

CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY

AND

DRUM HILL ASSOCIATES, LP

**AMENDED AND RESTATED
PAYMENT IN LIEU OF TAX AGREEMENT**

Dated as of December 15, 2010

Affected Tax Jurisdictions:
**Westchester County
City of Peekskill
Peekskill City School District**

Street Address: 90 Ringgold Street, Peekskill, New York
Tax Map ID No.: 33.37-1-36

AMENDED AND RESTATED PAYMENT IN LIEU OF TAX AGREEMENT

THIS AMENDED AND RESTATED PAYMENT IN LIEU OF TAX AGREEMENT (the "Agreement"), dated as of the ___ day of December 2010, by and between the **CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with its registered offices located at 840 Main Street, Peekskill, New York 10566 (the "Agency") and DRUM HILL ASSOCIATES, LP, a New York limited partnership with offices at 90 Ringgold Street, Peekskill, New York 10566 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 671 of the Laws of 1974 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Agency previously undertook a certain project (the "Project") for the benefit of Drum Hill Associates, LP (the "Company") consisting of: (i) the acquisition of fee title to a certain parcel of real property with related improvements located at 90 Ringgold Street, Peekskill, New York (the "Land", being more particularly identified as TMID No. 33.37-1-36); (ii) appointment of the Company as agent of the Agency to undertake the reconstruction and development upon the Land of a 120 unit senior living facility to be occupied by persons 62 years of age or older with certain affordable income restrictions (the "Building", and together with the Land, the "Facility"); (iii) the issuance by the Agency of its Senior Living Facility Revenue Bonds (Drum Hill Senior Living Project), Series 1998 in the aggregate principal amount of \$13,900,000 (the "Bonds") in furtherance of the Project and the Facility; and (iv) the sale of the Facility by the Agency to the Company pursuant to a certain Sale Agreement, dated as of October 1, 1998; and

WHEREAS, in furtherance of the Project, and for the benefit of the City of Peekskill (the "City"), the Peekskill City School District (the "School") and the County of Westchester (the "County", and collectively with the City and School, the "Affected Tax Jurisdictions"), the Agency and the Company also entered into a certain Payment in lieu of Tax Agreement, dated as of September 1, 1998 (the "PILOT Agreement", a copy of which is attached hereto as Exhibit A), wherein the Company agreed to make certain Payments in Lieu of Taxes ("PILOT Payments") for the benefit of the Affected Tax Jurisdictions during the term of the PILOT Agreement; and

WHEREAS, it has come to the attention of the City of Peekskill (the "City"), the Agency and Company that there have been billing and payment inconsistencies relating to the PILOT Agreement resulting in certain overpayment of PILOT Payments by the Company to the City as agent of the Agency (the "Overpayments"), and further, the Company has threatened litigation with respect to both recovery of the Overpayments and the recently increased assessed valuation of the Facility (the "Assessment Increase"); and

WHEREAS, as a means to avoid litigation and settle the Company's claims with respect to the Overpayments and the Assessment Increase, the Agency and Company deem it necessary and proper to enter into this Amended and Restated Payment PILOT Agreement for the benefit of the City, Agency, Company and the Affected Tax Jurisdictions whereby the Company will be provided with a partial credit for the Overpayments and a negotiated assessed valuation will be utilized to structure PILOT Payments for the remaining PILOT Term (collectively, the "Settlement"); and

WHEREAS, pursuant to Section 874(1) of the Act and by virtue of the Agency's continued ownership of the Land and Facility, the Land and Facility will continue to be exempt from the payment of taxes imposed upon real property and improvements during the term hereof, other than special ad valorem levies, special assessments and service charges against the Land and Facility which are or may be imposed during the term hereof for special improvements or special district improvements; and

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section I - Payments in Lieu of Taxes:

1.1 Section 2.02 of the PILOT Agreement and Exhibit B therein are **DELETED** and replaced in entirety as follows:

Section 2.02 Payments in Lieu of Taxes.

(a) As long as the Facility and Land are owned by the Agency, the Company agrees to pay to the Agency Attn: Executive Director, 840 Main Street, Peekskill, New York 10566, as a payment in lieu of taxes, on or before April 30 and September 30 of each calendar year commencing on April 30, 2011 for City and County Taxes and September 30, 2011 for School Taxes (each a "Payment Date"), an amount equal to the Total PILOT Payment (as hereinafter defined). The Company hereby agrees to make all such Total PILOT Payments on or before each Payment Date without further notice or invoice from the Agency or the Affected Tax Jurisdictions. Notwithstanding the foregoing, the Agency, by and through the City and/or on its own behalf, shall generate and issue PILOT Invoices to the Company at least Thirty (30) days in advance of each Payment Date during the term hereof. For purposes of this Agreement, each "Total PILOT Payment" shall be an amount equal to the corresponding amount set forth within **Exhibit B-1** attached hereto. For purposes of the foregoing, "Real Estate Taxes" means all general levy real estate taxes levied against the Land and Facility by the City, County and School.

