

PROJECT AUTHORIZING RESOLUTION

(Ft. Hill Peekskill, LLC Project)

A regular meeting of City of Peekskill Industrial Development Agency was convened on Tuesday December 20, 2016 at 7:00 p.m.

The following resolution was duly offered and seconded, to wit:

On motion duly made and seconded, the following resolution was placed before the members of the City of Peekskill Industrial Development Agency:

Resolution No. 2016 - 08

RESOLUTION OF THE CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY (i) APPOINTING FT. HILL PEEKSKILL, LLC (THE "COMPANY", FOR ITSELF AND/OR ENTITIES TO BE FORMED) AS ITS AGENT TO UNDERTAKE THE PROJECT (AS MORE FULLY DESCRIBED BELOW); (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE OF AN AGENT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT; (iii) AUTHORIZING THE PROVISION OF CERTAIN FINANCIAL ASSISTANCE TO THE COMPANY (AS FURTHER DEFINED HEREIN); (iv) ADOPTING FINDINGS WITH RESPECT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT ("SEQRA"); AND (v) AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS WITH RESPECT TO THE PROJECT.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 671 of the Laws of 1974 of the State of New York, as amended (hereinafter collectively called the "Act"), the **CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **FT. HILL PEEKSKILL, LLC**, for itself and/or a related entity or entities to be formed (collectively, the "Company"), has submitted an application to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition by the Agency of a leasehold interest in approximately 17 acres of real property located on and adjacent to Mary's Street, Peekskill, New York (the "Land", being more particularly described as new tax parcels to be subdivided from existing tax parcels 32.8-1-3, 22.20-2-1 and 22.20-2-4) along with the existing improvements thereon consisting principally of an approximately 29,000 square foot former convent building structure, an approximately 7,500 square foot chapel building structure and various outbuildings and structures and infrastructure

improvements (the “Existing Improvements”); (ii) the planning, design, demolition, construction, reconstruction, and rehabilitation of the Existing Improvements for operation by the Company as an approximately 41-room hotel facility, spa and restaurant facility and the planning, design, demolition, construction and operation upon the Land of a commercial, market rate apartment complex comprised of three (3) buildings containing 178 residential apartment units, along with roadway, improvements, internal and external parking improvements, access and egress improvements, stormwater improvements, utility improvements, signage, curbage, sidewalks, and landscaping improvements (collectively, the “Improvements”); (iii) the acquisition of and installation in and around the Existing Improvements and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the “Equipment” and, collectively with, the Land, the Existing Improvements and the Improvements, the “Facility”); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the “Straight Lease Transaction”); and

WHEREAS, on June 7, 2016, the Agency adopted an initial resolution (the “Initial Project Resolution”) which (i) accepted the Company’s application, (ii) authorized the scheduling and conduct of a public hearing in compliance with the Act, (iii) described the contemplated forms of financial assistance to be provided by the Agency (the “Financial Assistance”, as described herein); and

WHEREAS, the Common Council of the City of Peekskill (the “Common Council”) reviewed the proposed Project pursuant to the State Environmental Quality Review Act, as codified under Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, “SEQRA”) and related Environmental Assessment Form (“EAF”) and issued a Negative Declaration, dated September 12, 2016 (the “Negative Declaration”), a copy of which, along with the EAF, are attached hereto as **Exhibit A**; and

WHEREAS, the Agency and Company negotiated the terms of PILOT Agreements (the “PILOT Agreements”) to be entered into in connection with the Project, the terms of which deviate (the “Deviation”) from the Agency’s Uniform Tax Exemption Policy (the “UTEP”), and in accordance with the By-laws of the Agency, the Agency presented the terms of the PILOT Agreements to and secured the consent of the Common Council on November 28, 2016; and

WHEREAS, in accordance with the Initial Project Resolution, the Agency published and forwarded a Notice of Public Hearing and Contemplated Deviation to the Affected Tax Jurisdictions at least ten (10) days prior to said Public Hearing, copies of such notices and proof of publication and a copy of the minutes of the Public Hearing are attached hereto as **Exhibit B**; and

WHEREAS, pursuant to Section 859-a of the Act, the Agency held a public hearing on December 20, 2016 with respect to the Project (the “Public Hearing”) and the proposed Financial Assistance (as further defined herein) being contemplated by the Agency whereat interested

parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, the Agency is contemplating providing financial assistance to the Company with respect to the Project (collectively, the “Financial Assistance”) in the form of: (A) an exemption from all State and local sales and use taxes with respect to qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility; (B) mortgage recording tax exemption(s) relating to financings undertaken by the Company in furtherance of the Project, and (C) a partial real property tax abatement through the PILOT Agreements, pursuant to which the Company would make payments in lieu of real property taxes for the benefit of each affected tax jurisdiction (the “Affected Tax Jurisdictions”); and

WHEREAS, in furtherance of the foregoing, the Agency desires to authorize (i) the undertaking of the Project and the appointment of the Company as agent of the Agency to undertake same; (ii) the execution and delivery of one or more Agent and Financial Assistance and Project Agreements (“Agent Agreements”), Lease Agreements, Leaseback Agreements, PILOT Agreements, and related documents; and (iii) the provision of the Financial Assistance to the Company, which shall include (a) an exemption from all state and local sales and use taxes with respect to the qualifying personal property included in or incorporated into the Facility or used in the construction and equipping of the Facility, (b) mortgage recording tax exemptions in connection with financings undertaken by the Company for the Project, and (c) a partial real property tax abatement through the execution of an agreement with the Agency regarding payments in lieu of real property taxes to be made for the benefit of the Affected Tax Jurisdictions.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE CITY OF PEEKSKILL INDUSTRIAL AGENCY AS FOLLOWS:

Section 1. Based upon the representations made by the Company to the Agency in the Company’s Application, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) The Agency has the authority to take the actions contemplated herein under the Act; and

(C) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in the City of Peekskill, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

(D) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the “State”) to another area of the State or result in the

abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(E) Based upon the Agency's review of the Project, portions of the Project may include facilities or property that are primarily used in making retail sales, as defined within Section 862(2) of the Act, to customers who personally visit the Facility. Notwithstanding the foregoing, and based on representations made by the Company to the Agency within the Application and otherwise, the Agency hereby finds that the Project is likely to attract a significant number of visitors from outside the economic development region as established by section two-hundred thirty of the New York State Economic Development Law. Therefore, the Agency may and hereby authorizes the provision of the Financial Assistance to the Company in furtherance of the Project.

