

CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY

AND

STUHR GARDENS ASSOCIATES LLC

PAYMENT IN LIEU OF TAX AGREEMENT

Dated as of May 1, 2007

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

Street Address: Vail Avenue (a/k/a Wiberly Avenue)
Tax Map ID No.: 23.15-1-2

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "Agreement"), dated as of the 1st day of May 2007, 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 **STUHR GARDENS ASSOCIATES LLC**, a New York limited liability company having offices at 700 White Plains Road, Suite 363, Scarsdale, New York 10583 (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, on or about the date hereof, the Agency has issued its housing revenue bonds in a principal amount equal to \$7,200,000 (Stuhr Gardens Associates, LLC Project), Series 2007 (the "Bonds") for the benefit of the Company for the purpose of financing a certain project (the "Project") consisting of: (A) the acquisition by the Agency of a leasehold interest in an approximately 8.5-acre site on Vail Avenue (a/k/a Wiberly Avenue) in the City of Peekskill, New York (the "Land") and the existing improvements located thereon, consisting principally of three three-story and four two-story residential rental apartment buildings (the "Existing Improvements"); (B) the renovation, reconstruction, refurbishment and upgrading of the Existing Improvements to accommodate (i) approximately 104 residential units comprised of approximately twenty-eight (28) one-bedroom units, approximately forty-nine (49) two-bedroom units and approximately twenty-seven (27) three-bedroom units (the "Residential Units") and, in accordance with the Internal Revenue Code of 1986, as amended (the "Code"), approximately eighty-two (82) of such Residential Units will be leased to households earning no more than sixty percent (60%) of the area's median gross income; (ii) a non-subsidized superintendent's apartment; and (iii) various lobby, laundry and tenant storage facilities (collectively, the "Improvements"); (C) the acquisition of and installation in and around the Improvements of certain machinery, equipment and other items of tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); (D) the paying of certain costs and expenses incidental to the issuance of the Bonds (the costs associated with items (A) through (D) above being hereinafter referred to as the "Project Costs"); and (E) the lease (with an obligation to purchase) of the Facility back to the Company pursuant to the Lease Agreement, dated the date hereof, by and between the Agency and the Company (the "Lease Agreement"); and

WHEREAS, in order to induce the Company to acquire, construct and equip the Facility, the Agency has taken a leasehold interest to the land, improvements and personal property constituting the Facility and leased said land, improvements and personal property back to the Company pursuant to the terms and conditions of the Lease 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 Westchester County, New York (the "County" and, collectively with the City and the 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. Subject to the completion and filing by the taxable status date (May 1, 2007 (the "Taxable Status Date") of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law 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 2008 City and County tax years and the 2007/2008 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 and/or any Housing and Urban Development ("HUD") use restrictions encumbering the Facility and the Company is in compliance with any and all Agency and HUD use restrictions relating to the Facility, specifically including but not limited to the Section 8 HAP Contract, the HUD Use Agreement, and Tax Regulatory Agreement (collectively, the "Regulatory Agreements"); (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; (iv) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability; and (v) the non-inclusion of interest on the Bonds for Federal income tax purposes will not be adversely affected.

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.

B. 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 April 1 of each calendar year commencing on April 1, 2008 (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** 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 improvements to the condition of the Residential Units, 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 Applicable Exemptions and Period of Benefits. The real property tax exemption and corresponding tax benefits provided for herein should be deemed to include the 2008 County and City calendar tax year through the 2047 County and City calendar tax year and 2007/2008 School tax year through the 2046/2047 School tax year. This PILOT Agreement shall expire on December 31, 2047 (with the understanding that the Company will be making a payment hereunder for County and City tax year 2047 and School tax year 2047/2048 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 the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement.

1.5 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County, City and School District purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date.

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), and pure water charges and sewer 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 or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this Agreement, as if and to the same extent as if the Company were the owner of the Facility.

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) to make the payments required under that certain Municipal Impact Fee Agreement, dated as of May 1, 2007, by and between the City of Peekskill, New York and the Company; or (iv) the occurrence and continuance of any events of default under the Lease Agreement or the Regulatory Agreements 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. Notwithstanding the foregoing, however, this Agreement may be assigned, without further Agency approval, to U.S. Bank National Association, or its successors (the "Trustee") upon a foreclosure sale of the Facility, provided the Trustee shall agree to be bound and comply with the provisions of the Regulatory Agreements and any HUD use restrictions encumbering the Facility and the other terms and conditions contained herein.

