

RESOLUTION GRANTING APPROVAL OF AND AUTHORIZING THE GRANT OF CERTAIN FINANCIAL ASSISTANCE BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY TO EB AT WEST BABYLON, LLC IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF AN ASSISTED LIVING FACILITY IN THE TOWN OF BABYLON

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; and

WHEREAS, representatives of EB at West Babylon, LLC, a limited liability company organized and existing under the laws of the State of New York (the "Lessee") have supplied information to the Agency with respect to a project (the "Project") consisting of the acquisition, construction and equipping of an 150,000 square foot, 168 unit assisted living facility (the "Facility") to be located at 510-530 Montauk Highway in West Babylon, New York 11704 by the Lessee (or any other entity formed by the principals of the Lessee (the "Company")) for use by the Company in its elder care business; and

WHEREAS, the Project has been the subject of a deviation from the Agency's Uniform Tax Exemption Policy ("UTEP") as described in UTEP Deviation Memorandum of the Agency dated August 6, 2015; and

WHEREAS, there has been delivered to the Agency a Market Assessment for Assisted Living and Memory Care in West Babylon, NY dated May 2015 prepared by Engel Burman with respect to the Project; and

WHEREAS, representatives of the Company have indicated that the Project will result in the growth of a significant number of permanent full time jobs within the Town of Babylon (the "Town"); and

WHEREAS, in order to induce such facilities within the Town it appears necessary to assist the Company by taking fee or leasehold title to the Facility so as to afford the Company certain relief from mortgage recording taxation, relief from real property taxation and relief from sales and use taxation for a limited period; and

WHEREAS, it is contemplated that the Company will cause the transfer of the Facility site pursuant to a Company Lease Agreement from the Company to the Agency (the "Company Lease Agreement") or a deed of the Facility site to the Agency and the Agency will assist the Company to undertake the Project and will lease or sublease the Facility to the Company pursuant to a lease agreement (the "Lease Agreement"), by and between the Agency and the Company pursuant to which the Company agrees, among other things, to make lease payments in such amounts as specified in the Lease Agreement and the Company may further lease or sublease the Facility to an entity affiliated with the Company (the "Sublessee") pursuant to a sublease agreement (the "Sublease Agreement"), by and between the Company and the

Sublessee, if any, pursuant to which the Sublessee shall agree, among other things, to make sublease payments in such amounts as specified in the Sublease Agreement which shall equal all amounts due to the Agency under the Lease Agreement; and

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

WHEREAS, it is desired that the Agency authorize the granting of certain financial assistance to the Company and the Sublessee, if any, in connection with the Project including exemption 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. (a) The Agency hereby finds and determines that (i) the Project constitutes a "Project" within the meaning of the Industrial Development Agency Act Article 18-A of the General Municipal Law of the State of New York (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 Facility pursuant to the Act, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Town of Babylon, New York 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 and the Sublessee, if any, with respect to the Project.

(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 2.4 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 2.4 of the Lease Agreement.

Section 2. To accomplish the purposes of the Act, the Agency shall take fee or leasehold title to the Facility, assist the Company and the Sublessee, if any, to undertake the Project and lease or sublease the Facility to the Company pursuant to the Lease Agreement. The Company shall further sublease the Facility to the Sublessee pursuant to the Sublease Agreement.

Section 3. Pursuant to the Lease Agreement and Sublease Agreement, the Company or the Sublessee, if any, on behalf of the Company shall make certain payments in lieu of real property taxes ("Pilots") which would be otherwise due and payable with respect to the Facility.

Section 4. In order to provide the Company and the Sublessee, if any, 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 to the Company's agents sale tax authorization letters ("Sales Tax Authorization Letters") which shall be used pursuant to the terms contained therein and in the Lease Agreement.

Section 5. In order to secure amounts to be loaned by any mortgage lender (acceptable to the Chief Executive Officer (“CEO”) of the Agency (or any other authorized representative)) 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 such mortgage lender acceptable to the CEO of the Agency or any other authorized representative, in form acceptable to the CEO of the Agency or any other authorized representative and Counsel to the Agency.

Section 6. The form and substance of the Company Lease Agreement in substantially the form previously approved by the Agency for other “straight lease” transactions is hereby approved.

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 Sublease Agreement 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, is hereby authorized, on behalf of the Agency, to execute and deliver final forms of the Lease Agreement, Sales Tax Authorization Letters, the Mortgages 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 of the Agency or any other authorized representative of the Agency shall upon advice of counsel approve. The execution thereof by the CEO of the Agency or any other authorized representative shall constitute conclusive evidence of such approval.

The CEO 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 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 or any other authorized representative, the Chief Financial Officer (“CFO”) of the Agency, 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 Lease Agreement and the Sublease 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 of Babylon 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 Winston & Strawn LLP is hereby appointed transaction counsel to the Agency for this transaction.

Section 15. Notwithstanding the foregoing, the Agency will not grant any Financial Assistance (as such term is defined in the Act) in excess of \$100,000 to either of the Sublessee, if any, or the Company until the Agency has held a public hearing with respect to the Project in accordance with the provisions of the Act.

Section 16. This resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

The resolution was thereupon declared duly adopted.

Adopted: September 2, 2015

