

PRELIMINARY AGREEMENT
(Calverton Aviation & Technology LLC 2022 Project)

THIS PRELIMINARY AGREEMENT (the “**Preliminary Agreement**”), made as of September 21, 2022 between the **TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation, organized and existing under the General Municipal Law of the State of New York, having offices at 542 East Main Street, Suite 1, Riverhead, New York 11901 (the “**Agency**”), **TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY (“CDA”)**, a community development agency, organized and existing under the General Municipal Law of the State of New York, having offices at 200 Howell Avenue, Riverhead, New York 11901 and **CALVERTON AVIATION & TECHNOLOGY LLC**, a Delaware limited liability company authorized to transact business in New York, having offices at 1300 William Floyd Parkway, Shirley, New York 11901 (the “**Company**”).

WHEREAS, by Title 1 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 of the State of New York (collectively the “**Act**”), the Agency was created with the authority and power to provide financial assistance for the purpose of, among other things, acquiring, renovating and equipping certain facilities as authorized by the Act; and

WHEREAS, Calverton Aviation & Technology 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 Calverton Aviation & Technology LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”) and the Town of Riverhead Community Development Agency, a community development agency created under Section 680-c of the General Municipal Law (the “**CDA**”), have applied to the Agency for assistance in connection with (A) a multi-phase industrial development facility consisting of the acquisition of certain parcels of land aggregating approximately 2,106 acres located at Enterprise Park at Calverton, Riverhead, New York 11901 also known as Lots 1 through 8 (SCTM# 0600-135.00-01.00-007.33 and 007.400) (collectively, the “**Land**”), and the construction and equipping of multiple buildings thereon (the “**Facility**”), which Facility will be developed and leased to multiple tenants not yet determined for use as a research and manufacturing park (collectively, the “**Project**”), and the acquisition and installation of certain equipment and personal property for Phase I at an estimated cost to be Two Hundred Forty-Five Million and 00/100 Dollars (\$245,000,000.00); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential (i) exemptions from mortgage recording taxes for one or more mortgages, (ii) exemptions from certain sales and use taxes and (iii) abatement of real property taxes (collectively, the “**Financial Assistance**”); and (C) the lease (with an obligation to purchase) or sale of the Equipment to the Company or such other person as may be designated by the Company and agreed upon by the Agency and sublease by the Agency to the Company; and

WHEREAS, on September 21, 2022, the Agency adopted a Preliminary Resolution (the “**Preliminary Resolution**”) accepting the Application for Financial Assistance,

dated September 9, 2022 (the “**Application**”), submitted by the Company and the CDA to the Agency and the execution of this Preliminary Agreement; and

WHEREAS, as of the date of this Preliminary Agreement, the Agency has not authorized the holding of a public hearing for the Project and has not determined whether it will provide Financial Assistance to the Company in connection with the Project; and

WHEREAS, the Agency will not hold a public hearing and will not make any determination as to Financial Assistance for the Project prior to the Agency completing its due diligence review of the Project, including review of all materials submitted by the Company and CDA in their Application, as well as any other materials requested by the Agency, its counsel, or its consultant in its sole discretion; and

WHEREAS, as a condition for the Agency to commence its due diligence review of the Project, the Agency and the Company are entering into this Preliminary Agreement whereby the Company shall agree to indemnify and hold the Agency and the CDA harmless in connection with all matters relating to the Project, and to pay all costs, expenses, and fees of the Agency, Nixon Peabody LLP (the “**Agency’s Transaction Counsel**”), any other attorneys or law firms engaged by the Agency in connection with the Project (together with Agency’s Transaction Counsel, the “**Agency’s Counsel**”), and any third-party consultants, accounting firms or construction monitoring firms (collectively, the “**Agency’s Consultants**”), retained by the Agency in its due diligence review in connection with the Project and all costs, expenses and fees of the CDA and Smith, Finkelstein, Lundberg, Isler & Yakoboski LLP, counsel to CDA (the “**CDA’s Counsel**”).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Agency and the Company agree as follows:

1. Undertakings of the Agency. Based upon the statements, representations, and undertakings of the Company and subject to the conditions set forth herein and in the Preliminary Resolution, the Agency agrees, subject to the provisions of the Preliminary Resolution, to commence its due diligence review of the Project by reviewing the Application, any materials subsequently requested by the Agency, its counsel, or its consultants to supplement the Application, and any other materials or information deemed relevant by the Agency in order to determine whether to undertake the Project and provide any Financial Assistance. The Agency may, in its sole discretion after completing its due diligence review, determine to hold a public hearing and do all things necessary to grant Financial Assistance to the Company in connection with the Project, subject to approval by the Agency’s board of directors and the requirements of the Act.

2. Undertakings of the Company. Based upon the statements, representations, and undertakings of the Agency and subject to the conditions set forth herein and in the Preliminary Resolution, the Company agrees as follows:

(a) Subject to the provisions of the Preliminary Resolution, the Company shall cooperate in good faith with the Agency's due diligence of the Project and the Application and shall diligently provide the Agency with any and all materials and information deemed necessary by the Agency to make a determination as to whether it will grant any Financial Assistance for the Project.

