

TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY

and

RIVERHEAD APARTMENTS LLC

PROJECT AGREEMENT

Dated November 2, 2017

PROJECT AGREEMENT

THIS PROJECT AGREEMENT, dated November 2, 2017, is by and between the TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY, a public benefit limited liability company and an industrial development agency of the State of New York (the "State") duly organized and existing under the laws of the State, having its office at the Town of Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York 11901 (the "Agency"), and RIVERHEAD APARTMENTS LLC, a limited liability company formed under the laws of the State of New York, having an office at 50 Jericho Quadrangle, Suite 200, Jericho, NY 11753 (the "Company").

WITNESSETH:

WHEREAS, Title 1 of Article 18-A, as amended, of the General Municipal Law of the State (the "Enabling Act") has been duly enacted into law as Chapter 1030 of the Laws of 1969 of the State; and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, improve, maintain, equip and lease or sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery, equipment and other facilities deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, civic, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to enter into an agreement which includes provisions such as those contained herein (this agreement being hereinafter referred to as the "Project Agreement"); and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was created for the benefit of the Town of Riverhead, Suffolk County, New York (the "Town") and the inhabitants thereof by Chapter 624 of the Laws of 1980 (together with the Enabling Act, the "Act"); and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project consisting of: a proposed development located within a New York State Empire Zone and a designated urban renewal area at 221 East Main Street (S.C.T.M. No. 0600-129-01-21) and 31 McDermott Avenue (S.C.T.M. No. 0600-129-01-22) to replace the existing deteriorated and outdated retail storefront with a five-story, mixed-use building consisting of 116 rental apartments and approximately 12,623 gross square feet (11,992 net rentable square feet) of ground floor retail fronting East Main Street and McDermott Avenue. The unit mix will consist of 31 studio, 57 one-bedroom and 28 two-bedroom units (which includes one two-bedroom unit for building superintendent). The majority of apartments will be kept affordable to residents earning 60% of

the AMI with tiers of units available to residents earning between 90% and 130% of the AMI. Initial rents for studio units will range between \$976 and \$1,326, for one-bedrooms between \$1,210 and \$1,639 and for two-bedrooms between \$1,452 and \$1,955 subject to adjustment based on increases in published AMI. Parking spaces will be located sub-grade to East Main Street. In addition to providing resident parking, this arrangement will raise critical structural and mechanical components well above the base flood elevation. Other flood resilient measures proposed include flood barriers, on-site backup power and wind and water resistant design and materials. Project cost is estimated to be \$57,072,763 (the "Project"); and

WHEREAS, by Resolution, adopted on September 11, 2017 (the "Resolution"), the Agency has conferred on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (i) the provision of an exemption from Mortgage Recording Taxes, (ii) the provision of an exemption from Sales and Compensating Use Taxes on certain property, including tangible personal property, and (iii) a partial abatement of real property taxes for parcels identified as S.C.T.M. No. 0600-129-01-21 and S.C.T.M. No. 0600-129-01-22 for a 30-year period (collectively, the sales and use tax exemption benefit, the mortgage recording tax benefit, and the partial abatement from real property taxes benefit, are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, it has been estimated and confirmed by the Company as included within its Application for Financial Assistance that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$14,992,673, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$1,293,118, (ii) that the mortgage recording tax exemption amount not to exceed \$408,750 and (iii) that real property tax abatement benefits to be provided to the Company over the 30-year benefit period of the anticipated payment-in-lieu-of tax agreement are estimated to be approximately \$2,352,750; and

WHEREAS, the Company proposes to lease the Facility to the Agency, and the Agency desires to rent the Facility from the Company pursuant to the terms of a certain Ground Lease Agreement dated as of November 2, 2017 (the "Ground Lease Agreement"), by and between the Company and the Agency; and

WHEREAS, the Agency proposes to sublease the Facility to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions set forth in a certain Lease Agreement dated as of November 2, 2017 (the "Lease Agreement"); and

