

RESOLUTION GRANTING APPROVAL OF AND AUTHORIZING THE GRANT OF CERTAIN FINANCIAL ASSISTANCE BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY TO ALEGRIA NORTH, LLC IN CONNECTION WITH THE ACQUISITION, DEMOLITION, CONSTRUCTION, FURNISHING AND EQUIPPING OF A 100% AFFORDABLE COMMERCIAL 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, New York (the “**Town**”); and

WHEREAS, 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 for the Wyandanch Area, (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 entered into negotiations with Alegria North, LLC, a New York limited liability company (on behalf of itself and/or the principals of Alegria North, LLC and/or any entity or entities formed on behalf of Alegria North, LLC or any of the foregoing (collectively, the “**Company**”)) for the undertaking of a “project” within the meaning of the Act (the “**Project**”), a commercial residential housing project consisting of the (i) acquisition and demolition of an approximately 8,000 square foot existing building, (ii) the clearing of approximately 40,000 square feet of land thereon and (iii) the construction, furnishing and equipping by the Company of an approximately 82,500 square foot 100% affordable commercial multi-family residential rental housing facility, to be located on that certain approximately 0.92 acre lot, piece or parcel of land generally known as 309 Merritt Avenue & 23 North 16th Street, in Wyandanch, New York 11798 (the “**Land**”) and the acquisition and installation of certain equipment, furnishings and personal property therefor (the “**Facility Equipment**”), all for use as an approximately 81-unit commercial multi-family 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 Land is located approximately 0.2 miles away from the Wyandanch LIRR train station, 0.1 miles away from four (4) Suffolk County Bus Lines (2A, S23, 2B and S33) and the Project will be undertaken as a transit-oriented re-development. The Project will comply with the Agency's Affordable Housing Guidelines and will provide at completion eighty-one (81) affordable units (forty-one (41) one bedroom units, thirty-six (36) two bedroom units, three (3) three bedroom units and one (1) two bedroom unit for the live-in superintendent) which such units will be occupied by tenants whose incomes do not exceed thirty percent (30%), fifty percent (50%), sixty percent (60%) and seventy percent (70%) of Area Median Income that will comprise approximately 100% of all units in the Project. Additionally, nine (9) units will be accessible to persons with physical impairments and four (4) units to persons with hearing/visual impairments; 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, the Project is the subject of a Cost Benefit Analysis Substantiation of Need for Babylon IDA Financial Assistance prepared by Grow America and dated December 18, 2023 (the "**Grow America Study**") which provides in part that without financial assistance provided by the Agency the Project fails to demonstrate acceptable ratios for investors and lenders; and

WHEREAS, based upon the Project Application, the Agency hereby determines that Agency financial assistance and related benefits in the form of a straight-lease transaction between the Agency and the Company are necessary for the Company to undertake the Project; 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, as amended, 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 7, 2024 (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) 40 full-time construction jobs for the first year of the construction period, and (ii) 50 full-time construction jobs for the second year of the construction period.
- (c) The Project will include a capital investment of approximately \$50,740,534 with respect to the Facility.
- (d) The Town is in need of affordable multi-family housing units and the Facility will provide eighty-one (81) affordable multi-family housing units (forty-one (41) one bedroom units, thirty-six (36) two bedroom units, three (3) three bedroom units and one (1) two bedroom unit for the live-in superintendent) pursuant to the Agency’s Affordable Housing Guidelines which such units will be occupied by tenants whose incomes do not exceed thirty percent (30%), fifty percent (50%), sixty percent (60%) and seventy percent (70%) of Area Median Income that will comprise approximately 100% of all units in the Project. Additionally, nine (9) units

will be accessible to persons with physical impairments and four (4) units to persons with hearing/visual impairments.

- (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 multiple sources.

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 not to exceed \$1,348,060 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 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 by any mortgage lenders acceptable to the Chief Executive Officer (“**CEO**”) or the Chief Financial Officer (“**CFO**”) of the Agency to the Company with respect to the financing or refinancing of the Project and the Facility, 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 Company Lease 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 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 of the Agency 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, 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 any other Authorized Representative of the Agency shall upon advice of counsel approve. The execution thereof by the CEO or any other Authorized Representative of the Agency shall constitute conclusive evidence of such approval.

