

**FIRST AMENDMENT TO
LEASE AND PROJECT AGREEMENT**

Dated as of September 20, 2023

by and between

TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY

and

AVALON AMITYVILLE, LLC

Avalon Amityville, LLC 2021 Facility

Affecting the Land generally known by the street address
366 Broadway, Amityville, New York 11701
in the County of Suffolk, State of New York
as more particularly described in
Exhibit A to the Lease and Project Agreement
and which is known as
District 0101, Section 002.00, Block 02.00, Lot 003.000
on the Official Tax Map of Suffolk County

FIRST AMENDMENT TO LEASE AND PROJECT AGREEMENT

This **FIRST AMENDMENT TO LEASE AND PROJECT AGREEMENT**, made and entered into as of September 20, 2023 (this **"First Amendment"**), by and between **TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the **"Agency"**), party of the first part, having its principal office at 47 West Main Street, Babylon, New York 11702, and **AVALON AMITYVILLE, LLC** a limited liability company organized and existing under the laws of the State of Delaware (the **"Company"**), party of the second part, having its principal office at 58 South Service Road, Suite 303, Melville, New York 11747 (all capitalized terms used herein and not otherwise defined shall have the same meaning as set forth in the Lease and Project Agreement herein defined):

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the **"Enabling Act"**) authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal property, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 177 of the 1973 Laws of New York, as amended (together with the Enabling Act, the **"Act"**) for the benefit of the Town of Babylon, County of Suffolk and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency entered into (i) a Company Lease Agreement with the Company, dated as of March 31, 2021 (the **"Company Lease"**), and (ii) a Lease and Project Agreement with the Company, dated as of March 31, 2021 (the **"Lease Agreement"**), with respect to a project (the **"Project"**) consisting of the acquisition, construction and equipping of a 323 commercial residential rental housing complex located on that certain approximately 7.68 acre lot, piece or parcel of land known as 366 Broadway, Amityville, New York 11701, Suffolk County Tax Map District 0101, Section 002.00, Block 02.00, Lot 003.000 (the **"Land"**) and the acquisition and installation of certain equipment, furnishings and personal property therefor (the **"Facility Equipment"**) (the Land and all buildings, structures and other improvements now or hereafter located thereon, and all fixtures and appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located on the Land and/or the buildings and improvements located thereon or placed on any part thereof, and attached thereto, which are used or usable in connection with the present or future operation thereof or the activities at any time conducted therein, and Facility Equipment (and all repairs, replacements, improvements and substitutions thereof or therefor, and all parts, additions and accessories incorporated therein), subject to the terms hereof, are collectively referred to herein as the **"Facility"**) for use by the Company as a residential rental apartment complex; and

WHEREAS, pursuant to Section 5.2 of the Lease Agreement, the Agency granted the Company an exemption from New York State and local sales and use taxes (**"Sales Tax"**) with respect to the costs of the Project Work (as defined in the Lease Agreement) for an aggregate principal amount not to exceed \$2,448,535 or such greater amount as approved by the Agency in its sole and absolute discretion, in connection with the financing of the Project; and

WHEREAS, the Company has represented that the Sales Tax with respect to the component of the Project Work subject to Sales Tax is expected to exceed \$2,448,535 and has requested that the Agency amend the Lease Agreement in order to grant the Company additional exemptions from Sales Tax with respect to the component of the Project Work subject to Sales Tax for an aggregate principal amount not to exceed \$3,000,000 pursuant to Section 5.2 of the Lease and Project Agreement; and

WHEREAS, the Agency now desires to enter into this First Amendment with the Company to amend the Lease Agreement in order to increase the maximum aggregate principal amount of exemptions from Sales Tax with respect to the component of the Project Work subject to Sales Tax from \$2,448,535 to \$3,000,000.

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree to amend the Lease Agreement as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not create a debt of the State of New York or of the County of Suffolk, and neither the State of New York nor the County of Suffolk shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the lease rentals, revenues and receipts derived from or in connection with the Facility including moneys received under the Lease Agreement):

Section 1. Amendments.