WHEREAS, in order to define the obligations of the Company regarding payments-in-lieu-of taxes for the Facility, the Agency and the Company will enter into a Payment-in-Lieu-of-Tax Agreement, dated as of November 2, 2017 (the "PILOT Agreement"), by and between the Agency and the Company; and

WHEREAS, in order to define the obligations of the Company regarding its ability to utilize the Agency's sales and use tax exemption benefit as agent of the Agency to acquire, construct, renovate and equip the Facility and to undertake the Project, the Agency and the

Company will enter into this Project Agreement, dated as of November 2, 2017 by and between the Agency and the Company; and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolutions and as more particularly described in the PILOT Agreement, Ground Lease, Lease, Guaranty, Sales Tax Authorization Letter and this Project Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

WHEREAS, no Financial Assistance shall be provided to the Company prior to the effective date of this Agreement.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Purpose of Project. It is understood and agreed by the parties hereto that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project facility to advance job opportunities, health, general prosperity and economic welfare of the people of Town of Riverhead and to otherwise accomplish the public purpose of the Act. Therefore, the Agency is entering into the Ground Lease Agreement, Lease Agreement, PILOT Agreement, Guaranty, Sales Tax Agent Authorization Letter and Project Agreement.

2. PILOT Agreement. The parties hereto understand and agree that a certain PILOT Agreement, to be entered into, or entered into, by and between the Company and the Agency dated November 2, 2017 which is or shall be contemporaneously recorded with the Suffolk County Clerk and incorporated herein as if fully set forth.

3. Termination, Modification and/or Recapture of Agency Financial Assistance. It is understood and agreed by the Parties hereto that the Agency is entering into the Ground Lease Agreement, the Lease Agreement, the PILOT Agreement, the Sales Tax Authorization Letter and the Project Agreement in order to provide Financial Assistance to the Company for the Facility and to accomplish the public purposes of the Act. The Company hereby makes the following representations and covenants in order to induce the Agency to proceed with the Project/Facility:

(a) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolutions, the Company covenants and agrees that it may be subject to a Recapture Event (as hereinafter defined) resulting in the potential recapture of any and all Financial Assistance, as described below, if the Company receives, or its Subagents receives any Financial Assistance from the Agency, and it is determined by the Agency that:

(1) the Project shall be placed in service no later than five (5) years from the date hereof and shall have received a valid and subsisting Certificate of Occupancy for all structures and uses; or

(2) the Company or its Subagents appointed on NYS Sales Tax Form ST-60 as filed by the Agency, if any, authorized to make purchases for the benefit of the Project is not entitled to the sales and use tax exemption benefits; or

(3) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or

(4) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(5) the Company has made a material false or misleading statement, or knowingly omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, on its application for Financial Assistance; or

(6) the Company fails to meet and maintain the thresholds and requirements representing certain material terms and conditions, said Investment Commitment, Employment Commitment, and Local Labor Commitment, all as further defined below, being additional purposes to be achieved by the Agency with respect to its determination to provide Financial Assistance to the Project and required by the Agency to be complied with and adhered to, as evidenced by submission, as so required by the Agency, of written confirmation certifying and confirming on an annual basis beginning in the first year in which Financial Assistance is so claimed, through the conclusion of the later of either (i) two (2) years following the construction completion date or (ii) the calendar year of the termination of the PILOT Agreement (said date hereinafter referred to as the "Project Completion Date" and the time period so referenced being hereinafter defined as the "Material Terms and Conditions Monitoring Period") confirming the following:

(a) Investment Commitment - that the total investment actually made with respect to the Project at the Project's construction completion date equals or exceeds \$48,511,848 (which represents the product of 85% multiplied by \$57,072,763 being the total Project cost as stated in the Company's application for Financial Assistance); and