The CEO or CFO of the Agency 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, 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 to the extent required by any Agency Document.

Section 10. The CEO, the 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 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 Town Board of the Town of Babylon, as lead 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 adopted the findings in Resolution No. 390 with respect to the Facility and the Project as set forth in Exhibit A attached hereto which are incorporated by reference herein. The Agency hereby adopts such findings.

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:

TOWN BOARD OF THE TOWN OF BABYLON NEGATIVE DECLARATION

RESOLUTION NO. 390 APRIL 24, 2024
TOWN BOARD ENVIRONMENTAL DETERMINATION APPLICATION OF
THE D & F DEVELOPMENT GROUP, LLC APPLICATION 22-51DW FOR THE
PREMISES IDENTIFIED BY SCTM#: 0100-040.00-01.00-021.000 AND 023.000 LOCATED
ON THE NORTH SIDE OF MERRITT AVENUE BETWEEN NORTH 15TH STREET AND
NORTH 16TH STREET, WYANDANCH, NY AND AMENDMENTS TO CHAPTER 213-
503, WYANDANCH AND STRAIGHT PATH CORRIDOR CODE OF THE TOWN OF
BABYLON

The following resolution was offered by Councilman Manetta and seconded by Councilman Martinez

WHEREAS, the applicant, The D & F Development Group, LLC 100 Schoolhouse Road, Levittown, NY 11756 has proposed to develop a 28,196 square foot four story residential structure with 81 apartment units and amenities and parking on the ground level and associated site improvements on a 40,000 square foot site zoned Wyandanch Form Based Code, Transect T5; and

WHEREAS, the proposal is located on the north side of Merritt Avenue between 15th and 16th Street, Wyandanch and is identified by SCTM#: 0100-040.00-01.00-021.000 and 023.000; and

WHEREAS, the Town Board of the Town Babylon is also considering changes to Section 213-503 Regulating Plan Tile 2 of Section 213-503, the Wyandanch and Straight Path Corridor Code of the Town of Babylon: Regulating Plans by Blocks, in connection with the development of the proposal, as part of this Action; and

WHEREAS, the Town Board of the Town of Babylon has classified the Action as an Unlisted Action with a full coordinated SEQRA review having been conducted with all identified Involved Agencies; and

WHEREAS, the Town Board of the Town of Babylon hereby declares its intent to be the lead agency for the development proposal by The D & F Development Group, LLC and the changes to Section 213-503 of the Code of the Town of Babylon 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 Town Board of the Town of Babylon in fulfilling its responsibilities under SEQRA and TOBEQRA; and

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

WHEREAS, the Town Board of the Town of Babylon has independently reviewed the available information and the recommendation of the Department of Environmental Control; and

WHEREAS, that the Town Board of the Town of Babylon hereby independently determines the following:

1. The proposal will not create a significant increase in traffic.
2. The project will be developed in conformance with Chapter 189 of the

Code of the Town of Babylon Stormwater Management and Erosion and Sediment Control requirements.

3. Post construction stormwater management will address long term maintenance of the stormwater infrastructure on the subject site.
4. The project site does not contain any sensitive cultural or environmental resources.
5. The development will be connected to the Wyandanch Sewer District for wastewater disposal which will mitigate adverse impacts to groundwater resources from wastewater discharge.
6. The land use of the subject premises will change from commercial and industrial to residential which will be consistent with the Town of Babylon's goals for Wyandanch Rising.
7. There are not any significant adverse impacts from the changes to Section 213-503 of the Code of the Town of Babylon that have been identified.

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of Babylon as lead agency hereby determines that the proposal by The D & F Development Group, LLC and the changes to Section 213-503 of the Code of the Town of Babylon will not have a significant adverse impact on the environment.

AND FURTHER, be it

RESOLVED, that based upon the foregoing determination, the Town Board of the Town of Babylon hereby adopts a NEGATIVE DECLARATION, for the proposal by The D & F Development Group, LLC and the changes to Section 213-503 of the Code of the Town of Babylon as required by the SEQRA AND TOBEQRA.

VOTES: 4 YEAS: 4 NAYS: 0

The resolution was thereupon declared duly adopted.