(b) The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

(c) The failure by the Company (or any authorized assignee hereunder) to: (i) make the payments described in Section 2.02(a) within thirty (30) days of the Payment Date (the "Delinquency Date"), or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows: With respect to payments to be made pursuant to Section 2.02(a) I herein, if said payment is not received by the Delinquency Date as defined herein, the Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

(d) Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this Agreement, including any internal or external improvements to the Facility, the Company shall notify the Agency of such future addition ("Future Addition"). A "Future Addition" shall not mean or include improvements to the condition of the residential units, common areas or capital repairs to and within the Building, as defined herein and as such residential units are regulated within any regulatory agreements relating to affordable income restrictions. The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant evidence that the Agency may thereafter request. Upon the next taxable status date after the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total PILOT Payment. It is expressly agreed by the parties hereto that any such Future Addition, except as provided within the preceding sentence, shall be subject to an additional PILOT Payment (the "Additional PILOT Payment") in an amount equal to that which would be paid if the Future Addition were owned by the Company and subject to full taxation. In any PILOT year in which an Additional PILOT Payment is due in connection with a Future Addition pursuant to this Section 2.02 of this PILOT Agreement, the Company shall pay that amount in addition to the Total PILOT Payment, the collective amounts to be the Adjusted Total PILOT Payment. The Agency shall notify the Company of any proposed Additional PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, the Company may challenge the Agency's determination in accordance with Section 2.03 of this Agreement. Then and in that event, the valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the Additional Total PILOT payment until a different Additional Total PILOT Payment shall be established. If a lesser Adjusted Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Adjusted Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding Adjusted Total PILOT Payment(s).

(e) Applicable Exemptions and Period of Benefits. Unless otherwise terminated by the Agency or Company in accordance with the provisions hereof or within the Sale Agreement, this Agreement shall remain in effect through October 1, 2028. The real property tax exemption and corresponding tax benefits provided for herein should be deemed to include the current 2010 County and City calendar tax year through October 1, 2028 of the 2028 County and City calendar tax year and the current 2010/2011 School tax year through October 1, 2028 of the 2028/2029 School tax year. This PILOT Agreement shall expire on October 1, 2028 (with the understanding that the Company will be making a payment hereunder for County and City tax year 2029 and School tax year 2028/2029 in the amounts as if the Agency were not in title on the tax status date with respect to said tax years). In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by any other Section of the New York Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

(f) The failure by the Company to make the payments required pursuant to this Agreement by the Delinquency Date shall constitute an "Event of Default" hereunder and pursuant to the Sale Agreement. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

(g) Settlement Provisions. The parties hereto agree that the City, Agency and Company have stipulated that a total of \$174,013.30 in Overpayments were received by the City, as agent of the Agency, from the Company and during calendar years 2004-2009. Of this amount, the City, Agency and Company have agreed to credit the amount of \$93,692.60 toward PILOT Payments withheld by the Company for calendar and PILOT Year 2009, leaving a balance of \$80,320.70 in Overpayments due to the Company (the "Remaining Credit"). The City, Agency and Company have agreed to provide the Remaining Credit to the Company in four (4) equal installments of \$20,080.17 (the "Credit Installments"), such Credit Installments to be credited to the Company during calendar years 2010 through 2013, as set forth herein and within Exhibit B-1, hereto.

(h) 2010 Total PILOT Payment and Special District Charges. Commensurate with the execution and delivery of this Agreement, the Company shall pay to the City, as agent of the

Agency, a Total PILOT Payment for the 2010 City and County Tax Years and 2010/2011 School Tax Year in the amount of **\$98,596.98** (the “2010 Total PILOT Payment”, such amount being reflective of a stipulated \$150,000 assessed valuation of the Land and Facility, as equalized, multiplied by applicable tax rates, then reduced by an abatement factor of 10% and the initial Credit Installment). In addition to the 2010 Total PILOT Payment, the Company shall also pay to the City the additional amount **\$7,168.49**, such amount being reflective of 2010 special district charges for the Land and Facility (the “2010 Special District Charges”). Upon receipt of the foregoing amounts, the City, as agent of the Agency, shall distribute the 2010 Total PILOT Payment to the Affected Tax Jurisdictions, pro-rata based upon their reflective tax rates, and the 2010 Special District Charges to the applicable levying authorities.

