

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 (iii) 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. Estoppel 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

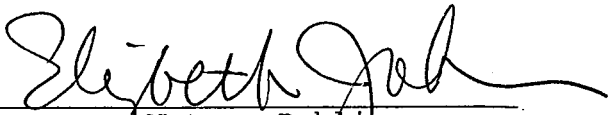
By: Robert E Flower
Robert Flower
Chair

DRUM HILL ASSOCIATES, L.P.

By: John Saraceno
John Saraceno
General Partner

STATE OF NEW YORK)
COUNTY OF ~~WESTCHESTER~~ ^{NEW YORK}) SS.:

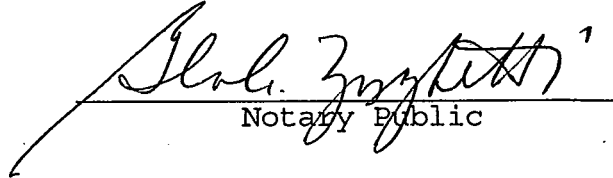
On this 6th day of November, 1998, before me personally came John Saraceno, to me personally known, who, being by me duly sworn, did depose and say that he resides at 26 Amanda Lane, New Rochelle, New York 10804; that he is the general partner of the limited partnership described in and which executed 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.


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)

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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. 01204715804
Qualified in Rutland 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.