(b) Employment Commitment - that there are at least 0 existing full time equivalent ("FTE") employees of Riverhead Apartments LLC located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE"); and that the Company has maintained and created FTE employment at the Facility equal to 2.5 FTE employees (representing the sum of 0 Baseline FTE plus the product of 85% multiplied by 3 (being the total number of new FTE employee positions as proposed to be created by the Company as stated in the Company's application for Financial Assistance); and

(c) Local Labor Commitment - that the Company adheres to and undertakes or has undertaken construction activities in compliance with the Agency's Local Labor Workforce Policy on an annual reporting basis during the construction period; and

(7) Rent Limitations – that the Company fails to meet the rent restrictions and income guidelines set forth in a certain Regulatory Agreement by and among New York State Housing Finance Agency, New York State Division of Housing and Community Renewal, Riverhead Apartments LLC and Town of Riverhead Industrial Development Agency for Riverhead Lofts of even date herewith.

In order to accomplish the foregoing, the Company shall provide annually, to the Agency, a certified statement and documentation: i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created in form as supplied by the Agency and as may be amended from time to time by the Agency.

The findings made by the Agency with respect to Section 3(a)(1), (2), (3), (4) and/or (5) and/or failure to provide the written confirmation as required by Section 3(a)(6) with respect to the thresholds and requirements as identified in Section 3(a)(6), above, and/or failure to meet the thresholds and requirements as identified in Section 3(a)(6) above, may potentially be determined by the Agency, in accordance with the Sales Tax Authorization Letter and Section 6.15 Recapture of Agency Benefits contained in the Lease Agreement and/or a failure to comply with the Agency's policies and Resolutions (collectively, findings and determinations made as described herein with respect to Section 3(a)(1), (2), (3), (4) and/or (5) and/or the failure under Section 3(a)(6) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 3(a)(6) are hereby defined as a "Recapture Event"). If the Agency declares a Recapture Event, the Company agrees and covenants that it will be liable as provided with respect to Recapture Events as defined in the Lease. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the New York State and local sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

(b) In accordance with the Resolution the Company further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$14,992,673, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 3(a) of this Agent Agreement, cannot exceed \$1,293,118.

(c) The Company acknowledges and understands that a Recapture Event made with respect to Section 3(a)(5) of this Project Agreement will, in addition, immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future Financial Assistance with respect to the Project.

4. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the Agency.

5. Notices. All notices, certificates and other communications under this Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by Federal Express, addressed as follows or to such other address as any party may specify in writing to the other:

To the Company:

Riverhead Apartments LLC

c/o Georgica Green Ventures, LLC
50 Jericho Quadrangle, Suite 200
Jericho, NY 11753

With Copy To:

Nixon Peabody LLP
Tower 46
55 Est 46th Street
New York, NY 10036-4120
Attn: Aaron J. Yowell, Esq.

With Copy To:

Raymond James Housing Opportunities Fund 46 L.L.C.
c/o Raymond James Tax Credit Funds, Inc.
880 Carillon Parkway
St. Petersburg, Florida 33716
Email: Steve.Kropf@RaymondJames.com
Attention: Steven J. Kropf, President

With Copy To:

William G. Driggers
Bryan Cave LLP
1155 F Street NW
Suite 500

Washington, DC 20004
Email: william.driggers@bryancave.com

With Copy To:

New York State Housing Finance Agency
641 Lexington Avenue
New York, New York 10022
Attention: Senior Vice President, Multifamily Housing
Attention: Counsel

With Copy To:

TD Bank, N.A.
125 Park Avenue
New York, New York 10017
Attention: Mathew H. Schatz

With Copy To:

Emmet, Marvin & Martin, LLP
120 Broadway
New York, New York 10271
Attention: Eric Usinger, Esq.

To the Guarantor:

Georgica Green Ventures, LLC
50 Jericho Quadrangle, Suite 200
Jericho, NY 11753

With Copy To:

Nixon Peabody LLP
Tower 46
55 Est 46th Street
New York, NY 10036-4120
Attn: Aaron J. Yowell, Esq.