1.2 Section 2.03 of the PILOT Agreement is DELETED and replaced in entirety as follows:

Section 2.03 Review of Assessments

The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, only with respect to: (i) any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions as same may increase the Company’s liability for Special Assessments, as defined within Section 2.01(c), hereof, and (ii) the value of any Future Addition to the Facility as defined within Section 2.02(d), hereof, and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of assessment on the Land or Facility. The Company, on its own behalf, and on behalf of its successors and assigns, hereby acknowledges and agrees that the assessment figures determining the “Total PILOT Payment” in each PILOT Year, as set forth within Exhibit B-1, may not be challenged or reduced in any fashion during the term hereof. The foregoing forbearance from any challenge or protest shall survive the assignment or termination of this Agreement and/or the Sale Agreement and shall be enforceable by the Agency or any of the Affected Tax Jurisdictions for the contemplated term of this Agreement (October 1, 2028).

1.3 Section 4.02 of the PILOT Agreement is DELETED and replaced in entirety as follows:

Section 4.02 Assignment of PILOT Agreement; Transfer of Facility

(a) This PILOT Agreement may not be assigned in whole or in part without the prior written consent of the Agency, which consent may not be unreasonably withheld, delayed or conditioned, but any such assignment and related Agency consent shall be undertaken pursuant to and in accordance with Section 10.2 of the Sale Agreement.

(b) In the event that the Facility is transferred from the Agency to the Company (the Sale Agreement is terminated and title to the Land and Facility are transferred by the Agency to the Company), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in

excess of the payment described in Section I herein, or this Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility (taking into account any Total PILOT Payment previously made by the Company for the applicable PILOT year) if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination. The parties hereto agree that the provisions of RPTL Section 520 shall apply in the event of any transfer of the Land and/or Facility from the Agency to any other entity ineligible for an exemption from real property taxes. In the event that any such transfer occurs prior to the end of PILOT Year 13 (as defined within Exhibit B-1, hereto) and the Company has not received the benefit of all Credit Installments as defined herein, any remaining Credit Installments unrealized by the Company at the time of such transfer may be utilized by the Company to offset pro-rated real property tax payment obligations accruing pursuant to RPTL Section 520.

Section II - Miscellaneous.

2.1 This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

2.2 This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in the City of Peekskill, Westchester County, New York.

2.3 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

2.4 Unless otherwise deleted or modified pursuant to this Agreement, the remaining terms, conditions and provisions of the PILOT Agreement shall remain in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[Signature Page to Amended and Restated PILOT Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF PEEKSKILL INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Brian O. Havranek, CEO

DRUM HILL ASSOCIATES, LP

By: 
John Farrenec
Managing Partner

EXHIBIT A
PILOT AGREEMENT, DATED AS OF SEPTEMBER 1, 1998

CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY
AND
DRUM HILL ASSOCIATES, LP

PAYMENT IN LIEU OF TAX AGREEMENT

Dated: As of September 1, 1998

THIS PAYMENT IN LIEU OF TAX AGREEMENT, dated as of September 1, 1998, is by and between the CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation and an industrial development agency of the State of New York (the "State") duly organized and existing under the laws of the State, having its office at City Hall, 840 Main Street, Peekskill, New York 10566 (the "Agency"), and DRUM HILL ASSOCIATES, LP a New York limited partnership duly formed and existing under the laws of the State, having an office at 657 Yonkers Avenue, Yonkers, New York 10704 ("Drum Hill").

W I T N E S S E T H:

WHEREAS, Title 1 of Article 18-A, as amended, of the General Municipal Law of the State (the "Enabling Act") has been duly enacted into law as Chapter 1030 of the Laws of 1969 of the State; and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery, equipment and other facilities deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, civic, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to sell and to mortgage its facilities and to enter into an agreement which includes provisions such as those contained herein (this agreement being hereinafter referred to as the "PILOT Agreement"); and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was created for the benefit of the City of Peekskill, Westchester County, New York (the "City") and the inhabitants thereof; and

WHEREAS, the Agency intends to acquire a parcel of land and the building thereon located at 90 Ringgold Street in Peekskill, as more particularly described in Exhibit A attached hereto (the "Land") pursuant to a deed of the Land from Drum Hill to the Agency (the "Deed") and to appoint Drum Hill its agent for purposes of causing Drum Hill to reconstruct and construct on such Land one hundred twenty (120) residential units of Senior Citizen Housing, each of which are proposed to be occupied by elderly households (age 62 or older) 20% or more of which will be occupied by residents with an income at or below fifty percent

