Transcript Document No. 1

AVB HARBOR ISLE, LLC

and

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY

(TOWN OF HEMPSTEAD, NEW YORK)

COMPANY LEASE AGREEMENT

Dated as of March 1, 2019

Town of Hempstead Industrial Development Agency
(AVB Harbor Isle, LLC 2019 Facility)

THIS COMPANY LEASE AGREEMENT, dated as of March 1, 2019 (this "**Company Lease**"), is by and between AVB HARBOR ISLE, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, having its principal office at 58 South Service Road, Suite 303, Melville, New York 11747 (the "**Company**"), and the TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 350 Front Street, 2nd Floor, Hempstead, New York 11550 (the "**Agency**").

RECITALS

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State of New York (the "**State**"); and

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act, as amended, and Chapter 529 of the Laws of 1971 of the State, as amended (collectively, the "**Act**"), the Agency was created and is empowered under the act to undertake the Project Work and the leasing of the Facility defined below; and

WHEREAS, the Agency has agreed to assist in the acquisition of an approximately 11.6 acre parcel of land located at Sheridan Place and Island Parkway South in Island Park, Town of Hempstead, Nassau County, New York (excluding the docks and boat slips and any portions of property seaward of the existing or future bulkhead) (the "**Land**"), the construction and equipping of an approximately 266,267 square foot apartment complex containing approximately 172 units (to be a mixture of 1-bedroom, 2-bedroom and 3-bedroom luxury apartments) located thereon (the "**Improvements**" and "**Equipment**"; and, together with the Land, the "**Facility**"), to be used by the Company as a waterfront rental community (the "**Project**"); and

WHEREAS, as of the date of execution of this Company Lease, the Company is leasing the Land from Blue Island Development LLC (the "**Owner**"), pursuant to a certain Ground Lease, dated March 29, 2019 (the "**Ground Lease**") and will acquire fee title to the Land subsequent to the date hereof pursuant to that certain Real Estate Contract, dated as of October 10, 2018 (the "**Contract**"); and

WHEREAS, the Company has agreed to sublease (and, upon the Company's acquisition of the fee interest to the Land, and lease) the Land and the Improvements to the Agency pursuant to and in accordance with this Company Lease; and

WHEREAS, the Company has agreed to transfer to the Agency title to the Equipment pursuant to a Bill of Sale, dated the Closing Date (the "**Bill of Sale**"); and

WHEREAS, the Agency has agreed to sublease (and, upon the Company's acquisition of the fee interest to the Land, and lease) the Facility to the Company pursuant to

the terms of a certain Lease and Project Agreement, dated as of March 1, 2019 (the "**Lease Agreement**"), by and between the Agency and the Company; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to complete the Project Work (as such term is defined in the hereinafter defined Lease Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties mutually agree as follows:

The Company hereby subleases (and, upon the Company's acquisition of the fee interest to the Land, and leases) the Land (described in Exhibit A attached hereto) and the Improvements to the Agency for the annual rent of $1.00 for a term commencing on the Closing Date and terminating at 11:59 p.m. on December 31, 2035 (the "**Lease Term**").

Upon the Company's acquisition of fee title to the Land, the Agency's subleasehold interest in the Land hereunder shall immediately convert to a leasehold interest in the Land. Notwithstanding anything contained to the contrary herein, in the event that the Contract is terminated for any reason, this Company Lease shall immediately terminate.

This Company Lease shall terminate on the earliest of (i) the expiration of the Lease Term and (ii) the termination of the Lease Agreement pursuant to the terms thereof.

The Company agrees to keep, perform and observe, from and after the date hereof, all of the terms, covenants, conditions, obligations and other provisions contained in the Lease Agreement. The Company agrees further that it shall indemnify, defend and hold harmless the Agency from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings and reasonable attorneys' fees arising out of or in connection with the Lease Agreement or this Company Lease and shall defend the Agency in any suit, action or proceeding, including appeals, for personal injury to, or death of, any person or persons, or for any loss of or damage to property of persons, or for other claims arising out of the acts or omissions of the Company or any of its officers, directors, agents or employees, except to the extent caused by the gross negligence or willful misconduct of the Agency, its agents, contractors and/or employees. The foregoing indemnitees shall include all expenses incurred by the Agency, including, without limitation, reasonable attorneys' fees to enforce this Company Lease, the Lease Agreement or any other document to which the Company and the Agency are parties, and with respect to third party claims.

The Agency, for itself and its successors and assigns, hereby agrees to sublease (and, upon the Company's acquisition of the fee interest to the Land, and lease) the Land and the Improvements from the Company on the terms and conditions contained herein.

