

Date: October 2, 2023

At a meeting of the Town of Riverhead Industrial Development Agency (the “Agency”), held at Town Hall, 200 Howell Avenue, in Riverhead, New York, in said Town, on October 2, 2023 at 5:00 p.m. Prevailing Time.

Present: James B. Farley, Chairman (via videoconference)
Lori Ann Pipeczynski, Vice Chair
Lee Mendelson, Treasurer
Anthony Barresi, Secretary
Doug Williams, Asst. Treasurer

Recused:

Excused:

Also Present: Tracy Stark-James, Executive Director
William F. Weir, Esq., Transaction Counsel (via videoconference)
Terance V. Walsh, Esq., Transaction Counsel (via videoconference)

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 pertaining to the assignment and assumption of the Agency’s The Browning Hotel Properties, LLC 2007 Facility, the execution of related documents with respect thereto, and the leasing of the facility to Bradford Allen Hospitality Riverhead JV, LLC.

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

Voting Aye
____ James B. Farley
____ Lori Ann Pipeczynski
____ Anthony Barresi
____ Lee Mendelson
____ Douglas Williams

Voting Nay

#41-23 RESOLUTION OF THE TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ASSIGNMENT AND ASSUMPTION OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY FROM THE BROWNING HOTEL PROPERTIES, LLC TO BRADFORD ALLEN HOSPITALITY RIVERHEAD JV, LLC, A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF BRADFORD ALLEN HOSPITALITY RIVERHEAD JV, LLC AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS AND MAKING CERTAIN FINDINGS AND DETERMINATIONS

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 624 of the Laws of 1980, the Town of Riverhead Industrial Development Agency was created and is a public benefit corporation and an industrial development agency of the State of New York (the "**Agency**") having those powers set forth in, and subject to the requirements of, Article 18-A of the General Municipal Law; and

WHEREAS, by Application dated November 3, 2006, Browning Hotel Properties, LLC (the "**Original Company**") sought financial assistance from the Agency for the construction and equipping of a 114 key, 62,589 square foot Hilton Garden Inn Hotel; and

WHEREAS, upon the proceedings held upon the Application, the Agency adopted a determination by resolution dated February 5, 2007 entitled "A RESOLUTION DETERMINING THE PROPOSED BROWNING HOTEL PROPERTIES, LLC PROJECT A "PROJECT," APPROVING THE PROVIDING OF FINANCIAL ASSISTANCE BY THE TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY TO BROWNING HOTEL PROPERTIES, LLC WITH RESPECT THERETO, APPOINTING BROWNING HOTEL PROPERTIES, LLC AGENT OF THE TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY AND APPROVING DOCUMENTS IN CONNECTION THEREWITH" which resolution provided financial assistance to construct and equip a 114 key, 62,589 square foot Hilton Garden Inn Hotel (the "**Hilton Project**") located at 2012 Old Country Road, Riverhead, New York 11901 (the "**Land**"), at a total project cost of \$18,110,489. This facility has been constructed and placed in service and has a valid and subsisting certificate of occupancy; and

WHEREAS, upon proceedings held upon the Application, the Agency adopted a determination by resolution, dated April 6, 2015 entitled "A RESOLUTION APPROVING THE PROVISION OF FINANCIAL ASSISTANCE BY THE TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY TO BROWNING HOTEL PROPERTIES, LLC AND RELATED ENTITIES PHASE II" which resolution provided financial assistance to construct and equip on the Land the Phase II facility consisting of 140 key, 114,900 square foot Marriott Residence Inn (the "**Marriott Project**", and together with the Hilton Project and the Land, the "**Facility**") with meeting space and amenities at a total project cost of

\$26,849,775. All documents necessary to provide Agency assistance were executed and delivered at a closing October 22, 2015. This facility has been constructed and placed in service and has a valid and subsisting Certificate of Occupancy; and

WHEREAS, the Facility is a phased development project with common features of design for ingress and egress, plantings and site layout on a single tax map parcel on the Land, Suffolk County Tax Map Number 0600-118-2-3.2 (the "**Tax Map Parcel**"); and

WHEREAS, in connection with the financial assistance provided by the Agency, the Agency acquired title to the Facility by deed dated May 4, 2007 (the "**Deed**") from the Original Company; and

WHEREAS, simultaneous with the execution of the Deed, the Agency agreed to sell the Facility back to the Original Company, and granted the Original Company sole and exclusive possession of the Facility, pursuant to a Sale Agreement dated as of May 4, 2007 (the "**Original Sale Agreement**"), by and between the Agency and the Original Company; and

