

RESOLUTION GRANTING APPROVAL OF AND AUTHORIZING THE GRANT OF CERTAIN FINANCIAL ASSISTANCE BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY TO WR COMMUNITIES - L LLC IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION, FURNISHING AND EQUIPPING OF AN AFFORDABLE MULTI-FAMILY RESIDENTIAL RENTAL HOUSING 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, the Town of Babylon (the "Town") has undertaken multiple actions regarding the redevelopment of downtown Wyandanch including the designation of an Urban Renewal Area in downtown Wyandanch, the adoption of a blighted study, which was prepared by AKRF and is entitled "Blighted Study for the Wyandanch Area" dated May, 2007, and the adoption of a Nomination under the State of New York's Brownfield Opportunity Area Program due to severe blighted conditions within downtown Wyandanch. The Town by Resolution of the Town Board No. 424 dated June 25, 2008 (i) adopted the Blighted Study, (ii) designated an urban renewal area (the "Downtown Wyandanch Urban Renewal Area") in downtown Wyandanch as appropriate for urban renewal and (iii) authorized the Town Department of Planning and Economic Development and/or its agents to prepare or cause to be prepared an urban renewal plan. The Town by Resolution of the Town Board, dated May 22, 2009 adopted an Urban Renewal Plan for the Downtown Wyandanch Urban Renewal Area (the "Plan"); and

WHEREAS, to accomplish the purposes of the Act, and in accordance with the Plan, the Agency has previously undertaken the following five "projects" (within the meaning of the Act): (i) "Project A", consisting of the acquisition of a leasehold interest in, and the construction and equipping of, an approximately 122,234 square foot mixed-use residential/commercial development, which includes approximately 17,500 square feet of commercial nonresidential space located on the ground floor, with balance of the facility being used as multifamily residential space that includes work force housing, located at District 0100, Section 040.00, Block 02.00, Lot 12.003 (now known as Lot 48.019) on the Official Tax Map of Suffolk County; (ii) "Project B", consisting of the acquisition of a leasehold interest in, and the construction and equipping of, an approximately 99,912 square foot mixed-use residential/commercial development, which includes approximately 17,553 square feet of commercial nonresidential space located on the ground floor, with balance of the facility being used as multifamily residential space that includes work force housing, located at District 0100, Section 040.00, Block 02.00, Lot 48.010 on the Official Tax Map of Suffolk County; (iii) "Project D", consisting of the acquisition, construction and equipping of an approximately 82,091 square foot multifamily residential rental facility with a 100% affordability component, containing one building located at District 0100, Section 040.00, Block 02.00, Lot 48.007 on the Official Tax Map of Suffolk County; (iv) "Project E", consisting of the acquisition, construction and equipping of an approximately 106,200 square foot multifamily residential rental facility with a

100% affordability component, containing one building located at District 0100, Section 040.00, Block 02.00, Lot 48.020 on the Official Tax Map of Suffolk County; and (v) the construction of a five-story parking garage by the MTA; and

WHEREAS, to further accomplish the purposes of the Act, and in accordance with the Plan, the Agency has entered into negotiations with the WR Communities – L LLC (the “Company”) for the undertaking of a “project,” within the meaning of the Act (the “Project”), a commercial residential housing project consisting of the acquisition, construction, furnishing and equipping by the Company of an approximately 235,791 square foot, multi-family residential rental housing facility, including 8,674 square feet of community facility space, to be located on that certain approximately 3.43 acre parcel of land located at the Southeast Corner of Straight Path and Long Island Avenue, Wyandanch, New York 11798 constituting a commercial facility under the Act (the “Land”), and the acquisition and installation of certain equipment, furnishings and personal property therefor (the “Facility Equipment”), all for use as an approximately 218-unit multifamily rental housing facility with a 100% affordability component (the Land, Improvements, including construction, renovation and reconstruction thereof, and the Facility Equipment, collectively the “Facility”); and

WHEREAS, the Project and the Facility are an integral part of the effectuation of the Plan and the construction of the Facility is a key component of the Plan; 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 Projection Application, the Company is in substantial compliance with the Act; and

WHEREAS, in order to induce such facilities within the Town and to foster the economic development contemplated by the Project and the Plan it appears necessary to assist the Company by taking 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, to facilitate the Project, the Agency and the Company have entered into negotiations to enter into a “straight lease transaction” within the meaning of the Act pursuant to which (i) the Company will lease or sublease the Land to the Agency pursuant to a Company

Lease between the Company and the Agency (as the same may be amended or supplemented, the "Company Lease") and (ii) the Agency will undertake the Project and will sublease 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, such agreement with respect to payments in lieu of real property taxes has been the subject of a deviation from the Agency's Uniform Tax Exemption Policy (the "UTEP") pursuant to a Deviation Memo of the Agency dated February 1, 2023 (the "Deviation Memo"); and

WHEREAS, it is desired that the Agency authorize deviation from the Agency's UTEP and the granting of certain financial assistance to the Company 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. With respect to the Agency's evaluation criteria for Affordable Housing Projects and Senior Housing Projects the Agency makes the following determinations:

- (a) It has reviewed the information in the Cost Benefit Analysis with respect to the Project.
- (b) The Project will not have significant long term impact on local labor in the Town but will result in approximately (i) 20 full-time construction jobs for the first year of the construction period, (ii) 90 full-time construction jobs for the second year of the construction period, and (iii) 20 full-time construction jobs for the third year of the construction period.
- (c) The Project will include a capital investment of approximately \$137,448,095 with respect to the Facility.
- (d) The Town is in need of affordable multi-family housing units and the Facility will provide 218 affordable multi-family housing units pursuant to an affirmative fair housing marketing plan approved by the New York State Homes & Community Renewal and New York State Housing Finance Agency, and based on tenants' income which shall range from 30% to 80% of Area Median Income.
- (e) The Facility is located in an area of the Town characterized by significant unemployment and economic distress.

