisition of an approximately 1.84 acre parcel of land located at 217 West Broadway Port Jefferson, New York 11777 (the “**Land**”), (ii) the demolition of two (2) existing buildings, totaling approximately 15,000 square feet located thereon and the construction thereon of an approximately 54,000 square foot building, consisting of approximately 52 apartments, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (iii) the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility will be leased by the Agency to the Company, and used by the Company as a residential apartment building to be subleased to various residential tenants. The Facility will be initially owned, operated and/or managed by the Company.

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

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

Dated: August __, 2017

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON
_____, 2017

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(OVERBAY, LLC 2017 FACILITY)

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

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

Section 3. The hearing officer then described the proposed transfer of the real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility as follows:

Overbay, LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of Overbay, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in connection with (i) the acquisition of an approximately 1.84 acre parcel of land located at 217 West Broadway Port Jefferson, New York 11777 (the “**Land**”), (ii) the demolition of two (2) existing buildings, totaling approximately 15,000 square feet located thereon and the construction thereon of an approximately 54,000 square foot building, consisting of approximately 52 apartments, together with the acquisition, installation and equipping of improvements, structures and other related facilities attached to the Land (the “**Improvements**”), and (iii) the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), which Facility will be leased by the Agency to the Company, and used by the Company as a residential apartment building to be subleased to various residential tenants. The Facility will be initially owned, operated and/or managed by the Company.

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

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

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

EXHIBIT C

Proposed PILOT Schedule

Schedule of payments-in-lieu-of-taxes: Village of Port Jefferson, Town of Brookhaven, (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Bayport-Blue Point School District, Suffolk County and Appropriate Special Districts

<u>Tax Year</u>	<u>PILOT Payment Amount</u>
Construction	Land Taxes Only
Construction	Land Taxes Only
1	\$28,000.00
2	\$39,144.00
3	\$50,288.00
4	\$61,432.00
5	\$72,576.00
6	\$83,720.00
7	\$94,864.00
8	\$106,008.00
9	\$117,152.00
10	\$128,296.00
11	\$139,439.00
12	\$150,583.00
13	\$161,727.00
14	\$172,871.00
15	\$184,015.00

Date: August 16, 2017

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held on the 16th day of August, 2017 at 8:00 a.m. local time, Town of Brookhaven, 1 Independence Hill, 3rd Floor, Farmingville, New York 11738, the following members of the Agency were:

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

Recused:

Absent: Scott Middleton

Also Present: Lisa M. G. Mulligan, Chief Executive Officer

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on a proposed lease extension in connection with a certain industrial development facility more particularly described below (35 Sawgrass, LLC/Quality King Distributors, Inc. Facility) and approving the execution and delivery of related documents.

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

Voting Aye

Braun
Callahan
Grucci
Kelly
Pollakusky
Scheidt

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING AN
EXTENSION TO AN EXISTING LEASE AGREEMENT AND
THE EXECUTION AND DELIVERY OF LOAN DOCUMENTS
IN CONNECTION THEREWITH FOR THE 35 SAWGRASS,
LLC/QUALITY KING DISTRIBUTORS, INC. FACILITY AND
APPROVING THE FORM, SUBSTANCE, EXECUTION AND
DELIVERY OF SUCH RELATED DOCUMENTS

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

WHEREAS, the Agency previously entered into a straight lease transaction on behalf of Sarg, LLC, a New York limited liability company duly organized and validly existing under the laws of the State of New York (the “**Original Company**”), in connection with the acquisition, construction and equipping of an approximately 560,000 square foot building located on an approximately 37.0 acre parcel of land located on Sawgrass Drive, in the Brookhaven Industrial Park, Hamlet of Bellport, Town of Brookhaven, Suffolk County, New York (District 0200, Section 843.00, Block 04.00, Lot 001.000, f/k/a District 0200, Section 813.00, Block 01.00, P/O Lot 008.016), which was leased by the Agency to the Original Company and subleased by the Original Company to the Sublessee, for the warehousing, assembly, repackaging and wholesale distribution of health and beauty and fragrance products and for administrative offices of the Sublessee (the “**Original Facility**”); and