WHEREAS, as a condition to the Agency taking title to the Facility pursuant to the Deed, Company agreed to make payments-in-lieu-of-tax payments (the "**PILOT Payments**") with respect to the Land and the Hilton Project pursuant to a Payment In Lieu of Tax Agreement dated as of May 4, 2007 (the "**PILOT Agreement**") by and between the Agency and the Original Company; and

WHEREAS, the Original Company, the Agency, and Riverhead Hotel Management Corp. (the "**Sublessee**") entered into a Ground Lease (the "**Original Ground Lease**") dated as of July 20, 2012 for the purpose of leasing the Facility to the Sublessee; and

WHEREAS, upon the commencement of the Marriott Project, the Agency and the Original Company entered into a First Amendment to Sale Agreement (the "**First Amendment to Sale Agreement**") dated as of October 22, 2015 to reflect the Agency's agreement to sell the Facility, including the Marriott Project, back to the Original Company; and

WHEREAS, the Original Company agreed to enter into an Amended and Restated Payment In Lieu of Tax Agreement, dated October 22, 2015 (the "**Amended and Restated PILOT Agreement**"), in order to provide for PILOT Payments associated with the Marriott Project; and

WHEREAS, the Agency and the Original Company subsequently entered into a Second Amendment to Sale Agreement (the "**Second Amendment to Sale Agreement**", and together with the Original Sale Agreement and the First Amendment to Sale Agreement, the "**Existing Sale Agreement**"), dated as of March 14, 2019 in order to reflect certain mortgage loans incurred by the Original Company on such date; and

WHEREAS, in connection with such mortgage financing, the Original Company, the Agency, and the Sublessee amended the Original Ground Lease pursuant to a First

Amendment to Ground Lease (the "**Amendment to Ground Lease**", and together with the Original Ground Lease, the "**Ground Lease**"); and

WHEREAS, the Amended and Restated PILOT Agreement was further amended by the Original Company and the Agency pursuant to a certain Amendment to PILOT Agreement, dated as of August 31, 2023 (the "**Amendment to PILOT Agreement**", and together with the Amended and Restated PILOT Agreement, the "**Existing PILOT Agreement**"), in order to reflect a reduced assessed value of the Facility and to reflect past overpayments as a result of a successful tax certiorari proceeding brought by the Original Company; and

WHEREAS, Bradford Allen Hospitality Riverhead JV, LLC, a limited liability company organized and existing under the laws of the State of Delaware, on behalf of itself and/or the principals of Bradford Allen Hospitality Riverhead JV, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the "**Company**"), (i) BAH Riverhead Select Service Hotel, 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 BAH Riverhead Select Service Hotel, LLC and/or an entity formed or to be formed on behalf of any of the foregoing ("**BAH Riverhead Select**"), and (ii) BAH Riverhead Extended Stay Hotel, 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 BAH Riverhead Extended Stay Hotel, LLC, and/or an entity formed or to be formed on behalf of any of the foregoing ("**BAH Riverhead Extended**"), and together with BAH Riverhead Select, collectively, the "**Sublessee**") have now requested the Agency's consent to the (i) assignment by the Original Company of all of its rights, title, interest, duties, liabilities and obligations under the Existing Sale Agreement and the Existing PILOT Agreement, and certain other agreements in connection with the Facility to the Company and the assumption by the Company of all of such rights, title, interest, duties, liabilities and obligations of the Original Company, and (ii) the release of the Original Company from any further liability with respect to the Facility, subject to certain requirements of the Agency (the "**Assignment and Assumption**"), all pursuant to the terms of an Assignment, Assumption and Amendment Agreement, to be dated as of October 1, 2023, or such other date as may be determined by the Chairman or the Executive Director of the Agency, and counsel to the Agency (the "**Assignment and Assumption Agreement**"), by and among the Agency, the Original Company and the Company and the Sublessee; and

WHEREAS, the Existing Sale Agreement will be assigned by the Original Company to the Company pursuant to a certain Assignment and Assumption of Sale Agreement, to be dated as of October 1, 2023, or such other date as may be determined by the Chairman or the Executive Director of the Agency, and counsel to the Agency (the "**Assignment of Sale Agreement**", and together with the Existing Sale Agreement, the "**Sale Agreement**"), by and between the Original Company and the Company, and consented to by the Agency; and

WHEREAS, the Existing PILOT Agreement will be assigned by the Original Company to the Company pursuant to a certain Assignment and Assumption of PILOT Agreement, to be dated as of October 1, 2023, or such other date as may be determined by the Chairman or the Executive Director of the Agency, and counsel to the Agency (the

