

RESOLUTION GRANTING APPROVAL OF AND AUTHORIZING THE GRANT OF CERTAIN FINANCIAL ASSISTANCE BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY TO 75 E. HOFFMAN LH, LLC IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A MULTI-FAMILY RESIDENTIAL HOUSING FACILITY

WHEREAS, the Town of Babylon Industrial Development Agency (the "Agency") is authorized under the laws of the State of New York, and in particular under the provisions of the New York State Industrial Development Agency Act and the Agency's enabling legislation, respectively constituting Article 18-A and Section 907-a of the General Municipal Law (Chapter 24 of the Consolidated Laws of New York), as amended (the "Act"), to assist in providing for manufacturing, warehousing, research, civic, commercial and industrial facilities in the Town of Babylon, New York (the "Town"); and

WHEREAS, representatives of 75 E. Hoffman LH, LLC, a limited liability company organized and existing under the laws of the State of New York or any other real estate holding company created in connection with the foregoing (the "Company") have filed or caused to be filed an application with the Agency concerning a project (the "Project") consisting of: (i) the acquisition of seven (7) existing buildings, containing an aggregate total of approximately 121,185 square feet (the "Original Buildings"), located at 75, 85 and 95 East Hoffman Avenue, 165 and 175 South Pennsylvania Avenue, and 90 and 95 Mal Drive, Lindenhurst, New York 11757 (the "Project Site"); (ii) the demolition of the Original Buildings; and (iii) the acquisition, construction, equipping and furnishing of a new, multi-family residential rental housing facility on the Project Site containing approximately 331,988 square feet, consisting of 260 units ((26) units of which will qualify as work force housing) (the "Facility"); and

WHEREAS, it is contemplated that the Company will cause the transfer or lease of the Project Site to the Agency pursuant to a Company Lease Agreement (the "Company Lease") and the Agency will assist the Company to undertake the Project and will sublease the Project Site and lease the Facility to the Company pursuant to a Lease and Project Agreement (the "Lease Agreement"), by and between the Company and the Agency pursuant to which the Company agrees, among other things, to make lease payments in such amounts as specified in the Lease Agreement; and

WHEREAS, pursuant to the Lease Agreement the Company has agreed to make certain payments in lieu of real property taxes with respect to the Facility to the Agency; and

WHEREAS, the Project was the subject to a uniform tax exemption policy deviation; a memo relating to the same of the Agency dated as of November 16, 2018 was delivered to each of the "affected tax jurisdiction" as defined in the Act ; and

WHEREAS, the Project was the subject of a project report of the National Development Counsel dated November 26, 2018 (the "NDC Report"), which was

submitted by NDC to the Agency in connection with the Project Application (hereinafter defined); and

WHEREAS, The Town and/or the Incorporated Village of Lindenhurst, New York (“Lindenhurst”) have undertaken multiple actions regarding the redevelopment of downtown Lindenhurst, including: (i) the amendment of Article XXIV of Chapter 193 of the Zoning Code of Lindenhurst to create a new Downtown Redevelopment District (the “DRD”) (or “floating zone” district) to, among other things, facilitate the development of affordable multifamily housing in Lindenhurst; (ii) the rezoning, pursuant to a resolution of the Village Board of Lindenhurst approved May 1, 2018, of the Project Site to DRD from its previous designation (most of the Project Site had been zoned “industrial”; the southern portion of tax lot 045.006 was within the “C” Residence Zoning District); (iii) the approval by the Village Board of Lindenhurst of a site plan application relating to the Project Site; and (iv) other actions taken in connection with the foregoing.