The Company and the Agency acknowledge that the Agency will sublease (and, upon the Company's acquisition of the fee interest to the Land, and lease) the Facility to the Company pursuant to the Lease Agreement. The Company and the Agency agree that while this Company Lease and the Lease Agreement remain in full force and effect, (i) (a) prior to the Company's acquisition of fee title, there shall be no merger of the Company's leasehold estate in the Land and the Company's sub-subleasehold interest in the Land created under the

Lease Agreement, and (b) subsequent to the Company's acquisition of fee title, there shall be no merger of the Company's fee simple absolute estate in the Land and the Improvements and the Company's subleasehold estate in the Land and Improvements created under the Lease Agreement; and (ii) the Agency shall continue to have, use and enjoy the subleasehold (or upon the Company's acquisition of the fee interest to the Land, leasehold estate) in the Land and the Improvements created under this Company Lease.

The Company and the Agency acknowledge that in order to accomplish certain financing arrangements for the Facility, the parties may be required to assign and mortgage, for collateral purposes, each of their respective rights, titles and interests held pursuant to this Company Lease, the Lease Agreement and other interests that either may hold. Each of the Company and the Agency hereby consents to all such assignments, mortgages and other collateral financing requirements that may arise in connection with the financing or refinancing of the Facility.

This Company Lease and any and all modifications, amendments, renewals and extensions thereof are subject and subordinate to any Mortgage which may be granted by the Agency and the Company on the Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

This Company Lease shall not be recorded by either party hereto. The Agency shall cause a memorandum of lease with respect hereto to be recorded in the office of the Nassau County Clerk.

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 Hempstead Industrial Development Agency
350 Front Street, 2nd Floor
Hempstead, New York 11550-4037
Attention: Chief Executive Officer

With a copy to:

Ryan, Brennan & Donnelly LLP
131 Tulip Avenue
Floral Park, New York 11001
Attention: John E. Ryan, Esq.

To the Company:

AVB Harbor Isle, LLC
58 South Service Road, Suite 303
Melville, New York 11747
Attention: Mr. Christopher Capece, Vice President, Development

and

AVB Harbor Isle, LLC
c/o AvalonBay Communities, Inc.
Ballston Tower
671 N. Glebe Road, Suite 800
Arlington, Virginia 22203
Attention: Brian R. Lerman, Esq., Vice President – Associate General Counsel

With a copy to:

Forchelli Deegan Terrana, LLP
The Omni
333 Earle Ovington Blvd., Suite 1010
Uniondale, New York 11553
Attention: Daniel P. Deegan, Esq.

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the third Business Day after mailing with respect to certified mail and one Business Day after mailing with respect to overnight mail.

Copies of all notices given either to the Agency or to the Company shall also be sent to any Lender, if such Lender shall have delivered written instructions to the Agency and the Company with the address of such Lender.

If a party hereto determines in its reasonable discretion that any further instruments or other actions are necessary or desirable to carry out the terms of this Company Lease, the other party shall, at the Company's sole cost and expense, execute and deliver all such instruments and take all such actions.

Capitalized terms used in this Company Lease and not otherwise defined in this Company Lease shall have the meanings assigned thereto in Schedule A to the Lease Agreement.

This Company Lease 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.

This Company Lease may not be amended, changed, modified or altered except in writing executed by the parties hereto.

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

AVB HARBOR ISLE, LLC
By: AvalonBay Communities, Inc.

By: _____
Name: Christopher Capece
Title: Vice President, Development

STATE OF NEW YORK)
: SS.:
COUNTY OF ~~NASSAU~~ Suffolk)

On the 28th day of March in the year 2019, before me, the undersigned, personally appeared **Christopher Capece**, 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 or entity on behalf of which the individual acted, executed the instrument.

_____
Notary Public

Terese Cirone
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01CI6385970
Qualified in Suffolk County
Commission Expires January 14, 2023

4821-3049-1273.2

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Name: Frederick E. Parola
Title: Chief Executive Officer

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

On the 28th day of March in the year 2019, before me, the undersigned, personally appeared **Frederick E. Parola**, 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 or entity on behalf of which the individual acted, executed the instrument.