To the Agency:

Town of Riverhead Industrial Development Agency

Town of Riverhead Town Hall
200 Howell Avenue
Riverhead, NY 11901
Attention: Executive Director

6. Amendments. No amendment, change, modification, alteration or termination of this Agreement shall be made except in writing upon the written consent of the Company and the Agency.

7. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

8. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard or reference to its conflict of laws principles.

9. Section Headings. The headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Agreement.

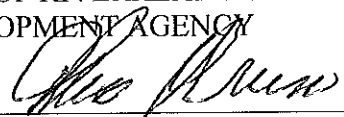
10. Due Authorizations, Execution and Delivery. The execution and delivery of this Agreement by the Managing Member and the performance by the Managing Member of the transactions contemplated hereby have been duly authorized by all requisite corporate, limited liability company, partnership or trust actions or proceedings. Each Managing Member is duly organized, validly existing and in good standing under the laws of the state of its formation with power to enter into this Agreement and to consummate the transactions contemplated hereby.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of the day and year first above written.

Dated: 10/24/17

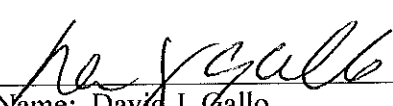
TOWN OF RIVERHEAD INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Thomas Cruso
Chairman

RIVERHEAD APARTMENTS LLC, a New York
limited liability company

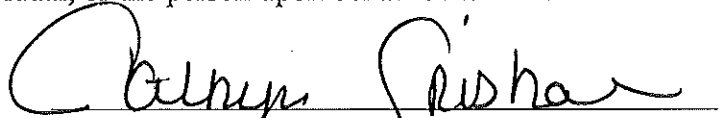
By: G&G RIVERHEAD LLC, its Managing
Member

Dated: 10/24/17

By: 
Name: David J. Gallo
Title: Authorized Signatory

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

On the 24th day of October in the year 2017 before me, the undersigned, a notary public in and for said State, personally appeared David J. Gallo 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

CATHRYN M. GRISHABER
Notary Public, State of New York
Monroe County, REG# 016R6136940
My Commission Expires November 14, 2017 *adn*

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

On the 23rd day of October in the year 2017 before me, the undersigned, a notary public in and for said State, personally appeared Thomas Cruso 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 its capacity and that by its signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

RICHARD A. EHLERS
Notary Public, State of New York
Suffolk County No. 02EH4738288
Commission Expires February 28, 2018

EXHIBIT A

Property Description

Old Republic Title Insurance Company

**SCHEDULE A
DESCRIPTION OF PREMISES continued**

OVERALL DESCRIPTION:

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being at Riverhead, Town of Riverhead, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point at the corner formed by the intersection of the southerly side of East Main Street (NYS Rte. 25) and the westerly side of McDermott Avenue;

RUNNING THENCE from said point of beginning South 13 degrees 02 minutes 40 seconds East along the westerly side of McDermott Avenue 382.21 feet to land now or formerly Riverhead Public Parking District No. 1;

RUNNING THENCE South 78 degrees 50 minutes 20 seconds West along land now formerly Riverhead Public Parking District No. 1, 110.93 feet to a monument found and land now or formerly Riverhead Enterprises;

RUNNING THENCE along land now or formerly Riverhead Enterprises the following two (2) courses and distances:

1. North 08 degrees 55 minutes 00 seconds West 97.00 feet;
2. North 08 degrees 43 minutes 30 seconds West 289.87 feet to the southerly side of East Main Street (NYS Rte. 25);

RUNNING THENCE North 82 degrees 00 minutes 00 seconds East along the southerly side of East Main Street (NYS Rte. 25) 82.37 feet to the point or place of BEGINNING.

AMENDED – 10/11/2017