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: Acting Executive Director

To Agency Counsel:

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

--and to--

Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Russell Gaenzle, Esq.

To the Company:

Stuhr Gardens Associates, LLC
700 White Plains Road, Suite 363
Scarsdale, New York 10583
Attn.: Joel B. Mounty

To Company Counsel:

Cannon Heyman & Weiss LLP
54 State Street, 5th Floor
Albany, New York 12207
Attn.: Geoffrey Cannon, Esq.

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).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[Signature Page to PILOT Agreement]

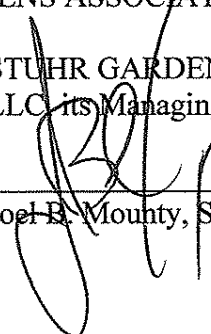
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF PEEKSKILL INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Brian O. Havranek, CEO

STUHR GARDENS ASSOCIATES LLC

By: STUHR GARDENS MANAGERS
LLC, its Managing Member

By: 
Joel B. Mounty, Sole Member

SCHEDULE A
TO
PILOT AGREEMENT DATED AS OF MARCH 1, 2007, BETWEEN
CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY
STUHR GARDENS ASSOCIATES, LLC PROJECT

"Total PILOT Payment" shall be calculated as follows:

<u>PILOT Year</u>	<u>County Tax Year</u>	<u>City Tax Year</u>	<u>School Tax Year</u>	<u>Total PILOT Payment</u>
Year 1	2008	2008	2007/2008	\$140,000.00
Year 2	2009	2009	2008/2009	\$144,200.00
Year 3	2010	2010	2009/2010	\$148,526.00
Year 4	2011	2011	2010/2011	\$152,981.78
Year 5	2012	2012	2011/2012	\$157,571.23
Year 6	2013	2013	2012/2013	\$162,298.37
Year 7	2014	2014	2013/2014	\$167,167.32
Year 8	2015	2015	2014/2015	\$172,182.34
Year 9	2016	2016	2015/2016	\$177,347.81
Year 10	2017	2017	2016/2017	\$182,668.25
Year 11	2018	2018	2017/2018	\$188,148.29
Year 12	2019	2019	2018/2019	\$193,792.74
Year 13	2020	2020	2019/2020	\$199,606.52
Year 14	2021	2021	2020/2021	\$205,594.72
Year 15	2022	2022	2021/2022	\$211,762.56
Year 16	2023	2023	2022/2023	\$218,115.44
Year 17	2024	2024	2023/2024	\$224,658.90
Year 18	2025	2025	2024/2025	\$231,398.67
Year 19	2026	2026	2025/2026	\$238,340.63
Year 20	2027	2027	2026/2027	\$245,490.85
Year 21	2028	2028	2027/2028	\$252,855.57
Year 22	2029	2029	2028/2029	\$260,441.24
Year 23	2030	2030	2029/2030	\$268,254.48
Year 24	2031	2031	2030/2031	\$276,302.11
Year 25	2032	2032	2031/2032	\$284,591.17
Year 26	2033	2033	2032/2033	\$293,128.91
Year 27	2034	2034	2033/2034	\$301,922.78
Year 28	2035	2035	2034/2035	\$310,980.46
Year 29	2036	2036	2035/2036	\$320,309.87
Year 30	2037	2037	2036/2037	\$329,919.17
Year 31	2038	2038	2037/2038	\$339,816.75
Year 32	2039	2039	2038/2039	\$350,011.25
Year 33	2040	2040	2039/2040	\$360,511.59
Year 34	2041	2041	2040/2041	\$371,326.93
Year 35	2042	2042	2041/2042	\$382,466.74
Year 36	2043	2043	2042/2043	\$393,940.74
Year 37	2044	2044	2043/2044	\$405,758.97
Year 39	2045	2045	2044/2045	\$417,931.73
Year 39	2046	2046	2045/2046	\$430,469.69
Year 40	2047	2047	2046/2047	\$443,383.78

For the term of this PILOT Agreement, the Company shall pay the applicable Total PILOT Payment as set forth within the above schedule.