- (f) The Project is in alignment with local planning and development efforts including the Plan and the Blighted Study for the Wyandanch Area.
- (g) The Project is located in an area that has inadequate affordable housing supply.
- (h) The Project is in an urban/town center location.
- (i) The Project has local officials' support.
- (j) The Project promotes transit oriented or walkable community areas.
- (k) The financial assistance to be provided by the Agency is a critical component of financing for the Facility to be provided by New York State Housing Finance Agency.

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 in a maximum amount of \$2,835,334 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.

(d) The Agency approves the deviation from its UTEP with respect to the Project and the Facility as described in the Deviation Memo.

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

Section 4. Pursuant to the Lease Agreement, the Company shall make certain payments in lieu of real property taxes substantially as described in the Project Application in accordance with the Deviation Memo.

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 will provide such exemption to the Company pursuant to the Lease Agreement and 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 to the Company with respect to the Project by one or more mortgage lenders acceptable to the Chief Executive Officer (“CEO”) or the Chief Financial Officer (“CFO”) of the Agency or any other authorized representative, 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. In order to provide certain tax credits and other subsidies for the Facility, the Agency together with the Company and the New York State Division of Housing and Community Renewal will enter into a Low-Income Housing Credit Agreement and a New York State Extended Low Income Housing Commitment and Regulatory Agreement (collectively, the “Regulatory Agreement”), forms of which reasonably acceptable to the Agency are hereby approved.

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

Section 9. Thomas E. Dolan, as CEO or any successor CEO or any other Authorized Representative, is hereby authorized, on behalf of the Agency, to execute and deliver final forms of the Company Lease, the Lease Agreement, the Mortgages, the Regulatory Agreement 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 any other Authorized Representative of the Agency shall upon advice of counsel approve. The execution thereof by the CEO shall constitute conclusive evidence of such approval.

The CEO or any other Authorized Representatives 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 to the extent required by any Agency Document.

Section 10. The CEO, 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 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 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 Katten Muchin Rosenman 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 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. 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 hereby adopts the findings of the

Town of Babylon with respect to the Facility and the Project as set forth in Exhibit A hereto which are incorporated by reference herein.

Section 17. 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: February 15, 2023

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

I, Paulette LaBore 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 February 15, 2023, 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 15th day of February, 2023.

Paulette LaBore
Secretary

(SEAL)

EXHIBIT A

[Insert Town of Babylon SEQRA negative Declaration]

Bldg

RESOLUTION NO. 2022-114
APPROVAL OF SUBDIVISION PLAT
TOWN OF BABYLON (PHASE II SUBDIVISION)
PB JOB # 22-47C
TUESDAY, OCTOBER 25, 2022

WHEREAS, pursuant to Town Law, Article 16, Section 276, a formal application for the approval to subdivide 23 lots into 6 in order to create the development block for Phase II of Wyandanch Rising, entitled Town of Babylon (Phase II Subdivision), was submitted to the Planning Board of the Town of Babylon on September 30, 2022; and

WHEREAS, the proposed subdivision for premises is located on the southeast corner of Straight Path and Long Island Avenue in the hamlet of Wyandanch and is identified by Suffolk County Tax Map No. 0100-057-01-001, 0100-057-01-part of 003.001, 0100-057-01-part of 013, 0100-057-01-part of 015.001, 0100-057-01-016, 0100-057-01-017, 0100-057-01-019.001, 0100-057-01-020, 0100-057-01-part of 021, 0100-057-01-part of 024, 0100-057-01-026, 0100-057-01-027, 0100-057-01-028, 0100-057-01-029, 0100-057-01-030, 0100-057-01-031, 0100-057-01-032, 0100-057-01-033.001, 0100-057-01-033.002, 0100-057-01-034, 0100-057-01-035, 0100-057-01-036, 0100-057-01-part of 045; and

WHEREAS, a public hearing was held on said subdivision application and plat at the Babylon Town Hall in Lindenhurst, New York on October 17, 2022; and

WHEREAS, the project is located in the Wyandanch Form Based Code Zoning District. The Town Board of the Town of Babylon conducted a GEIS review that included and addressed the environmental impacts of this project and adopted relevant finding on May 22, 2009. The proposed action will be carried out in conformance with said GEIS and Findings and therefore does not require any further action pursuant to SEQRA; and

WHEREAS, pursuant to NYS General Municipal Law §239-m, this application was referred to the Suffolk County Planning Commission on October 14, 2022, comments were received back from that office on October 24, 2022, and the application was considered to be a matter of local determination; and

WHEREAS, the Planning Board reviewed the surveys, subdivision plat and the recommendations of Public Works, Department of Planning and Development, Divisions of Engineering, Building, Fire Prevention, Traffic Safety and the Department of Environmental Control at the meetings of October 17, 2022 and October 25, 2022; and

NOW, THEREFORE, be it

RESOLVED that the application of Town of Babylon (Phase II Subdivision), for approval of the subdivision plat prepared by Mark Rimler,

Licensed Land Surveyor, License No. 049756 dated October 24, 2022 is hereby APPROVED and that the Chairperson of the Planning Board be authorized to endorse approval on said subdivision plat subject to the following conditions:

1. Subject to SCDHS approval.

VOTES: (5) AYES: (5) NAYS: (0) ABSTAINED (0)

Patrick Halpin	X
Edward Wynn	X
Gerry O'Neill	X
Frank Santos	X
Julianne Nolan	X

The resolution was thereupon declared duly adopted.
Dated October 25, 2022, Town of Babylon New York



TOWN OF BABYLON

OCT 25 2022 PM 4:04

RECEIVED BY