(50%) of the Westchester County median income, including a Senior Center and other amenities and improvements ancillary thereto (the "Project") (the Land the Project being the "Facility") pursuant to the terms of a Sale Agreement dated as of the date hereof (the "Sale Agreement") by and among the Agency and Drum Hill, all as contemplated by and in furtherance of the purposes of the Enabling Act; and

WHEREAS, the Facility constitutes a "project" within the meaning of the Enabling Act; and

WHEREAS, under the present provisions of the Enabling Act and Section 412-a of the Real Property Tax Law of the State (the "RPTL"), the Agency is not required to pay Real Estate Taxes (hereinafter defined) upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, the Agency has expressed its reluctance to accept the Deed or to enter into the Sale Agreement unless Drum Hill shall agree to make payments in lieu of Real Estate Taxes ("PILOT Payments") with respect to the Facility; and

WHEREAS, Drum Hill is desirous that the Agency accept the Deed and enter into the Sale Agreement and Drum Hill is willing to enter into this PILOT Agreement in order to induce the Agency to accept the Deed and enter into the Sale Agreement; and

NOW, THEREFORE, in consideration of the matters above recited, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

ARTICLE I

REPRESENTATIONS AND WARRANTIES

Section 1.01. Representations and Warranties.

(a) The Agency does hereby represent and warrant that it has been duly established under the provisions of the Enabling Act, its Members have duly adopted a resolution dated August 17, 1998 that authorizes the transactions contemplated by this PILOT Agreement, it has the power to enter into the transactions contemplated by this PILOT Agreement and to carry out its obligations and exercise its rights hereunder and that its Chair has been duly authorized to execute and deliver this PILOT Agreement; and

(b) Drum Hill does hereby represent and warrant that it is a limited partnership duly founded and validly existing under the laws of the State, its Partners, by agreement of its Partners duly authorized the transactions contemplated by this PILOT Agreement, it has the power to enter into the transactions

contemplated by this PILOT Agreement and to carry out its obligations and exercise its rights hereunder and that its general partner has been duly authorized to execute and deliver this PILOT Agreement.

ARTICLE II

COVENANTS AND AGREEMENTS

Section 2.01. Tax-Exempt Status of Facility.

(a) Assessment of Facility. Pursuant to Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of title to the Land by the Agency and continuing for the period during which the Agency maintains title of the Facility, the Facility shall be assessed as exempt upon the assessment rolls of the City, except for Special Levies (hereinafter defined). The parties hereto understand that the Facility shall be entitled to such exempt status on the tax rolls of the City from the first taxable status date following (i) the Agency's acquisition of the Land and (ii) the completion and submission of all necessary filings in connection therewith. It is the intent of this PILOT Agreement that Drum Hill shall, at all times during its or the Agency's ownership of the Facility, be obligated to pay either PILOT Payments or Real Estate Taxes, and that the foregoing obligations shall not be duplicative of each other or otherwise be additive. For example, and without limitations, (i) Drum Hill shall be obligated to pay Real Estate Taxes until such time as the Agency's exemption with respect to the Land lawfully takes effect on the tax rolls of the Town, and shall be obligated to pay PILOT Payments at all times thereafter until the Agency's exemption with respect to the Project is no longer in effect on the tax rolls, and (ii) after the Agency conveys title to the Facility to a non-exempt owner, PILOT Payments shall continue to be payable by Drum Hill until such time as the Agency's conveyance of the Facility has been reflected on the tax rolls of the City. PILOT Payments shall be adjusted from year to year in the same manner as Real Estate taxes. The term "Real Estate Taxes" shall mean 100% of the real property taxes which would be levied upon or with respect to the Facility by the City, the County of Westchester, the Peekskill City School District if the Facility were owned by Drum Hill or any other non-exempt owner and not by the Agency and shall include interest and penalties as provided in this PILOT Agreement. Real Estate Taxes shall include all real property taxes of every kind and nature, all general and special assessments and levies (but excluding Special Levies and any other item from which the Agency is not exempt in accordance with applicable Law), permits, inspection and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, foreseen and unforeseen, ordinary and extraordinary, imposed upon or assessed against the Facility, or any part thereof, or arising in respect of the occupancy, use or possession thereof; provided however,

that Real Estate Taxes shall not include any taxes on or measured by, net income, franchise taxes, unincorporated business taxes, use taxes, sales taxes, recording taxes and other taxes not generally known as real estate taxes that either are actually paid by the Agency or Drum Hill to any taxing authority or would not be payable even if Drum Hill owned the Facility.