_____
Notary Public

MICHAEL LODATO
Notary Public, State of New York
01LO6226099
Qualified in ~~Suffolk~~ County NASSAU
Commission Expires Aug. 2, 2022

4821-3049-1273.2

EXHIBIT A

Legal Description of Real Property

Title No. 3020-543378

SCHEDULE "A"

ALL THAT CERTAIN PLOT, PIECE, OR PARCEL OF LAND, SITUATE, LYING, AND BEING NEAR THE CITY OF LONG BEACH AND THE INCORPORATED VILLAGE OF ISLAND PARK, IN THE TOWN OF HEMPSTEAD, COUNTY OF NASSAU AND STATE OF NEW YORK, MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EASTERLY SIDE OF WASHINGTON AVENUE WITH THE SOUTHERLY SIDE OF ISLAND PARKWAY SOUTH;

RUNNING THENCE FROM SAID POINT OF BEGINNING SOUTH 76° 46' 04" EAST ALONG THE SOUTHERLY SIDE OF ISLAND PARKWAY SOUTH A DISTANCE OF 124.10 FEET;

THENCE SOUTHERLY AND WESTERLY ALONG ISLAND PARK CANAL, THE BASIN, WRECK LEAD CHANNEL, AND SIMMONS HASSOCK CREEK, THE FOLLOWING 11 COURSES AND DISTANCES:

(1) SOUTH 13° 13' 56" WEST A DISTANCE OF 338.00 FEET;
(2) SOUTH 9° 29' 15" EAST A DISTANCE OF 133.16 FEET;
(3) SOUTH 25° 18' 23" EAST A DISTANCE OF 119.09 FEET;
(4) SOUTH 13° 13' 56" WEST A DISTANCE OF 101.00 FEET;
(5) SOUTH 51° 53' 31" WEST A DISTANCE OF 95.00 FEET;
(6) NORTH 86° 21' 06" WEST A DISTANCE OF 117.25 FEET;
(7) NORTH 76° 46' 04" WEST A DISTANCE OF 85.00 FEET;
(8) SOUTH 88° 45' 00" WEST A DISTANCE OF 170.00 FEET;
(9) NORTH 63° 15' 00" WEST A DISTANCE OF 112.01 FEET;
(10) NORTH 34° 16' 31" WEST A DISTANCE OF 278.94 FEET;
(11) NORTH 45° 07' 24" WEST A DISTANCE OF 99.99 FEET TO A POINT;

THENCE NORTH 44° 52' 36" EAST, A DISTANCE OF 82.00 FEET TO A POINT;

THENCE NORTH 45° 07' 24" WEST, A DISTANCE OF 26.11 FEET TO A POINT;

THENCE NORTH 44° 52' 36" EAST, A DISTANCE OF 25.95 FEET TO A POINT;

THENCE NORTH 45° 07' 24" WEST, A DISTANCE OF 100.00 FEET TO THE EASTERLY SIDE OF SHERIDAN PLACE;

THENCE NORTH 44° 52' 36" EAST, ALONG THE EASTERLY SIDE OF SHERIDAN PLACE A DISTANCE OF 430.00 FEET TO THE SOUTHERLY SIDE OF ISLAND PARKWAY SOUTH;

THENCE SOUTH 76° 46' 04" EAST, ALONG THE SOUTHERLY SIDE OF ISLAND PARKWAY SOUTH A DISTANCE OF 349.66 FEET TO THE WESTERLY SIDE OF WASHINGTON AVENUE;

THENCE SOUTH 13° 13' 56" WEST, ALONG THE WESTERLY SIDE OF WASHINGTON AVENUE A DISTANCE OF 600.00 FEET TO A POINT;

THENCE NORTH 76° 46' 04" WEST, ALONG THE NORTHERLY SIDE OF WASHINGTON AVENUE A DISTANCE OF 59.20 FEET TO A POINT;

THENCE SOUTH 01° 23' 24" EAST, ALONG THE WESTERLY SIDE OF WASHINGTON AVENUE A DISTANCE OF 137.45 FEET TO A POINT;

CONTINUED...

TITLE NO. 3020-543378
SCHEDULE "A" CONTINUED

THENCE SOUTH 76° 46' 04" EAST, ALONG THE SOUTHERLY SIDE OF WASHINGTON AVENUE A DISTANCE OF 10.33 FEET TO A POINT;

THENCE NORTH 01° 23' 24" WEST, ALONG THE EASTERLY SIDE OF WASHINGTON AVENUE A DISTANCE OF 103.35 FEET TO A POINT;

THENCE SOUTH 76° 46' 04" EAST, A DISTANCE OF 90.26 FEET TO A POINT;

THENCE NORTH 13° 13' 56" EAST ALONG THE EASTERLY SIDE OF WASHINGTON AVENUE A DISTANCE OF 633.00 FEET TO THE SOUTHERLY SIDE OF ISLAND PARKWAY SOUTH AND THE POINT OR PLACE OF BEGINNING.

THE policy to be issued under this report will insure the title to such buildings and improvements erected on the premises, which by law constitute real property.

FOR CONVEYANCING ONLY: TOGETHER with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.