(b) The Company agrees that the Agency and the CDA, and their respective directors, members, officers, agents, and employees (the "Indemnified Parties") shall not be liable for and agrees to protect, defend, indemnify, save, release and hold the Indemnified Parties harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses (including, without limitation, reasonable attorneys' and experts' fees, expenses and disbursements, incurred whether by reason of third party claims or to enforce the terms, conditions and provisions of this Preliminary Agreement) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any Indemnified Party relating to, resulting from or arising out of the Indemnified Parties' undertaking of its due diligence of the Project and the Application, and any official action taken by the Indemnified Parties towards undertaking the Project. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect. The Company's obligation to indemnify and hold the Indemnified Parties harmless under this subsection shall survive the termination of this Preliminary Agreement. In the event of any claim against the Indemnified Parties by any employee or contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts. The members, owners, and/or parent entities of the Company shall execute and deliver performance and payment guaranties of the Company's obligations to the Agency and the CDA under this Preliminary Agreement.

(c) The Company shall take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3. Undertakings of the CDA. Based upon the statements, representations, and undertakings of the Agency and subject to the conditions set forth herein and in the Preliminary Resolution, the CDA agrees as follows:

(a) Subject to the provisions of the Preliminary Resolution, the CDA shall cooperate in good faith with the Agency's due diligence of the Project and the Application and shall diligently provide the Agency with any and all materials and information deemed necessary by the Agency to make a determination as to whether it will grant any Financial Assistance for the Project.

4. General Provisions.

(a) This Preliminary Agreement shall take effect on the date of execution hereof until (a) a Lease and Project Agreement (the "**Lease and Project Agreement**") granting Financial Assistance to the Company becomes effective or (b) the Agency notifies the Company that it has determined not to undertake the Project or grant Financial Assistance; provided the obligations of the Company set forth in subparagraphs 2(b), 4(c), 4(d), and 4(e) hereof, which shall survive the termination of this Preliminary Agreement.

(b) It is understood and agreed by the Agency and the Company that the execution of a Lease and Project Agreement and related documents are subject to: (i) a finding by the Agency, after review of all relevant information, that the Project complies with the Act; (ii) the Company obtaining all necessary governmental approvals; (iii) the Agency holding a public hearing with respect to the Project and any potential Financial Assistance therefore; and (iv) approval of the members of the Agency.

(c) The Company agrees that it will reimburse the Agency, Agency's Counsel, any third-party consultant retained by the Agency to assist in its due diligence process, the CDA, and the CDA's Counsel, for all reasonable and necessary direct out-of-pocket expenses which the Agency has incurred to date and may incur hereafter as a consequence of executing this Preliminary Agreement or performing its obligations hereunder, including but not limited to, the cost of (a) undertaking due diligence of the Project, the Application, and any other additional materials, (b) causing a notice of any public hearing held with respect to the Project to be published and the cost of making and transcribing records of said hearings or other meeting of the Agency, (c) the fees and expenses charged and incurred by Agency's Transaction Counsel in connection with their representation of Agency in this matter and their preparation of any documents pertaining to the provisions of Financial Assistance, and (d) all fees and expenses of the CDA and CDA's Counsel in connection with the Application and the Project.

(d) Upon the execution and delivery of this Preliminary Agreement, the Company shall pay to the Agency the amount of \$150,000, to pay the fees and expenses of the Agency, the Agency's Transaction Counsel and any third-party consultants hired or engaged by the Agency in connection with the Application or the due diligence and analysis of the Project. At such times that the Agency has incurred \$100,000 of fees and expenses, the Agency shall notify the Company, and the Company shall within three (3) business days, pay to the Agency an additional \$100,000, and thereafter each time the Agency shall notify the Company that the Agency has incurred \$100,000 of fees and expenses, the Company shall pay to the Agency an additional \$100,000 until the closing of Phase I of the Project. All amounts paid by the Agency to reimburse the Agency's Transaction Counsel hereunder shall be credited against the final invoice delivered by Agency's Transaction Counsel at the closing of Phase I.

(e) Upon the execution and delivery of this Preliminary Agreement, the Company shall pay to the CDA the amount of \$25,000, to pay the fees and expenses of the CDA, the CDA's Counsel and any third-party consultants hired or engaged by the CDA in connection

with the Application or the due diligence and analysis of the Project. At such times that the CDA has incurred \$25,000 of fees and expenses, the CDA shall notify the Company, and the Company shall within three (3) business days, pay to the CDA an additional \$25,000, and thereafter each time the CDA shall notify the Company that the CDA has incurred \$25,000 of fees and expenses, the Company shall pay to the CDA an additional \$25,000 until the closing of Phase I of the Project. All amounts paid by the CDA to reimburse the CDA's Counsel hereunder shall be credited against the final invoice delivered by the CDA's Counsel at the closing of Phase I.