“Assignment of PILOT Agreement”, and together with the Existing PILOT Agreement, the **“PILOT Agreement”**), by and between the Original Company and the Company, and consented to by the Agency; and

WHEREAS, the Sublessees will make certain representations and assurances to the Agency with respect to their operation of the Facility pursuant to Tenant Agency Compliance Agreements to be dated as of October 1, 2023, or such other date as may be determined by the Chairman or the Executive Director of the Agency, and counsel to the Agency (the **“Tenant Agency Compliance Agreements”**), between each Sublessee and the Agency; and

WHEREAS, the Agency and the Company contemplate that the Sale Agreement may be amended and restated, if deemed necessary, by a certain Amended and Restated Sale Agreement, dated as of October 1, 2023 or such other date as may be determined by the Chairman or the Executive Director of the Agency, and counsel to the Agency (the **“Amended and Restated Sale Agreement”**), by and between the Agency, as lessor, and the Company as lessee; provided, in that case, the term **“Sale Agreement”** as set forth above shall be deemed to include the Amended and Restated Sale Agreement; and

WHEREAS, the Agency, the Company and the Sublessee will enter into such other documents upon advice of counsel, in both form and substance, as may be reasonably required to effectuate the assignment and assumption of the Project (together with the Assignment and Assumption Agreement, the Assignment of Sale Agreement, the Assignment PILOT Agreement, and the Tenant Agency Compliance Agreements, the **“Assignment Documents”**); and

WHEREAS, pursuant to Section 7.1 of the Sale Agreement, the Sale Agreement may be assigned by the Original Company, in whole or in part, with the prior written consent of the Agency; and

WHEREAS, following the completion of the Assignment and Assumption, the Company will benefit from the remaining term of the Existing PILOT Agreement through the 2026/2027 tax year, however no additional financial benefits shall be granted to the Company in connection with the Assignment and Assumption; and

WHEREAS, the Agency has given due consideration to the application of the Company and the Sublessee and to representations by the Company and the Sublessee that the Assignment and Assumption is necessary to facilitate the sale of the Facility from the Original Company to the Company, and is either an inducement to the Company and Sublessee to maintain and expand the Facility in the Town of Riverhead or is necessary to maintain the competitive position of the Company and the Sublessee in their respective industry; and

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

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of

the State of New York (collectively, the "SEQR Act" or "SEQR"), the Agency constitutes a "State Agency"; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form and related documents (the "Questionnaire") with respect to the Facility, a copy of which is on file at the office of the Agency; and

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

WHEREAS, the Original Company, the Company and the Sublessee have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the Assignment and Assumption Agreement.

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

Section 1. Based upon the Environmental Assessment Form completed by the Company and reviewed by the Agency and other representations and information furnished by the Company regarding the Facility, the Agency determines that the action relating to the purchase and sale of the Facility is a Type II action under SEQR and therefore, does not require further environmental review.

Section 2. Subject to the provisions of this resolution, 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 execution and delivery of the Assignment Documents and the sale of the Facility to the Company for further sublease to the Sublessee, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Riverhead, Suffolk County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The execution and delivery of the Assignment Documents is reasonably necessary to induce the Company and the Sublessee to maintain and expand their business operations in the State of New York; and

(e) Based upon representations of the Company and the Sublessee and counsel to the Company and the Sublessee, the Facility continues to conform with the local zoning laws and planning regulations of the Town of Riverhead, 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 sell the Facility to the Company, for further sublease to the Sublessee; and

(g) It is desirable and in the public interest for the Agency to consent to the execution and delivery of the Assignment Documents providing for the assignment by the Original Company of all of its rights, title, interest, duties, liabilities and obligations under the Sale Agreement and the PILOT Agreement and the Facility to the Company and the assumption by the Company of all of such rights, title, interest, duties, liabilities and obligations of the Original Company under the Sale Agreement and the PILOT Agreement; and

(h) The Assignment and Assumption Agreement, the Assignment of Sale Agreement, the Assignment of PILOT Agreement, and any other Assignment Documents to which the Agency is a party will be effective instruments whereby the Original Company will assign all of its rights, title, interest, duties, liabilities and obligations under the Sale Agreement, the PILOT Agreement, and the Facility to the Company and the Company will assume all of such rights, title, interest, duties, liabilities and obligations of the Original Company under the Sale Agreement, the PILOT Agreement, and the Facility with the consent of the Agency; and

(i) The Tenant Agency Compliance Agreements will be effective instruments whereby the Sublessees will make certain representations and assurances to the Agency with respect to their operation of the Facility.