WHEREAS, in connection with the Agency’s evaluation of the Project for the provision of financial assistance, the Agency has (i) assessed all material information relating to the project included in the Company’s project application (the “Project Application”) in order to afford a reasonable basis for the decision of the Agency to provide financial assistance to the Project; (ii) reviewed the Agency’s written cost benefit analysis for the Project which identifies the extent to which (A) the Project will create or retain permanent, private sector jobs; (B) the estimated value of any tax exemption to be provided to the Project, (C) the amount of private sector investment generated or likely to be generated by the Project; (D) reviewed the likelihood of accomplishing the proposed project in a timely fashion; and (E) considered the extent to which the Project will provide additional sources of revenue for the Town and the school district where the Facility is located; and

WHEREAS, in connection with the adoption of this resolution the Agency has reviewed the Project Application and the Company has confirmed in such Project Application that as of the date of the Project Application, the Company is in substantial compliance with the Act; and

WHEREAS, representatives of the Agency held a public hearing with respect to the Project on November 29, 2018 and a transcript of such hearing has been presented to the members of the Agency; and

WHEREAS, it is desired that the Agency authorize the granting of certain financial assistance to the Company in connection with the Project and the Facility including abatements from mortgage recording taxes, real property taxes and sales and use taxes.

NOW, THEREFORE, BE IT DETERMINED, APPROVED AND RESOLVED by the members of the Agency as follows:

Section 1. With respect to the Agency’s evaluation criteria for Housing Projects the Agency makes the following determinations:

- (a) It has reviewed the information in the Cost Benefit Analysis, the NDC Report and the public hearing materials with respect to the Project.
- (b) The Company will be making a capital investment in the Town and in Lindenhurst of approximately \$102 million in connection with the Project.
- (c) The Project will not have significant impact on local labor in the Town but will result in the creation of approximately 247 full time construction jobs for the approximately 25-month construction period of the Project.
- (d) The Town and Lindenhurst are in need of workforce housing units and the Facility will provide 26 units of work force housing.
- (e) The Project is in alignment with local planning and development efforts of Lindenhurst and the Project is a central component of the efforts of Lindenhurst and the Town to foster economic development by revitalizing downtown Lindenhurst into a lively, walkable, transit-oriented community, consistent with the goals of the Regional Plan Association's Report dated November 15, 2017 regarding Opportunities for Affordable Homes and Neighborhoods Near Transit.
- (f) The Project is in an urban/town center location.
- (g) The Project has support of Lindenhurst officials.
- (h) As detailed in the NDC Report, without the proposed real property tax abatement and stabilization (the "Pilot"), lender underwriting guidelines and investor thresholds are not met and the Project is financially not feasible.
- (i) As further detailed in the NDC Report, with the proposed Pilot, lender underwriting ratios are met and investors returns are reasonable to establish financial feasibility for the Facility and the metrics used and determined for the Project, cash on cash return, cash on cost, and internal rate of return (IRR), are consistent with what the market normally expects for a comparable residential development and accordingly the proposed Financial Assistance (defined below) provided by the Agency does not create undue enrichment for the Company.
- (j) The Project promotes transit oriented or walkable community areas.

Section 2. Based on the evaluation of the foregoing evaluation criteria, (a) the Agency hereby finds and determines that (i) the Project constitutes a “Project” within the meaning of the Act; and (ii) the granting of mortgage recording tax abatements, real property tax abatements and sales and use tax abatements (collectively the “Financial Assistance”) by the Agency with respect to the Project and the Facility pursuant to the Act, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Town and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act.

(b) It is desirable and in the public interest for the Agency to grant Financial Assistance to the Company with respect to the Project and the Facility.

(c) The Agency shall grant Financial Assistance to the Company in the form of New York State and local Sales and Use Tax abatements as provided in Section 5.2 of the Lease Agreement and in the event of the occurrence of a recapture event under the Lease Agreement the Agency will pursue recapture of Financial Assistance as provided in Section 5.4 of the Lease Agreement.

Section 3. To accomplish the purposes of the Act, the Agency shall take legal fee or leasehold title to the Project Site pursuant to the Company Lease, assist the Company to undertake the Project and lease the Facility and sublease the Project Site to the Company pursuant to the Lease Agreement.

Section 4. Pursuant to the Lease Agreement, the Company will make certain payments in lieu of real property taxes as described in the Project Application with respect to the Facility.