(b) To the extent the Facility or any portion thereof is declared to be subject to taxation or assessment by a final judgment of a court of competent jurisdiction, an amendment to the Enabling Act or other legislative or administrative change, the obligations of Drum Hill to make PILOT Payments hereunder shall, to such extent only, be replaced by the obligation of Drum Hill to pay Real Estate Taxes. To the extent that the foregoing declaration of non-exemption is given retroactive effect, any PILOT Payments previously made by Drum Hill during such retroactive period shall be credited against Real Estate Taxes due for such period. Nothing herein contained shall prohibit Drum Hill from contesting the validity or constitutionality of any such amendment, legislative or administrative change or judicial decision.

(c) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-a of the RPTL does not entitle the Agency to exemption from certain special assessments and special ad valorem levies (collectively, "Special Levies"). Drum Hill shall be obligated to pay such Special Levies even if either Section 874 of the General Municipal Law or Section 412-a of the RPTL are amended to entitle the Agency to exemptions from any or all Special Levies.

(d) Counsel Fees. Drum Hill expressly covenants and agrees to pay in full the reasonable fees and expenses of the Agency's counsel and all court costs, promptly upon receipt of a statement therefor, which are incurred after the date hereof and which fees and expenses arise in connection with any matter related to this PILOT Agreement.

Section 2.02. Payments in Lieu of Taxes.

(a) Agreement to Make Payments. Drum Hill agrees that it shall make PILOT Payments in lieu of Real Estate Taxes to the Agency at the address and to the attention of the person set forth in Section 4.03 hereof, for remittal by the Agency to each affected taxing jurisdiction, being the City of Peekskill, the County of Westchester, the Peekskill City School District, in amounts, as determined solely by the Agency, equal to the percentage which the tax levy of each such taxing jurisdiction is of the total tax levy of all such taxing jurisdictions, as shown upon the City of Peekskill Tax Receiver's rate sheet for the year in which such PILOT Payments are payable, not later than January 10 of each year in which PILOT Payments are payable hereunder, after which date such PILOT Payments shall be

considered delinquent Real Estate Taxes if not paid in full, and in the amounts set forth in Exhibit B attached hereto and made a part hereof.

(b) Maximum PILOT. Notwithstanding anything else contained herein, the PILOT Payments due under this PILOT Agreement shall not exceed the Real Estate Taxes that would have been due during each period that this PILOT Agreement is in effect if the Facility were owned by Drum Hill and not the Agency during such period.

(c) Method of Payment. All payments hereunder shall be paid by check made payable to the order of the Agency in then lawful money of the United States of America.

(d) Interest and Penalties. If Drum Hill shall fail to make any payment required by this PILOT Agreement when due, its obligation to make the payment so in default shall continue as an obligation of Drum Hill until such payment in default shall have been made in full, and Drum Hill shall pay the same together with interest and penalties thereon, to the extent permitted by law, at the rate per annum which would be payable if such amounts were delinquent Real Estate Taxes at the rate provided by applicable law or laws, until so paid in full.

Section 2.03. Review of Assessments.

As long as this PILOT Agreement is in effect, the Agency and Drum Hill agree that (i) the Agency shall be deemed to be the owner of the Facility, subject to Section 11.1 of the Sale Agreement; (ii) the Agency hereby irrevocably appoints Drum Hill its agent and attorney-in-fact for the purpose of instituting judicial review of any assessment of the real estate with respect to the Facility, pursuant to this PILOT Agreement and the provisions of Article 7 of the RPTL or any other applicable law as the same may be amended from time to time during the term of this PILOT Agreement, such appointment being coupled with an interest; and (ii) Drum Hill shall have sole authority and power to file grievances and protests, protesting any assessment placed on the Facility or seeking judicial review after the final determination by the assessor of any grievance or protest.

Upon receipt from the City of notice of any change in the assessment of the Facility pursuant to the applicable provisions of the RPTL, the Agency shall use its best efforts to provide to Drum Hill, in the same manner and at the same time as if Drum Hill were a taxpayer (or within fifteen calendar days thereof) a copy thereof. Failure of the Agency to provide to Drum Hill a copy of any such notice within the time herein stated shall not relieve Drum Hill of its obligations under this PILOT Agreement to pay PILOT Payments in the amounts due. Notwithstanding the foregoing, if the assessment of the Facility, including any additions thereto, is reduced as a result of any such grievance, protest or judicial review so that Drum Hill would be entitled to

receive a refund or refunds of taxes paid if Drum Hill were the owner of the Facility, then the payments due pursuant to this PILOT Agreement shall be recalculated based on such reduction and Drum Hill shall be entitled to a credit against future PILOT Payments in the amount equal to the payment due to Drum Hill as the result of such recalculation unless the Agency or the City shall pay to Drum Hill any overpayment made. In the event the Agency shall receive any such overpayment as a result of any such grievance, protest or judicial review the Agency shall pay such overpayment to Drum Hill.