5. Event of Default

(a) It shall be an "Event of Default" under this Preliminary Agreement (a) upon failure by the Company to make any payment required by this Preliminary Agreement, (b) upon failure by the Company to respond to any request by the Agency for documents or information to assist in the Agency's due diligence review hereunder, (c) upon failure by the Company to observe or perform any other covenant or agreement hereunder, or (d) if any representation or warranty of the Company under this Agreement, in the Application, or in any other materials or information submitted to the Agency by the Company is found to be inaccurate or misleading.

(b) Upon the occurrence of an Event of Default, the Agency shall have the right to terminate this Preliminary Agreement (subject to the survival of the Company's obligations of set forth in subparagraphs 2(b), 4(c), 4(d), and 4(e) hereof), cease its due diligence review hereunder, and rescind or terminate any outstanding approvals, authorizations, or resolutions then in effect. The Company shall also be required to pay to the Agency, the CDA, Agency's Transaction Counsel, and CDA's Counsel any costs and expenses incurred by such parties in connection with the Application, the Project, and this Preliminary Agreement.

6. Miscellaneous

(a) All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, return receipt requested, or delivered by any national overnight express delivery service (in each case, postage or delivery charges paid by the party giving such communication) addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Riverhead Industrial Development Agency
Riverhead Town Hall
200 Howell Street
Riverhead, New York 11901
Attention: Chief Executive Officer

With a copy to:

Nixon Peabody LLP
275 Broadhollow Road, Suite 300
Melville, NY 11747
Attention: William F. Weir, Esq.

To the CDA:

Town of Riverhead Community Development Agency
Riverhead Town Hall
200 Howell Street
Riverhead, New York 11901
Attention: Director

With a copy to:

Smith, Finkelstein, Lundberg, Isler and Yakobski, LLP
456 Griffing Avenue
Riverhead, New York 11901
Attention: Frank Isler, Esq.

To the Company:

Calverton Aviation & Technology, LLC
1300 William Floyd Parkway
Shirley, New York 11967
Attention: Justin Ghermezian, Managing Member

With a copy to:

Farrell Fritz, P.C.
400 RXR Plaza
Uniondale, New York 11556
Attention: Peter L. Curry, Esq.

(b) This Preliminary Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.


(c) This Preliminary Agreement may not be amended, changed, modified or altered except in writing executed by the parties hereto.

(d) This Preliminary Agreement shall be governed exclusively by the applicable laws of the State of New York, without regard or reference to its conflict of laws principals.

[Remainder of Page Intentionally Left Blank. Signature Page Follows].

IN WITNESS WHEREOF, the parties hereto have entered into this Preliminary Agreement as of the 21st day of September, 2022.


TOWN OF RIVERHEAD INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Name: James B. Farley
Title: Board Chair

CALVERTON AVIATION & TECHNOLOGY
LLC


By: _____
Name: Justin Ghermezian
Title: Managing Member

TOWN OF RIVERHEAD COMMUNITY
DEVELOPMENT AGENCY


By: 
Name: Dawn C. Thomas
Title: Executive Director

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By: 
Name: Justin Ghermezian
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TOWN OF RIVERHEAD COMMUNITY
DEVELOPMENT AGENCY

By: 
Name: Dawn C. Thomas
Title: Executive Director

**FIRST AMENDMENT TO PRELIMINARY AGREEMENT
(Calverton Aviation & Technology LLC 2022 Project)**

WHEREAS, the parties entered into an agreement titled "PRELIMINARY AGREEMENT" as of September 21, 2022 relating to and setting forth terms and conditions for the commencement of due diligence review of the project; and

WHEREAS, on December 21, 2022, the Agency retained Phillips Lytle LLP to represent the Agency and serve as "Agency's Transaction Counsel"; and

NOW, THEREFORE, the parties agree to amend the Preliminary Agreement dated September 21, 2022 as follows:

1. The name and address of "Agency's Transaction Counsel" shall be:

Phillips Lytle LLP
1205 Franklin Avenue
Suite 390
Garden City, NY 11530
Attention: Milan K. Tyler, Esq.


and all references and notice provisions set forth in the Preliminary Agreement and its preamble shall be amended to reflect Phillips Lytle LLP as Agency's Transaction Counsel as referenced above.

2. All terms and conditions of the original Preliminary Agreement shall remain in full force and effect.

First Amendment to

IN WITNESS WHEREOF, the parties hereto have entered into this Preliminary Agreement as of the 21st day of December, 2022.


TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY

By: 
Name: James B. Farley
Title: Board Chair

CALVERTON AVIATION & TECHNOLOGY LLC

By: _____
Name: Justin Ghermezian
Title: Managing Member


TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY

By: 
Name: Dawn C. Thomas
Title: Executive Director


First Amendment to

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By: 
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Title: Board Chair

CALVERTON AVIATION & TECHNOLOGY LLC

By: 
Name: Justin Ghermezian
Title: Managing Member

TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY

By: 
Name: Dawn C. Thomas
Title: Executive Director