(F) Based upon a review of the Application, the EAF and the Negative Declaration issued by the Common Council and submitted to the Agency, the Agency hereby:

(i) consents to and affirms the status of the Common Council as Lead Agency for review of the Project and Facility, within the meaning of, and for all purposes of complying with SEQRA;

(ii) ratifies the proceedings undertaken by the Common Council as Lead Agency under SEQRA with respect to the construction and equipping of the Facility pursuant to SEQRA; and

(iii) finds that the Project as reviewed by the Common Council involves a "Type I" Action (as such quoted term is defined under SEQRA). The Agency's subsequent review herein as an interested and/or involved agency is "uncoordinated" (as such quoted term is defined under SEQRA). Based upon the review by the Agency of the EAF and related documents delivered by the Company to the Agency and other representations made by the Company to the Agency in connection with the Project, the Agency hereby finds that (i) the Project will result in no major impacts and, therefore, is one which may not cause significant damage to the environment; (ii) the Project will not have a "significant effect on the environment" (as such quoted term is defined under SEQRA); and (iii) no "environmental impact statement" (as such quoted term is defined under SEQRA) need be prepared for this action. This determination constitutes a ratification of the Common Council's "negative declaration" (as such quoted terms are defined under SEQRA) for purposes of SEQRA.

Section 2. Upon consideration of the Deviation, as outlined within the Public Hearing Notice and Deviation letter issued to the Affected Tax Jurisdictions, and upon consideration of the Project and comments received from the Affected Tax Jurisdictions, the Agency hereby authorizes the undertaking of the Deviation based upon the following factors: (i)

the expansion and retention of employment opportunities in the City of Peekskill; (ii) the substantial capital investment associated with the Project derived from Company sources; (iii) the redevelopment and rehabilitation of historic and underutilized buildings within the City; and (iv) the construction of new ratable assets within the City, including hotel and market rate housing improvements. In addition, the Agency's consideration of the foregoing includes the economic condition of the Land, Existing Improvements, and surrounding area at the time of the Company's application and the economic multiplying effect that the Project will have on the City, including the retention and creation of permanent, private sector jobs and sales tax revenue generation.

Section 3. Subject to (i) the Company executing the Agent Agreement, and (ii) the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, renovation, construction, reconstruction, rehabilitation and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Agent Agreement shall expire on December 31, 2018 (*unless extended for good cause by the Executive Director of the Agency*).

Section 4. Based upon the representation and warranties made by the Company the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately **\$19,932,203.00**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$1,470,000.00**. The Agency agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

Section 5. Pursuant to Section 875(3) of the Act, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; (iv) the Company

has made a material false statement on its application for financial assistance; (v) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project; and/or (vi) the Company obtains mortgage recording tax benefits and/or real property tax abatements and fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project (collectively, items (i) through (vi) hereby defined as a "Recapture Event").

As a condition precedent of receiving sales and use tax exemption benefits and real property tax abatement benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, mortgage recording tax benefits and/or real property tax abatements abatement benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

Section 6. The Chairman, Vice Chairman and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any non-recourse leasehold mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by a lender to be identified by the Company (the "Lender") up to a maximum principal amount required to undertake the Project and/or finance equipment and other personal property and related transactional costs (hereinafter, with the Agent Agreement, collectively called the "Agency Documents"); and, where appropriate, the Secretary or Acting Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman and/or Executive Director of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman and/or Executive Director of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited and any such security instruments shall inure to the leasehold interest previously transferred by the Agency to the Company relating to the Facility.

Section 7. The Chairman, Vice Chairman and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver one or more Agent Agreements, Lease Agreements, Leaseback Agreements, PILOT Agreements, and related documents, with such changes as shall be approved by the Chairman, Vice Chairman, the Executive Director and counsel to the Agency upon execution; provided the Agent Agreement and Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project.

Section 8. 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

and to execute and deliver all such certificates, instruments and documents, to 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 resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 9. These Resolutions shall take effect immediately upon adoption.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

| | <u>Yea</u> | <u>Nea</u> | <u>Absent</u> | <u>Abstain</u> |
|------------------|------------|------------|---------------|----------------|
| Alan Kravitz | [X] | [] | [] | [] |
| Arun Manansingh | [X] | [] | [] | [] |
| Deborah Post | [X] | [] | [] | [] |
| | [] | [] | [] | [] |
| Frances Gibbs | [] | [] | [X] | [] |
| Nicholas Misch | [X] | [] | [] | [] |
| Charles Jennings | [] | [X] | [] | [] |

The Resolutions were thereupon duly adopted.

EXHIBIT A

SEQRA Materials

EXHIBIT B

[Public Hearing Notice and Minutes]

Attached Hereto

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

I, the undersigned Deputy Director of the City of Peekskill Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the foregoing extract of the minutes of the meeting of the Wayne County Industrial Development Agency (the "Agency") including the resolution contained therein, held on December 20, 2016, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with Article 7.

I FURTHER CERTIFY that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Agency this 28th day of December 2016.



Deputy Director

[SEAL]