

CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY

AND

HOTEL, LLC

WITH ACKNOWLEDGMENT AND GUARANTY BY

JOHN E WALSH BLVD, LLC

PAYMENT IN LIEU OF TAX AGREEMENT

Dated as of September 7, 2012

Affected Tax Jurisdictions:

City of Peekskill

Peekskill City School District

County of Westchester

Street Address: 2 John E. Walsh Boulevard (TMID No. 32.19-1-4.2)

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "Agreement"), dated as of the 7th day of September 2012, 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 offices located at 840 Main Street, Peekskill, New York 10566 (the "Agency") and **HOTEL, LLC**, a limited liability company of the State of New York (the "Company"), with acknowledgment and guaranty by **JOHN E WALSH BLVD, LLC**, also a limited liability company of the State of New York (the "Operator"), each having offices at 2 John E. Walsh Boulevard, Peekskill, New York 10566.

WITNESSETH:

WHEREAS, the Agency was created by Chapter 83 of the Laws of 1982 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, **GEORGE LIASKOS**, individually, for himself or on behalf of **HOTEL, LLC** (collectively, the "Company"), has submitted an application (the "Application") to the Agency, copies of which were presented at this meeting and a copy of which is on file at the office of the Agency, requesting that the Agency undertake a certain project (the "Project") consisting of: (i) the acquisition or retention of title to or a leasehold interest in an approximately 1.25 acre vacant parcel of real property located on John E. Walsh Boulevard in the City of Peekskill, New York (such 1.25 acre parcel being further identified as TMID No. 32.19-1-4.2 and hereinafter referred to as the "Land") and the existing foundation and site improvements located thereon (the "Existing Improvements"); (ii) the acquisition, construction and equipping by the Company as agent of the Agency of a 76 room hotel facility on the Land (the "Improvements"), (iii) the acquisition and installation in and around the Existing Improvements and Improvements of certain items of machinery, equipment and other tangible personal property, related furniture, fixtures and equipment (the "Equipment" and, together with the Land, the Existing Improvements, and the Improvements, the "Facility"); (iv) the operation of the Facility by the Operator as lessee of the Company; and (v) the sale or lease (with an obligation to purchase) of the Facility by the Agency to the Company; and

WHEREAS, in order to induce the Company to acquire, construct and equip the Facility, the Agency is willing to take a leasehold interest to the land, improvements and personal property constituting the Facility pursuant to a Lease Agreement (the "Lease Agreement") and lease said land, improvements and personal property back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement dated on or about the date hereof (the "Leaseback Agreement"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it, other than special

ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of the City of Peekskill, New York ("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").

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 - Payment in lieu of Ad Valorem Taxes:

1.1 A. Acquisition of Land and Existing Improvements; Prior Exemption Continued. Prior to the date hereof, the Land and Existing Improvements were owned by the Agency and therefore exempt from real property taxes pursuant to Section 874 of the Act and Section 412-a of the New York State Real Property Tax Law ("RPTL"). The Agency and the Company previously entered into a certain a certain Purchase and Sale Agreement with Exclusive Option, dated as of February 1, 2009 (the "Purchase and Sale Agreement") relating to the disposition of the Land to the Company, and (ii) a certain Agent and Site Access Agreement, also dated as of February 1, 2009 (the "Access Agreement"), wherein the Company was granted access rights to the Land to begin preliminary construction activities. As of the date hereof, the Agency has transferred fee title to the Land and Existing Improvements to the Company, subject to a retained leasehold interest of the Lease Agreement.

Pursuant to 874 of the Act and RPTL Section 412-a , and relevant opinions issued by the New York State Office of Real Property Tax Services, the Agency's retained interest in the Land and Existing Improvements shall have the effect of continuing and maintaining the exempt status (Section Roll 8) of the Land and Existing Improvements.

B. Subject to the completion and filing by the taxable status date (May 1, 2013) (the "Taxable Status Date") of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under RPTL Section 412-a and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Land and the Facility shall be exempt from Real Estate Taxes commencing as of the date hereof, such exemption to include the current tax years and prospectively, the 2013 City and County tax years and the 2013-14 School tax year through the termination date, as defined herein. 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 District. The Company shall provide to the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Lease Agreement to the contrary, in the event the exemption

from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the Facility continues to qualify as a "project" under the Act; (ii) the Facility has not been declared to be in default with respect to the provisions of any applicable Agency Restrictions; (iii) neither the Facility nor any part of or interest therein has been declared in default under any document for which the Facility could be sold, forfeited or lost; and (iv) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

C. Payee/Total PILOT Payments. (i) *Payee.* As long as the Facility is leased 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 March 15 of each calendar year commencing on March 15, 2013 (the "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.