ARTICLE III

LIMITED OBLIGATION OF THE PARTIES

Section 3.01. No Recourse; Limited Obligation of the Agency.

(a) No Recourse. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this PILOT Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, officer, agent, servant or employee of the Agency in his or her individual capacity, and no recourse under or upon any obligations, covenant or agreement contained in this PILOT Agreement, or otherwise based or in respect of this PILOT Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent, servant or employee, as such, of the Agency, or any successor public benefit corporation. It is expressly understood that this Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent, servant or employee of the Agency or of any successor public benefit corporation. Any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent, servant or employee under or by reason of the obligations, covenants or agreements contained in this PILOT Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this PILOT Agreement.

(b) Limited Obligation. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the Town and the Town shall not be liable thereon. Furthermore, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from this PILOT Agreement, the Sale Agreement, the Facility generally, or sale or other disposition of the Facility.

(c) Further Limitation. Notwithstanding any provision of this PILOT Agreement to the contrary, the Agency shall not be

obligated to take any action pursuant to any provision hereof unless (i) the Agency shall have been requested to do so in writing by Drum Hill and (ii) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from Drum Hill security or indemnity satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs. Nothing in this paragraph shall be construed as requiring the Agency to receive any such written request or indemnity as a precondition to the exercise by the Agency of its rights hereunder.

Section 3.02. No Recourse, Limited Obligation of Drum Hill.

No Recourse. All covenants, stipulations, promises, agreements and obligations of Drum Hill contained in this PILOT Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of Drum Hill, not of any officer, agent, servant or employee of Drum Hill, and no recourse under or upon any obligation, covenant or agreement contained in this PILOT Agreement, or otherwise based or in respect of this PILOT Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future officer, agent, servant or employee, as such of Drum Hill or any successor thereto. It is expressly understood that this PILOT Agreement is an obligation of Drum Hill, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such officer, agent, servant or employee by reason of the obligations, covenants or agreements contained in this PILOT Agreement or implied therefrom.

ARTICLE IV

MISCELLANEOUS

Section 4.01. Amendment of PILOT Agreement.

This PILOT Agreement may not be amended, changed, modified, altered or terminated, unless such amendment, change, modification, alteration or termination is in writing and signed by the Agency and Drum Hill.

Section 4.02. Agreement to Run with the Land.

This PILOT Agreement shall run with the Land, both as respects benefits and burdens created herein, and shall be binding upon and inure to the benefit of the successors and assigns of the respective parties.

Section 4.03. Notices.

All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed received, served or noticed, as applicable, when delivered or when mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the Agency and Drum Hill, as the case may be, addressed as follows:

To the Agency:

City of Peekskill Industrial
Development Agency
City Hall
840 Main Street
Peekskill, New York 10566
Attention: Executive Director

To Drum Hill
Associates:

Drum Hill Associates
657 Yonkers Avenue
Yonkers, New York 10704
Attention: General partner

With a Copy to:

Guy Haward, Esq.
Hayward, Parker & O'Leary
225 Dolson Avenue
Middletown, New York 10940

The Agency and Drum Hill may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 4.04. Binding Effect.

This PILOT Agreement shall inure to the benefit of the Agency and Drum Hill, and shall be binding upon the Agency and Drum Hill and their respective successors and assigns.

Section 4.05. Severability.

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this PILOT Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this PILOT Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

Section 4.06. Counterparts.

This PILOT Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 4.07. Applicable Law.

This PILOT Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Section 4.08. Recording.

This PILOT Agreement shall be filed in the Office of the Westchester County Clerk, Division of Land Records of the County of Westchester pertaining to the real property described in Exhibit A hereto.

Section 4.09. Estoppe1 Certificates.

The Agency, within 10 days after a request in writing by Drum Hill or a mortgagee, shall furnish a written statement, duly acknowledged, that this PILOT Agreement is in full force and effect and that there are not defaults thereunder by Drum Hill, or if there are any defaults, such statement shall specify the defaults the Agency claims to exist.

IN WITNESS WHEREOF, the Agency and Drum Hill have caused this PILOT Agreement to be executed in their respective names as of September 1, 1998.

