

RESOLUTION GRANTING APPROVAL OF AND AUTHORIZING THE GRANT OF CERTAIN FINANCIAL ASSISTANCE BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY TO ENGEL BURMAN AT DEER PARK LLC IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A 55 AND OLDER MULTI-FAMILY RENTAL COMMUNITY

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 Engel Burman at Deer Park 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 demolition of the existing school buildings; and (ii) the acquisition, construction and equipping by the Company, of a new approximately 200-unit 55 and older multi-family rental community (which will include a 20% affordability component) aggregating approximately 220,000 square feet consisting of up to 15 buildings and a separate approximately 5,000 square foot club house and pool (the “Facility”), all to be located at 220 Washington Avenue, Deer Park, New York 11729 (the “Project Site”); 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 of a uniform tax exemption policy deviation; a memo relating to the same of the Agency dated as of March 15, 2019 (the “Deviation Memo”) 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 August 15, 2018 (the “NDC Report”), which was submitted by NDC to the Agency in connection with the Project Application (hereinafter defined); and

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 March 26, 2019 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 Senior Housing Projects and Adaptive Reuse 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 Deer Park of approximately \$49 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 75 full time construction jobs for the approximately 24-month construction period of the Project and will generate approximately 4 full time jobs in the first 2 years with annual salaries ranging from \$40,000 to \$60,000 with additional fringe benefits.

- (d) The Town is in need of affordable housing units and the Facility will provide 40 new affordable rental housing units in accordance with Town affordability guidelines and a Covenant and Restrictions agreement to be executed by and between the Town and the Company.
- (e) The Project is an integral part of the town's efforts to retain individuals 55 years and older as residents of the Town, which demographic is an important component of the Town's economy, as well as to free up existing housing stock for use by younger families.
- (f) The Project will be located on the site of the former George Washington School, which currently remains substantially vacant and is a liability to the Deer Park Union Free School District. The Project will increase revenues to local taxing jurisdictions by turning a tax-exempt and underutilized property into both a tax and job generating property and the approximately \$6.5 million proceeds of the sale of the George Washington School will be paid to the Deer Park Union Free School District.
- (g) The Project has support of local officials.

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 substantially as described in the Project Application and the Deviation Memo 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 Negative Declaration of the Town Planning Board 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.

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

I, Paulette A. Moses, the duly elected, qualified Secretary of the Town of Babylon Industrial Development Agency (the "Agency"), hereby certify that:

1. The foregoing is a true, correct and complete copy of the record of proceedings of the Agency had and taken at a lawful meeting of the Agency held at the Old Town Hall, 47 West Main Street, Babylon, New York on March 27, 2019, commencing at the hour of 8:00 A.M., as recorded in the regular official book, of the proceedings of the Agency, those proceedings were duly had and taken as shown therein.

2. All members of the Agency and the public were duly notified of that meeting pursuant to law.

IN WITNESS WHEREOF, I have signed this certificate and affixed the seal of the Agency the 27th day of March, 2019.

Paulette A. Moses
Secretary

(SEAL)



EXHIBIT A

[Negative Declaration]

**RESOLUTION NO. 2018-019
DETERMINING THAT PLANNING BOARD JOB NO. 14-44ABE
ENGEL BURMAN AT DEER PARK, LLC
WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT
MONDAY, JANUARY 29, 2018**

WHEREAS, the Planning Board of the Town of Babylon hereby declares its intent to be the lead agency for the application of Engel Burman at Deer Park, LLC, to subdivide a B Residence parcel into two (2); rezone parcel one to SCMR to construct a community facility on parcel two which shall remain as B Residence, located on the east side of Washington Avenue; 100' north of Sammis Avenue, in the hamlet of Deer Park identified by Suffolk County Tax Map Nos. 0100-091-03-070.002 and 0100-092-02-023 in accordance with the State Environmental Quality Review Act (SEQRA) and the Town of Babylon Environmental Quality Review Act (TOBEQRA); and

WHEREAS, the Department of Environmental Control is assisting the Planning Board in fulfilling its responsibilities under SEQRA and TOBEQRA; and

WHEREAS, in accordance with the requirements of 6NYCRR Sections 617.6 and 617.7, and Sections 114-6 and 114-7 of Chapter 114 of the Code of the Town of Babylon, the Department of Environmental Control has reviewed the Environmental Assessment Form with respect to the site plan, prepared by Thomas C. Dixon, Licensed Professional Engineer License No. 080973, dated December 14, 2017; and

WHEREAS, based upon review of the information submitted, the Department of Environmental Control has recommended a **NEGATIVE DECLARATION** be adopted; and

WHEREAS, the Planning Board has reviewed the available information and the recommendation of the Department of Environmental Control; and

WHEREAS, that the Planning Board classifies the action as an unlisted action with an uncoordinated review having been conducted; and

WHEREAS, that the Planning Board hereby independently determines the following:

1. The proposal will not create a significant adverse impact on traffic conditions of the surrounding roadway network based on the April 18, 2017 Traffic Safety Memorandum. Notwithstanding, the applicant shall fund the cost of further traffic studies to be conducted by Suffolk County for the intersection of Commack Road and Suburban Avenue and the intersection of Bayshore Road and Skidmore Road and if approved by Suffolk County, the applicant shall fund the installation

and all related costs of up to two (2) traffic signals at the intersection of Commack Road and Suburban Avenue and/or the intersection of Bayshore Road and Skidmore's Road.

2. The project site does not contain any sensitive environmental resources or habitat. The subject location is an improved former school site.

3. The project will not adversely impact groundwater resources. The project will connect to the Southwest Sewer District for wastewater disposal.

4. Environmental remediation of the site shall be undertaken including but not limited to asbestos removal an any subsurface tanks or other adverse environmental conditions that may need to be addressed. The work will be in conformance with applicable environmental regulations and standards of the New York State Department of Environmental Conservation, Suffolk County Department of Health Services, New York State Department of Labor and any other agencies having jurisdiction in the cleanup work.

5. A Stormwater Pollution Prevention Plan (SWPPP) will be prepared for this project in accordance with Chapter 189 of the Code of the Town of Babylon Stormwater Management and Erosion and Sediment Control of the Code of the Town of Babylon. Stormwater runoff will be contained onsite in conformance with Town of Babylon requirements and erosion and sediment control will be employed during construction. Post construction stormwater management measures are required for long term management and proper maintenance of the stormwater management system.

Now, therefore, be it resolved that the Planning Board as lead agency hereby determines that the proposal by Engel Burman at Deer Park, LLC will not have a significant adverse impact on the environment.

AND FURTHER BE IT,

RESOLVED, that based upon the foregoing determination, the Planning Board of the Town of Babylon hereby adopts a NEGATIVE DECLARATION, as required by the SEQRA AND TOBEQRA

<u>VOTES: (7)</u>	<u>AYES: (4)</u>	<u>NAYS: (0)</u>	<u>ABSTAINED (3)</u>
Patrick Halpin			X
Edward Wynn	X		
Frank Santos			X
Michael Cafaro	X		
Daniel Truchan	X		
Gerald O'Neill	X		
Julianne Nolan			X

The resolution was thereupon declared duly adopted.
Dated January 29, 2018, Town of Babylon New York.