Section 3. Subject to the provisions of this resolution, the Agency has assessed all material information included in connection with the Company's and the Sublessee's application for assumption of the Facility, and such information has provided the Agency a reasonable basis for its decision to provide the Assignment and Assumption.

Section 4. Subject to the provisions of this resolution, and in consequence of the foregoing, the Agency hereby determines to: (i) consent to the assignment by the Original Company of all of its rights, title, interest, duties, liabilities and obligations pertaining to the Facility under the Sale Agreement and the PILOT Agreement to the Company and the assumption by the Company of all of such rights, title, interest, duties, liabilities and obligations of the Original Company pursuant to the Assignment and Assumption Agreement, (ii) execute, deliver and perform the Assignment and Assumption Agreement, (iii) execute, deliver and perform the Assignment of Sale Agreement, (iv) execute, deliver and perform the Assignment of PILOT Agreement, (v) execute and deliver the Tenant Agency Compliance Agreements, and (vi) execute and deliver the other Assignment Documents to which the Agency is a party.

Section 5. Subject to the provisions of this resolution, the Agency is hereby authorized to consent to the assignment by the Original Company of all of its rights, title, interest, duties, liabilities and obligations under the Sale Agreement, the PILOT Agreement and the Facility to the Company and the assumption by the Company of all of such rights, title, interest, duties, liabilities and obligations of the Original Company pursuant to the Assignment and Assumption Agreement, the Assignment of Sale Agreement, and the

Assignment of PILOT Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such assignment and assumption are hereby approved, ratified and confirmed.

Section 6. Subject to the provisions of this resolution and the holding of the Hearing, the form and substance of the Assignment and Assumption Agreement, the Assignment of Sale Agreement, the Assignment of PILOT Agreement, the Tenant Agency Compliance Agreements, and any other Assignment Documents to which the Agency is a party (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Any expenses incurred by the Agency with respect to the Assignment and Assumption shall be paid by the Company and/or Sublessee. The Company and the Sublessee have agreed to pay such expenses and further shall agree to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Consent to Transfer Ownership and Assignment of the Facility.

Section 7.

(a) Subject to the provisions of this resolution, the Chairman, the Executive Director of the Agency or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Assignment and Assumption Agreement, the Assignment of Sale Agreement, the Assignment of PILOT Agreement, and the other Assignment Documents to which the Agency is a party, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, the Executive Director of the Agency or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "**Agency Documents**"). The execution thereof by the Chairman, the Executive Director of the Agency or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, the Executive Director of the Agency or any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Sale Agreement).

Section 8. Subject to the provisions of this resolution, 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 9. Subject to the provisions of this resolution, any expenses incurred by the Agency with respect to the Facility shall be paid by the Company and/or the Sublessee. The Company and the Sublessee agree to pay such expenses and further agree to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility. In accordance with the Agency's fee schedule, the Company has paid to the Agency a \$4,000 application fee, and upon closing of the Assignment and Assumption a \$5,000 administrative fee and reasonable fees of Transaction Counsel to the Agency will be due and payable by the Company.

Section 10. This resolution shall take effect immediately.

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

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

I have compared the foregoing copy of a resolution of the Town of Riverhead Industrial Development Agency (the “Agency”) with the original thereof on file in the office of the Agency, and the same is a true and correct copy of such resolution and of the proceedings of the Agency in connection with such matter. Such resolution was passed at a meeting of the Agency duly convened in public session on October 2, 2023, at 5:00 p.m., local time, at Town of Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York, at which meeting the following members were:

Present: James Farley, Chairman
 Lori Ann Pipeczynski, Vice Chairwoman
 Anthony Barresi, Secretary
 Lee Mendelson, Treasurer
 Doug Williams, Member

Absent:

Also Present: Tracy Stark-James, CEO
 William F. Weir, Esq., Nixon Peabody LLP

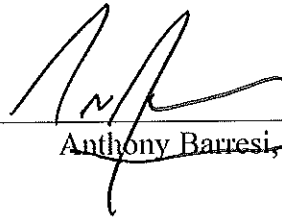
The question of the adoption of the foregoing resolution was duly put to vote on roll call,
which resulted as follows:

<u>Lee Mendelson</u>	VOTING	<u>Yes</u>
<u>Lori Ann Pipeczynski</u>	VOTING	<u>Yes</u>
<u>James Farley</u>	VOTING	<u>Yes</u>
<u>Anthony Barresi</u>	VOTING	<u>Yes</u>
<u>Doug Williams</u>	VOTING	<u>Yes</u>

and, therefore, the resolution was declared duly adopted.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), (ii) 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 October 2, 2023.

 *Asst Sec*

Anthony Barresi, Secretary