

RESOLUTION GRANTING APPROVAL OF AND AUTHORIZING THE GRANT OF CERTAIN FINANCIAL ASSISTANCE BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY TO AVALONBAY COMMUNITIES INC. AND BH REALTY GROUP, 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 AvalonBay Communities, Inc., a corporation organized and existing under the laws of the State of New York and its successors and assigns (the "Company") and BH Realty Group, LLC, a limited liability company organized and existing under the laws of the State of New York and its successors and assigns and any other real estate holding company created in connection with the foregoing (the "Owner") have filed or caused to be filed an application with the Agency concerning a project (the "Project") consisting of the acquisition, construction and equipping of a residential rental housing complex to include the following in whole or in part, an apartment building with 317± rental units; 21 townhouse-style rental units; a 274±-space parking garage to be enclosed by the proposed apartment building; surface parking areas providing 159± spaces; four courtyards; an in-ground swimming pool; and associated site improvements, including landscaping, sidewalks, site access, drainage, and utility connections on that certain approximately 7.68 acre lot, piece or parcel of land (the "Project Site") generally known as 366 Broadway in Amityville, New York (the "Facility"); and

WHEREAS, it is contemplated that the Owner or the Company will cause the lease of the Project Site to the Agency pursuant to a Company Lease Agreement (the "Company Lease") and the Agency will assist the Owner and/or the Company to undertake the Project and will sublease the Project Site and lease the Facility to the Owner and/or the Company pursuant to a Lease and Project Agreement (the "Lease Agreement"), the Owner may further sublease the Project Site and the Facility to the Company pursuant to a Sublease Agreement (the "Sublease Agreement"), under which said agreements the Owner and the Company will agree, among other things, to respectively make lease or sublease payments in such amounts as specified in the Lease Agreement or Sublease Agreement; and

WHEREAS, pursuant to the Lease Agreement and the Sublease Agreement the Owner and the Company have 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 project report of the National Development Counsel dated July 13, 2020 (the "NDC Report"), which was submitted by NDC to the Agency in connection with the Project Application (hereinafter defined); and

WHEREAS, there has been submitted to the Agency an Environmental Determination Resolution (19-11-25-01) of the Village of Amityville (the "Village") dated November 25, 2019 with respect to the Project pursuant to Article 8 of the New York State Environmental Quality Review Act of the New York State Environmental Conservation Act and the regulations promulgated thereunder ("SEQRA"); 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 Owner's and 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 June 24, 2020 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 Owner and 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 with respect to the Project.

- (b) The Project will include a capital investment of approximately \$119,405,954 with respect to the Facility.
- (c) The Project will not have significant long term impact on local labor in the Town but will result in approximately 104 temporary construction jobs during the first year of construction of the Facility, 173 temporary construction jobs during the second year of construction of the Facility and 156 temporary construction jobs during the third year of construction of the Facility.
- (d) The Project will transform a currently vacant and underutilized parcel of real property into a residential development in walking distance to the Village of Amityville's (the "Village") downtown commercial area and LIRR train station.
- (e) The Project will be located in the Village commercial center, is in the vicinity of the Long Island Railroad Amityville station, will be consistent with the Village's Transit Oriented Development efforts, will have positive economic development impacts on adjoining properties due to the enhanced synergy with nearby transit and downtown revitalization and provides additional walkable community areas in the Village.
- (f) The Project is in alignment with local planning and development efforts and is in alignment with the recent amendments to Chapter 183 of the Village Code (zoning) to establish a Transit Oriented (TO) District.
- (g) The Project is consistent with the conclusions of the 2015 Regional Planning Association Amityville Study and the Long Island Index. (*Long Island's Needs for Multifamily Housing: Measuring How Much We Are Planning to Build vs. How Much We Need for Long Island's Future*. February 2016), that providing diversified housing options as a critical component of Long Island's future success, with a specific focus on downtown Amityville.
- (h) The Project has local Village officials support.
- (i) The financial assistance to be provided by the Agency for the Project is an essential component of the Company's proposed costs of operations of the Facility and will assist the Company to attract lenders to finance the Project.

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 an amount not to exceed \$2,448,535 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 leasehold title to the Project Site pursuant to the Company Lease, assist the Owner and the Company to undertake the Project and lease the Facility and sublease the Project Site to the Owner or the Company pursuant to the Lease Agreement.

Section 4. To accomplish the purposes of the Act the Owner may further sublease the Project Site and the Facility to the Company pursuant to the Sublease Agreement.

Section 5. Pursuant to the Lease Agreement, the Owner and/or the Company will make certain payments in lieu of real property taxes as described in the Project Application with respect to the Facility.

Section 6. In order to provide the Owner and 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 7. 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 Owner and/or the Company with respect to the Project including any refinancing thereof, 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, the Owner and/or 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 8. 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 9. The form and substance of the Sublease Agreement in substantially the form previously approved by the Agency for other "straight lease" transactions is hereby approved.

Section 10. The form and substance of the Company Lease in substantially the form previously executed for other "straight lease" transactions is hereby approved.

Section 11. 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 12. 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 13. 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 14. 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 15. 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 16. The law firm Katten Muchin Rosenman LLP is hereby appointed transaction counsel to the Agency for this transaction.

Section 17 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 Statement of the Village as Lead Agency with respect to the Facility and the Project as set forth in Exhibit A hereto which is incorporated by reference herein.

Section 18. This resolution shall take effect immediately.

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

I, Paula L. 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 remotely on July 15, 2020 through a video conference link and a call-in number pursuant to Executive Order 202.1 (2020), issued by the Governor of the State of New York, 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, the meeting shown therein was duly held, and the persons named therein were present at that meeting 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 July, 2020.

Paula L. Moses
Secretary

(SEAL)