(ii) *Total PILOT Payment.* For purposes of this Agreement, each "Total PILOT Payment" shall be an amount equal to the corresponding amount set forth within **Schedule A**, 'Total PILOT Payment Schedule', attached hereto.

(iii) *Public Purpose.* 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.

1.2 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 the initial construction of or subsequent maintenance or improvements to the condition of the Existing Improvements or Improvements, as defined herein and contemplated and regulated within the Lease and the Regulatory Agreements. 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 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 1.2 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, then and in that event that 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).

1.3 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the remaining portions of current tax years, including the 2012 and 2013 City and County tax years and 2012-2013 School tax year, and prospectively, (ii) the 2014 City and County calendar tax years through the 2027 City calendar tax year and (ii) the 2013-2014 School tax year through the 2026-2027 School tax year. This PILOT Agreement shall expire on December 31, 2027 (with the understanding that the Company will be making a payment hereunder for City and County tax year 2028 and School tax year 2027-2028 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 Section 485-b 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.

1.4 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in such proportion as required pursuant to Section 858(15) of the Act.

Section II - Special District Charges, Special Assessments and Other Charges.

2.1 Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges, waste district, pure water charges, and sewer charges, collectively herein, "Special District Charges") are to be paid in full in accordance with normal billing practices, subject to any applicable exemptions afforded according to the laws of the State, County or City, as may be amended from time to time.

Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Agency to the Company (the Lease Agreement is terminated), 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.

Section IV - Assessment Challenges.

4.1 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, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions 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 any assessment of the Facility.

4.2 Notwithstanding the foregoing, the Company's rights pursuant to Section 4.1, above, shall be limited to challenging the assessed value of the Facility as same dictates the imposition of Special District Charges payable by the Company pursuant to Section II, hereof. The Company's right to challenge the assessed value of the Facility shall not impact, change, or otherwise alter the "Base Valuation" or "Added Value" as defined within Schedule A, hereto, which shall be frozen during the term of this Agreement.

4.3 Where appropriate pursuant to the provisions of this Section IV, the Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company (or any authorized assignee hereunder) to: (i) make the payments described in Section

I within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; (iii) the occurrence and continuance of any events of default under the Lease Agreement, Leaseback Agreement or that certain Loan Agreement entered into by the Company and the City, dated as of the date hereof, after the expiration of any applicable notice or cure periods. 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.

6.2 If payments pursuant to Section I herein are not made by the Delinquency Dates, 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 I herein, if said payment is not received by the Delinquency Date as defined in Section 6.1 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.

Section VII - Assignment.

7.1 No portion of any interest in this Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

Section VIII - Miscellaneous.

8.1 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.

8.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency:

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

To Agency Counsel:

William J. Florence, Esq.
Peekskill City Hall
840 Main Street
Peekskill, New York 10566

--and to--

Harris Beach PLLC
677 Broadway, Suite 1101
Albany, New York 12207
Attn: Justin S. Miller, Esq.

To the Company or Operator:

Hotel, LLC
2 John E. Walsh Boulevard
Peekskill, New York 10566
Attn: George Liaskos, Manager

To Company Counsel:

Brian Eisen, Esq.
4 Crestview Ave.
Cortlandt Manor, New York 10566

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8.3 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.

8.4 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.

8.5 Notwithstanding anything contained herein to the contrary, the Agency, at its sole discretion and on a case-by-case basis, may determine, (but shall not be required to do so) with respect to a particular project, that a project has failed to meet its intended goals and to require the project applicant to agree to the recapture by the Agency of the value of any or all exemptions from taxation granted with respect to the project by virtue of the Agency's involvement. Events that the Agency may determine will trigger recapture may include, but not limited to (i) Sale or closure of facility; (ii) Significant employment reduction; (iii) Significant change in use in facility; (iv) Significant change in business activities or project applicant or operator; or (v) Material noncompliance with or breach of terms of Agency transaction documents or of zoning or land use laws or regulations or federal, state or local environmental laws or regulations. If the Agency determines to provide for the recapture with respect to a particular project, the Agency also shall, in its sole discretion and on a case-by-case basis, determine the timing and percentage of recapture. The Agency shall notify the Company in writing within thirty (30) days of any such Event of Default of its intent to recapture PILOT Benefits (or any portion thereof).