WHEREAS, the Agency leased the Original Facility to the Original Company pursuant to and in accordance with a certain Lease Agreement, dated as of January 1, 2005 (the “**Original Lease Agreement**”), by and between the Agency and the Original Company, and a Memorandum of Lease Agreement, dated as of January 1, 2005, with respect to the Lease Agreement, was recorded in the Suffolk County Clerk’s Office on February 7, 2005 in Liber D00012370 of Deeds, Page 247; and

WHEREAS, the Original Company subleased the Original Facility to the Sublessee pursuant to and in accordance with a certain Sublease Agreement, dated January 1, 2005 (the “**Sublease Agreement**”), by and between the Original Company and the Sublessee, and a Memorandum of Sublease Agreement, dated as of January 1, 2005, with respect to the Sublease Agreement, was recorded in the Suffolk County Clerk’s Office on February 7, 2005 in Liber D00012370 of Deeds, Page 248; and

WHEREAS, in connection with the leasing and the subleasing of the Original Facility, the Agency, the Original Company and the Sublessee entered into a Payment-in-Lieu-of-Tax Agreement, dated as of January 1, 2005 (the “**Original PILOT Agreement**”), whereby the Original Company and the Sublessee agreed to make certain payments-in-lieu-of real property taxes on the Original Facility (as defined therein); and

WHEREAS, in connection with the leasing and the subleasing of the Original Facility, the Agency, the Original Company and the Sublessee entered into an Environmental Compliance and Indemnification Agreement, dated as of January 1, 2005 (the “**Original Environmental Compliance and Indemnification Agreement**”), whereby the Original Company and the Sublessee agreed to comply with all Environmental Laws (as defined therein) applicable to the Original Facility; and

WHEREAS, the Agency previously consented to a request from the Original Company to assign the Original Company’s leasehold estate and reversionary interest in the Original Facility pursuant to the Original Lease Agreement, which was amended and restated in a certain Assignment, Assumption and Release Agreement and Amended and Restated Lease Agreement, dated as of August 1, 2006 (the “**Assignment, Assumption and Release Agreement**”), a memorandum of which Assignment, Assumption and Release Agreement was to be recorded in the Suffolk County Clerk’s Office, to the Assignee, and the Original Company assigned to the Assignee all of the Original Company’s rights, title, interest, duties, liabilities and obligations in, to and under the Original Lease Agreement, the Original PILOT Agreement, the Original Environmental Compliance and Indemnification Agreement, and the Assignee assumed all of the Original Company’s rights, title, interest, duties, liabilities and obligations in, to and under the Original Lease Agreement, the Original PILOT Agreement, the Original Environmental Compliance and Indemnification Agreement and the Assignment, Assumption and Release Agreement; and

WHEREAS, as a condition for it to enter into and perform the transactions contemplated by the Original Lease Agreement, as assigned, assumed and released, the Agency, Assignee and the Sublessee entered into an Amended and Restated Environmental Compliance and Indemnification Agreement, dated as of August 1, 2006 (the “**Amended and Restated Environmental Compliance and Indemnification Agreement**”); and

WHEREAS, the Agency required, as a condition and as an inducement for it to enter into and perform the transactions contemplated by the Lease Agreement, as assigned, assumed and released, and the Amended and Restated Environmental Compliance and Indemnification Agreement, that the Assignee and the Sublessee enter into, execute, deliver and perform an Amended and Restated PILOT Agreement, dated as of August 1, 2006 (the “**Amended and Restated PILOT Agreement**”); and

WHEREAS, the Agency agreed to assist in the acquisition, installation and equipping of a photovoltaic system on the roof of the Original Facility (the “**2011 Facility**”), all to be leased by the Agency to the Company; and

WHEREAS, on September 9, 2011, the Agency held a public hearing, following publication on August 26, 2011 of notice of such public hearing, with respect to the acquisition, installation and equipping of the 2011 Facility; and

WHEREAS, by resolution adopted by the Agency on September 12, 2011, the Agency decided, pursuant to the provisions of the Act, to proceed with acquisition, installation and equipping of the 2011 Facility and to amend the existing Original Lease

Agreement, as assigned, assumed and released, pursuant to a certain Amendment and Modification Agreement (the “**Amendment and Modification Agreement**”), with respect to the 2011 Facility; and

WHEREAS, the Agency continued to lease the Facility to the Company pursuant to the terms of the Original Lease Agreement, as assigned, assumed and released, as amended by the Amendment and Modification Agreement, a memorandum of which amendment to the Lease Agreement was intended to be recorded in the Suffolk County Clerk’s Office; and