(a) Section 5.2(c)(i) of the Lease Agreement is hereby amended and replaced with the following:

(i) The Sales Tax Exemption shall be effective only for a term commencing on the Closing Date and expiring upon the earliest of (A) December 31, 2024, (B) the termination of this Lease Agreement, (C) the earlier of the Completion Date or the Required Completion Date, (D) failure of the Company to file Form ST-340, as described in Section 5.2(g) below, (E) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2 or (F) the date upon which the Company received the Maximum Company Sales Tax Savings Amount.

(b) The definition of Maximum Company Sales Tax Savings Amount contained in Schedule A of the Lease Agreement is hereby amended and replaced with the following:

“Maximum Company Sales Tax Savings Amount” shall mean the aggregate maximum dollar amount of Company Sales Tax Savings that the Company and all Agents acting on behalf of the Company are permitted to receive under this Lease Agreement, which shall not exceed \$3,000,000, or such maximum dollar amount as may be determined by the Agency pursuant to such additional documents as may be required by the Agency for such increase.

(c) The Expiration Date of the Sales Tax Agent Authorization Letter set forth in Exhibit D attached to the Lease Agreement is amended to December 31, 2024.

Section 2. Amendment, Ratification and Confirmation of the Lease Agreement. Except as specifically modified by this First Amendment, the Company hereby ratifies, confirms and reaffirms all of the terms and provisions of the Lease Agreement.

Section 3. Severability. If any clause, provision or section of this First Amendment be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

Section 4. Counterparts. This First Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5. Binding Effect. This First Amendment shall inure to the benefit of, and shall be binding upon, the Agency, the Company and its respective successors and assigns.

Section 6. Electronic Signature. The terms “execution,” “signed,” “signature,” and any similar terms, as used in this First Amendment, or any notice provided hereunder or any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, which shall include DocuSign and similar electronic signature platforms and digital copies of a signatory's manual signature, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 7. Governing Law. This First Amendment shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to the principals of conflicts of laws contained therein.

(Remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chief Executive Officer and attested under the seal of the Agency by its Secretary, or an Assistant Secretary and the Company duly executed this First Amendment all being done as of the year and day first above written.

(SEAL)

ATTEST:

Matthew T. McDonough
Matthew T. McDonough, Esq.
Agency Counsel

**TOWN OF BABYLON INDUSTRIAL
DEVELOPMENT AGENCY**

By:

Thomas E. Dolan

Name: Thomas E. Dolan

Title: Chief Executive Officer

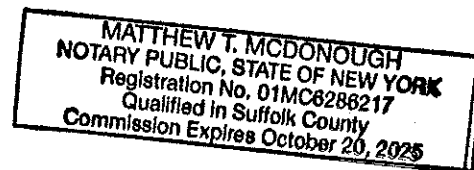
STATE OF NEW YORK)

) s.s.:

COUNTY OF SUFFOLK)

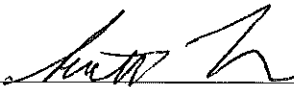
On the 3rd day of October, 2023, before me, the undersigned, personally appeared Thomas E. Dolan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Matthew T. McDonough
Notary Public



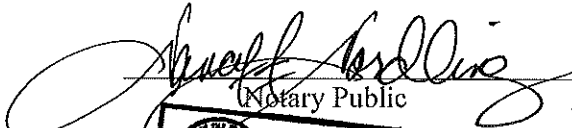
[Agency's signature page to First Amendment to Lease & Project Agreement]

AVALON AMITYVILLE, LLC

By: 
Name: Scott Fishbone
Title: Authorized Signatory

STATE OF New Jersey)
COUNTY OF Union) s.s.:

On the 14th day of October, 2023, before me, the undersigned, personally appeared Scott Fishbone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

NANCY J. NORDLING
NOTARY PUBLIC
STATE OF NEW JERSEY
ID # 50142430
MY COMMISSION EXPIRES NOV. 17, 2023

[Company's signature page to First Amendment to Lease & Project Agreement]