CITY OF PEEKSKILL INDUSTRIAL
DEVELOPMENT AGENCY

By:

Robert E. Flower
Robert Flower
Chair

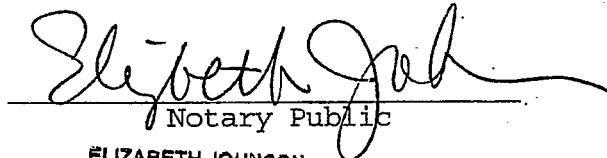
DRUM HILL ASSOCIATES, L.P.

By:

John Saraceno
John Saraceno
General Partner

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

On this 6th day of November, 1998, before me personally
came John Saraceno, to me personally known, who, being by me duly
sworn, did depose and say that he resides at 26 Amanda Lane,
New Rochelle, New York 10804; that he is the general partner of the
limited partnership described in and which executed the within
PILOT Agreement and that he executed the same on behalf of Drum
Hill Associates, L.P. for the uses and purposes therein mentioned.



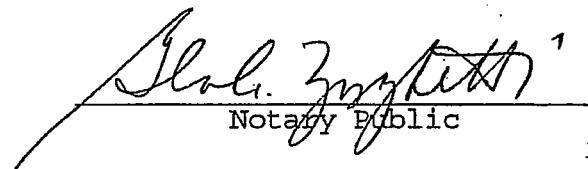
Elizabeth Johnson
Notary Public

ELIZABETH JOHNSON
Notary Public, State of New York
No. 01JO4973240
Qualified in Kings County
Certificate filed in New York County
Commission Expires Oct. 15, 2000

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

5

On this 4th day of November, 1998, before me personally came Robert Flower, to me known, who, being by me duly sworn, did depose and say that he resides in Peekskill, New York, that he is the Chairman of the CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY, the public benefit corporation of the State of New York described in and which executed the within PILOT Agreement.


Notary Public

GLORIA A. ZONGHETTI
Notary Public, State of New York
No. 01Z04715804
Qualified in Putnam County
Commission Expires Jan. 31, 1999

EXHIBIT A

Description of the Land

Roland K. Link
Licensed NYS Land Surveyor
16 Springbrook Drive
Mahopac, New York 10541
914-628-5857

*Member of the New York State Association of Professional Land Surveyors
Westchester Putnam Association of Professional Land Surveyors*

Beginning at the southeasterly corner of the existing three story masonry building located on the premises described in deed made Drum Hill Realty Corp. to Drum Hill Associates Limited Partnership dated October 23, 1997 and recorded in the County Clerk's Office, Division of Land Records on November 18, 1997 in Liber 11861, c.p. 339;

said point being distant North 34° 42' 10" East 164.30 feet from a point where the easterly side of Ringgold Street intersects the southerly side of the herein above mentioned premises described in Liber 11861, c.p. 339;

running thence from said point of beginning along the outer perimeter of the existing building and the proposed building the following courses and distances:

North 82° 41' 30" West 25.82 feet,
North 07° 18' 30" East 4.50 feet,
North 82° 41' 30" West 138.92 feet,
South 07° 18' 30" West 5.22 feet,
North 82° 41' 30" West 26.43 feet,
North 07° 18' 30" East 25.16 feet,
North 82° 41' 30" West 6.84 feet,
North 07° 18' 30" East 2.00 feet,
North 82° 41' 30" West 1.28 feet,
North 07° 18' 30" East 30.56 feet,
North 82° 41' 30" West 50.00 feet,
South 07° 18' 30" West 26.80 feet,
South 82° 41' 30" East 6.00 feet,
South 07° 18' 30" West 36.00 feet,
North 82° 41' 30" West 73.00 feet,
North 07° 18' 30" East 36.00 feet,
South 82° 41' 30" East 6.00 feet,
North 07° 18' 30" East 106.00 feet,
North 82° 41' 30" West 6.00 feet,
North 07° 18' 30" East 36.00 feet,
South 82° 41' 30" East 73.00 feet,
South 07° 18' 30" West 36.00 feet,
North 82° 41' 30" West 6.00 feet,
South 07° 18' 30" West 69.20 feet,
South 82° 41' 30" East 50.00 feet,

North 07° 18' 30" East 7.00 feet,
South 82° 41' 30" East 1.00 feet,
North 07° 18' 30" East 2.00 feet,
South 82° 41' 30" East 6.26 feet,
North 07° 18' 30" East 26.16 feet,
South 82° 41' 30" East 27.78 feet,
South 07° 18' 30" West 6.65 feet,
South 82° 41' 30" East 27.61 feet,
North 07° 18' 30" East 37.02 feet,
South 82° 41' 30" East 136.71 feet,
South 07° 18' 30" West 56.25 feet,
South 82° 41' 30" East 6.54 feet,
South 07° 18' 30" West 2.00 feet,
South 82° 41' 30" East 1.00 feet,
South 07° 18' 30" West 48.42 feet,
North 82° 41' 30" West 7.60 feet and
South 07° 18' 30" West 25.87 feet to the point and place of beginning.

