

MORTGAGE RECORDING TAX EXEMPTION AFFIDAVIT

RUSSELL E. GAENZLE, being duly sworn, deposes and says:

1. That he resides in Penfield, New York, and is a Member of Harris Beach PLLC, the law firm serving as transaction counsel to the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency").

2. That the Agency is a public benefit corporation duly organized and existing under the laws of the State of New York, having its offices at the Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York 12553.

3. That the Agency entered into a certain Lease Agreement, dated as of December 1, 2019 with **360 MIDDLETOWN HOLDING LLC** (the "Company"), pursuant to which the Agency received a leasehold interest in the property described in **Schedule A** attached hereto, and the Agency and the Company thereafter entered into a certain Leaseback Agreement, dated as of December 1, 2019, pursuant to which the Agency subleased its interest in said property back to the Company. By resolution duly adopted on December 12, 2019, the Agency approved the execution and delivery of the Lease Agreement, the Leaseback Agreement and the below-described Mortgage.

4. The Company, as mortgagor, has entered into certain agreements concerning a loan to be made to the Company by **BankUnited, N.A.** (the "Mortgagee"). As collateral for said debt, the Agency and the Company have executed a certain Mortgage, dated December 27, 2019 (the "Mortgage") in favor of the Mortgagee in the principal sum of **ONE MILLION SIX HUNDRED FORTY-EIGHT THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$1,648,500.00)**.

5. The Agency has covenanted in the Mortgage that it will record or cause the Mortgage to be recorded in all offices where recordation thereof is necessary.

6. That, in the opinion of your deponent, while the Agency would ordinarily pay the mortgage recording tax with respect to the Mortgage, the recording of the Mortgage is exempt from the payment of the mortgage recording tax, except for payment of the additional mortgage

recording tax imposed on real property located within a transportation district by Section 253(2) of the Tax Law, for the following reasons: (A) Section 874(2) of the General Municipal Law states that "any bonds or notes issued pursuant to this title, together with the income therefrom, as well as the property of the agency shall be exempt from taxation, except for transfer and estate taxes"; (B) General Municipal Law Section 874(1) states that an industrial development agency "shall be required to pay *no* taxes or assessments upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities"; to wit, the property referenced on **Schedule A** attached hereto and encumbered by the Mortgage to which the Agency is party; and (C) an Opinion of the New York State Comptroller No. 82-188 issued June 2, 1982, determining that an industrial development agency is exempt from payment of the mortgage recording tax.

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WHEREFORE, your deponent respectfully requests that:

The Mortgage be recorded as exempt from mortgage recording tax, **except for** the additional mortgage recording tax imposed on real property located within a transportation district pursuant to Sections 253(2)(a) of the Tax Law; and



RUSSELL E. GAENZLE

Subscribed and sworn to before me
this 23rd day of December, 2019.



Notary Public

Lori A. Palmer
Notary Public, State of New York
Qualified in Monroe County
Commission Expires May 31, 2023

SCHEDULE A

Section 60 Block 1 Lot 122

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Wallkill, County of Orange, State of New York, known and designated as being Lot #1 as shown on map entitled, "Minor Subdivision for Bryant Holdings, LLC" filed in the Orange County Clerk's Office on November 11, 2002 as Map No. 244-02 and being more particularly bounded and described as follows:

BEGINNING at a point on the southeasterly boundary of Crystal Run Road, where the same is intersected by the northeasterly boundary of Lot #2, Filed Map #224-02, lands now or formerly 360 Crystal Run LLC, said point marked by a monument found and running thence along the southeasterly boundary of Crystal Run Road, the following three (3) courses and distances:

1. N 48 degrees 49' 32" E a distance of 107.04 feet to a monument found;
2. N 52 degrees 12' 00" E a distance of 70.00 feet to a monument found;
3. N 75 degrees 51' 25" E a distance of 310.00 feet to a monument found;

Thence along the southwesterly boundary of Lot #1, Filed Map #96-95, lands now or formerly Gordon Wallkill MAB II Assoc. and in continuation along lands now or formerly Venda Properties, LLC (Liber 11569 Page 1821) S 32 degrees 56' 24" E a distance of 769.10 feet to an iron pin found; thence along the northwesterly and northeasterly bounds of Lot #2, Filed Map #224-02, lands now or formerly 360 Crystal Run Road LLC, the following two (2) courses and distances:

1. S 57 degrees 03' 36" W a distance of 346.68 feet;
2. N 41 degrees 10' 27" W a distance of 856.56 feet to the point of beginning, containing 7.791 +/- acres.

Premises known as 360 Crystal Run Road, Middletown, NY 10941