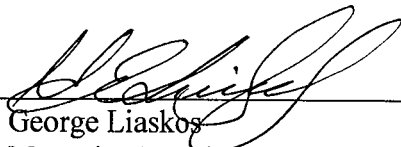
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF PEEKSKILL INDUSTRIAL
DEVELOPMENT AGENCY**

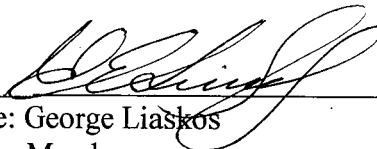
By: 
Brian O. Havranek
Executive Director

HOTEL, LLC

By: 
Name: George Liaskos
Title: Managing Member

WITH ACKNOWLEDGMENT BY:

JOHN E WALSH BLVD, LLC

By: 
Name: George Liaskos
Title: Member

PERFORMANCE GUARANTY

For good and valuable consideration, JOHN E WALSH BLVD, LLC, a limited liability company duly formed and validly existing pursuant to the laws of the State of New York having its principal offices at 2 John Walsh Boulevard, Peekskill, New York 10566 (the "Guarantor") hereby irrevocably, absolutely and unconditionally guarantees to the Agency and its assigns the full and prompt payment of all indebtedness, liabilities and obligations of the Company hereunder including, without limitation, the payment of the principal amount of the respective obligations and all interest, fees, costs and expenses. The within guarantees are independent of and in addition to any other guaranty, endorsement, collateral, remedy, statutory right or other agreement held by the Agency or its assigns and are a guaranty of payment and performance, not of collection.

Dated: September 7, 2012

JOHN E WALSH BLVD, LLC

By: _____

Name: George Liaskos

Title: Member

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

On the 7th day of September in the year 2012 before me, the undersigned, personally appeared GEORGE LIASKOS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

JUSTIN S. MILLER
Notary Public, State of New York
No. 02MI6020242
Qualified in Albany County
Commission Expires June 8, 2015

SCHEDULE A
TO PILOT AGREEMENT DATED AS OF SEPTEMBER 7, 2012,
CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY
HOTEL, LLC PROJECT

“Total PILOT Payment” shall be calculated as follows:

<u>PILOT Year</u>	<u>City/County Tax Years</u>	<u>School Tax Year</u>	<u>Total PILOT Payment</u>
Interim	2012 and 2013	2012/2013	Base Valuation
Year 1	2014	2013/2014	Base Valuation, plus (Added Value x .00)
Year 2	2015	2014/2015	Base Valuation, plus (Added Value x .00)
Year 3	2016	2015/2016	Base Valuation, plus (Added Value x .00)
Year 4	2017	2016/2017	Base Valuation, plus (Added Value x .00)
Year 5	2018	2017/2018	Base Valuation, plus (Added Value x .00)
Year 6	2019	2018/2019	Base Valuation, plus (Added Value x .10)
Year 7	2020	2019/2020	Base Valuation, plus (Added Value x .20)
Year 8	2021	2020/2021	Base Valuation, plus (Added Value x .30)
Year 9	2022	2021/2022	Base Valuation, plus (Added Value x .40)
Year 10	2023	2022/2023	Base Valuation, plus (Added Value x .50)
Year 11	2024	2023/2024	Base Valuation, plus (Added Value x .60)
Year 12	2025	2024/2025	Base Valuation, plus (Added Value x .70)
Year 13	2026	2025/2026	Base Valuation, plus (Added Value x .80)
Year 14	2027	2026/2027	Base Valuation, plus (Added Value x .90)

For the term of this PILOT Agreement, the Company shall continue to pay full taxes based on the Full Market Value (as may be equalized) of the Land as of the date hereof and before the completion of the Existing Improvements and Improvements (the “Base Valuation”). During the term of this PILOT Agreement, the Base Valuation shall be frozen at \$155,844.00 for the Term of this Agreement. The Total Taxable Valuation for each Total PILOT Payment shall be calculated such that a graduated abatement factor (“Abatement Factor”) shall be applied to the increased assessed valuation attributable to the Existing Improvements and Improvements made to the Project Facility by the Company, as an Agent of the Agency, for the Project (the “Added Value”). The Added Value as established by the Assessor of the City following completion of the Facility, shall be frozen during the Term of this Agreement. The abatement schedule shall allow for a 100% exemption from taxation for the Added Value in the first Five (5) PILOT Years, with such exemption being eliminated in 10% increments on an annual basis for PILOT Years 6 through 14.

Once the Total Taxable Valuation is established using the Abatement Factor, the Total PILOT Payment shall be determined by multiplying the Total Taxable Valuation by the respective tax rate for each affected tax jurisdiction (after application of any applicable equalization rate). After the Fourteenth (14th) PILOT Year, the Project Facility shall be subject to full taxation by the affected taxing jurisdictions.

Total Taxable Valuation = Base Valuation + (Added Value x Abatement Factor)

Total PILOT Payment = Total Taxable Valuation (after equalization) x Tax Rate