Containing 35,936 square feet.

EXHIBIT B

PILOT Payments and Exemption Schedule

<u>Year in which PILOT Payment is to be made*</u>	<u>Percentage of Exemption</u>
1	100%
2	50%
3	45%
4	40%
5	35%
6	30%
7	25%
8	20%
9	15%
10	10%
11	5%
Thereafter	Full Real Estate Taxes

*Measured from receipt of the initial Certificate of Occupancy for the Facility. PILOT Payments due on January 1 of each year.

EXHIBIT B-1
TO
AMENDED AND RESTATED PILOT AGREEMENT DATED AS OF DECEMBER 15, 2010,
CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY
DRUM HILL ASSOCIATES, LP PROJECT

“Total PILOT Payment” shall be calculated as follows:

<u>PILOT Year</u>	<u>County and City Tax Year</u>	<u>School Tax Year</u>	<u>Total Taxable Valuation</u>	<u>Total PILOT Payment</u>
Year 11	2011	2011/2012	\$150,000	(Total Taxable Valuation x Tax Rates) x .95, minus Credit Installment 2 of \$20,080.17
Year 12	2012	2012/2013	\$150,000	(Total Taxable Valuation x Tax Rates), minus Credit Installment 3 of \$20,080.17
Year 13	2013	2013/2014	\$150,000	(Total Taxable Valuation x Tax Rates), minus Credit Installment 4 of \$20,080.17
Year 14	2014	2014/2015	\$160,000	(Total Taxable Valuation x Tax Rates)
Year 15	2015	2015/2016	\$160,000	(Total Taxable Valuation x Tax Rates)
Year 16	2016	2016/2017	\$160,000	(Total Taxable Valuation x Tax Rates)
Year 17	2017	2017/2018	\$165,000	(Total Taxable Valuation x Tax Rates)
Year 18	2018	2018/2019	\$165,000	(Total Taxable Valuation x Tax Rates)
Year 19	2019	2019/2020	\$170,000	(Total Taxable Valuation x Tax Rates)
Year 20	2020	2020/2021	\$170,000	(Total Taxable Valuation x Tax Rates)
Year 21	2021	2021/2022	\$175,000	(Total Taxable Valuation x Tax Rates)
Year 22	2022	2022/2023	\$175,000	(Total Taxable Valuation x Tax Rates)
Year 23	2023	2023/2024	\$175,000	(Total Taxable Valuation x Tax Rates)
Year 24	2024	2024/2025	\$180,000	(Total Taxable Valuation x Tax Rates)
Year 25	2025	2025/2026	\$180,000	(Total Taxable Valuation x Tax Rates)
Year 26	2026	2026/2027	\$180,000	(Total Taxable Valuation x Tax Rates)
Year 27	2027	2027/2028	\$185,000	(Total Taxable Valuation x Tax Rates)
Year 28	2028*	2028/2029*	\$185,000	(Total Taxable Valuation x Tax Rates)

For the term of this PILOT Agreement, the Company shall pay the applicable Total PILOT Payment as set forth within the above schedule. For the term of this PILOT Agreement, the Total PILOT Payment shall be measured based upon the Total Taxable Valuation as set forth in each respective PILOT Year, above, such Total Taxable Valuation to be multiplied by the applicable tax rates of each respective Affected Tax Jurisdiction (“Tax Rates”). As set forth above, the Total PILOT Payment for PILOT Year 11 (calendar year 2011) shall be reduced by a Five Percent (5%) abatement factor, as granted within the PILOT Agreement (the “Abatement Factor”). In addition, the Total PILOT Payment for PILOT Years 11-13 (calendar years 2011-2013) are reduced by applicable Credit Installments, as defined herein and set forth above. The City, as agent of the Agency, shall deduct the Credit Installments equally between annual billings for City/County Total PILOT Payments and School Total PILOT Payments for PILOT Years 11-13 (calendar years 2011-2013). Total PILOT Payment = Total Taxable Valuation x Tax Rate, less any applicable Abatement Factor and/or Credit Installment.

* - On October 1, 2028, this Agreement shall terminate and the Project Facility shall be subject to full taxation by the affected taxing jurisdictions.