Section 5. In order to provide the Company with Financial Assistance with respect to exemption from New York State and local Sales and Use Taxes with respect to the Project the Agency may issue one or more Sales Tax Agent Authorization Letters (“Sales Tax Authorization Letters”) which shall be used pursuant to the terms contained therein and in the Lease Agreement.

Section 6. In order to secure amounts to be loaned by a mortgage lender acceptable to the Chief Executive Officer (“CEO”) or the Chief Financial Officer (“CFO”) of the Agency to the Company with respect to the Project, the Agency hereby authorizes the execution of one or more mortgages (collectively, the “Mortgages”) granted at the initial closing of the “straight lease” transaction or any time thereafter during the term of the Lease Agreement, from the Agency and the Company to any mortgage lender acceptable to the CEO or the CFO of the Agency or any other authorized representative, in form acceptable to the CEO or CFO of the Agency or any other authorized representative and counsel to the Agency.

Section 7. The form and substance of the Lease Agreement in substantially the form previously approved by the Agency for other “straight lease” transactions is hereby approved.

Section 8. The form and substance of the Company Lease in substantially the form previously executed for other “straight lease” transactions is hereby approved.

Section 9. The CEO of the Agency or any successor CEO of the Agency or any other authorized representative including the CFO, is hereby authorized, on behalf of the Agency, to execute and deliver final forms of the Company Lease, Lease Agreement, Mortgages, Sales Tax Agent Authorization Letters, and any other agreements or certificates consistent herewith (hereinafter collectively called the “Agency Documents”), all in substantially the forms previously executed by the Agency for other “straight lease” transactions acceptable to Agency counsel, with such changes, variations, omissions and insertions in the Agency Documents as the CEO or the CFO of the Agency or any other authorized representative of the Agency shall upon advice of counsel approve. The execution thereof by the CEO or the CFO of the Agency or any other authorized representative shall constitute conclusive evidence of such approval.

The CEO or CFO of the Agency or any other authorized representative are further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives including the Chairman, the Secretary or Assistant Secretary of the Agency, to execute any Agency Documents or certificates of the Agency authorized pursuant to this Resolution and determine the terms of the Agency Documents.

The Secretary, Assistant Secretary or counsel to the Agency is hereby authorized to attest to the CEO’s, the CFO’s or any other authorized representative’s signature on the foregoing documents and to impress or affix the seal or facsimile seal of the Agency thereto.

Section 10. The CEO of the Agency, the CFO of the Agency or any other authorized representative including the Chairman or the Secretary and any member of the Agency (as used in this resolution, the “Authorized Representatives”) are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to cause the transactions as described in the Company Lease and the Lease Agreement to be undertaken and in relation thereto, to execute and deliver any and all papers, instruments, agreements, opinions, certificates, affidavits and other documents, and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution, and the Agency Documents including such changes or revisions in the forms of such documents as may be requested by counsel to the Agency.

Section 11. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments, agreements and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary, or in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 12. All covenants, stipulations, obligations and agreements of the Agency contained in this resolution, and the Agency Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties, affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this resolution, and the Agency Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

Section 13. No covenant, stipulation, obligation or agreement contained in this resolution, or the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency or the Town in his or their individual capacity and neither the members of the Agency nor any officer shall be liable personally on the Agency Documents or be subject to any personal liability or accountability by reason of the execution thereof.

Section 14. The law firm Katten Muchin Rosenman LLP is hereby appointed transaction counsel to the Agency for this transaction.

Section 15 The Agency, as an involved agency, pursuant to the State Environmental Quality Review Act (SEQRA) (Article 8 of the Environmental Conservation law) and implementing regulations contained in 6 N.Y.C.R.R., part 617 has reviewed and hereby adopts the findings of the Board of Trustees of the Village of Lindenhurst as Lead Agency with respect to the Facility and the Project as set forth in Exhibit A hereto which are incorporated by reference herein.

Section 16. This resolution shall take effect immediately.