WHEREAS, in connection with the leasing and subleasing of the Facility, the Agency, the Company and the Sublessee amended and restated the Amended and Restated PILOT Agreement pursuant to a certain Second Amended and Restated Payment in Lieu of Tax Agreement, dated as of November 1, 2011 (the “**Second Amended and Restated PILOT Agreement**”), pursuant to which the Company and the Sublessee agreed to make payments in lieu of taxes on the 2011 Facility; and

WHEREAS, upon execution and delivery of the Second Amended and Restated PILOT Agreement, the Agency requested the Assessor of the Town of Brookhaven (the “**Town Assessor**”), to file the fifteen (15) year New York State Solar Panel Exemption (the “**Exemption**”) with respect to the 2011 Facility; and

WHEREAS, the Agency previously assisted in the conversion of approximately 10,000 square feet of existing storage space located on the Original Facility to office space (the “**2013 Facility**”; and together with the Original Facility and the 2011 Facility, the “**Facility**”) all to be leased by the Agency to the Company; and

WHEREAS, the Agency continued to lease the Facility to the Company pursuant to the terms of the Original Lease Agreement, as assigned, assumed and released, as amended by the Amendment and Modification Agreement, and as further amended by a certain Second Amendment and Modification Agreement, dated as of December 1, 2013 (the “**Second Amendment and Modification Agreement**”; and, together with the Original Lease, the Assignment, Assumption and Release Agreement, and the Amendment and Modification Agreement, the “**Lease Agreement**”), between the Agency and the Company, a memorandum of which Second Amendment and Modification Agreement was to be recorded in the Suffolk County Clerk’s Office; and

WHEREAS, in connection with the leasing and subleasing of the Facility, the Agency, the Company and the Sublessee amended and restated the PILOT Agreement pursuant to a certain Third Amended and Restated Payment in Lieu of Tax Agreement, dated as of December 1, 2013 (the “**Third Amended and Restated PILOT Agreement**”), pursuant to which the Company and the Sublessee agreed to make payments in lieu of taxes on the 2013 Facility; and

WHEREAS, in connection with the Third Amended and Restated Payment in Lieu of Tax Agreement, the Agency and the Company agreed to extend the term of the Lease Agreement to be coterminous with the term of the Third Amended and Restated PILOT Agreement; and

WHEREAS, the Agency desires to enter into an Extension of Lease Agreement, dated as of August 16, 2017 (the “**Extension of Lease**”), between the Agency and the Company, to be recorded in the Suffolk County Clerk’s office, which Extension of Lease will provide for the continued leasing of the Facility by the Agency to the Company for a term to expire on November 30, 2026; and

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

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated herein and the continued leasing and subleasing of the Facility.

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

Section 1. The Agency hereby finds and determines:

- (a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act.
- (b) The Facility continues to constitute a “project” as such term is defined in the Act.
- (c) The continued leasing of the Facility will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven, Suffolk County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act.
- (d) The continued leasing of the Facility as contemplated in this resolution is reasonably necessary to maintain the competitive position of the Company in its industry.
- (e) Based upon representations of the Company and counsel to the Company, the Facility continues to conform with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local land use plans for the area in which the Facility is located.
- (f) It is desirable and in the public interest for the Agency to assist in the continued leasing of the Facility.
- (g) The Extension of Lease will be an effective instrument whereby the Agency and the Company agree to extend the term of the Lease Agreement.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) consent to the Extension of Lease, and (ii) execute, deliver and perform the Extension of Lease.

Section 3. Subject to the provisions of this resolution and the Lease Agreement, the Agency is hereby authorized to do all things necessary or appropriate for the execution, delivery and performance of the Extension of Lease, and such other related documents as may be necessary or appropriate to effect the extension of the lease term, and all acts heretofore taken by the Agency with respect to such lease extension are hereby approved, ratified and confirmed.

Section 4.

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

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

Section 6. Subject to the provisions of this resolution and the Lease Agreement, the officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 7. Any expenses incurred by the Agency with respect to the transactions contemplated herein shall be paid by the Company.

Section 8. This resolution shall take effect immediately.

ADOPTED: August 16, 2017

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

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

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the “**Agency**”), including the resolutions contained therein, held on the 16th day of August, 2017, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

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

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 16th day of August, 2017.

By _____
Secretary