

Date: November 13, 2019

At a regularly scheduled meeting of the City of Poughkeepsie Industrial Development Agency (the "Agency") duly convened by the Vice Chair of the Agency and held on Wednesday, November 13, 2019, at 6:30 p.m. at Common Council Chambers, Poughkeepsie City Hall, 62 Civic Center Plaza, 3rd Floor, Poughkeepsie, New York 12601, the following members of the Agency were:

Present: Mr. Johnson  
Mr. Smith  
Ms. Vetter  
Mr. Shook

Absent: none

After the meeting had been duly called to order, the Chair announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to the approval of an amendment to the existing Payment In Lieu Of Tax Agreement with Eastman & Bixby Redevelopment Company LLC.

The following resolution was duly moved and seconded, discussed and adopted with the following members voting:

Voting Aye

Ms. Vetter  
Mr. Smith  
Mr. Johnson  
Mr. Shook

Voting Nay

**RESOLUTION OF THE CITY OF POUGHKEEPSIE INDUSTRIAL DEVELOPMENT AGENCY REGARDING THE APPROVAL OF AN AMENDMENT TO THE EXISTING PAYMENT IN LIEU OF TAX AGREEMENT WITH EASTMAN & BIXBY REDEVELOPMENT COMPANY LLC.**

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 304 of the Laws of 1974 of the State of New York, as the same may be amended from time to time (collectively, the "Act"), the **CITY OF POUGHKEEPSIE INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency"), was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the Act authorizes the Agency (1) to promote the economic welfare, recreational opportunities and prosperity of the inhabitants of the City of Poughkeepsie (the "City"), and (2) to promote, attract, encourage and develop recreation and economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration; and

WHEREAS, **EASTMAN & BIXBY REDEVELOPMENT COMPANY LLC**, a New York limited liability company (the "Company") and the Agency previously entered into a certain payment-in-lieu-of-tax agreement, dated as of August 18, 2000 (the "PILOT Agreement") with respect to a certain project (the "Project") undertaken by the Company, as agent of the Agency, consisting of: (1) the acquisition of land located at 22 Montgomery Street, in the City of Poughkeepsie in Dutchess County, New York (the "Eastman Land") together with a certain 140,000 square foot building containing existing multi-family housing units located thereon (the "Eastman Facility") (known as the Eastman Apartments) and the acquisition of land located at 21 Charles Street, in the City of Poughkeepsie in Dutchess County, New York (the "Bixby Land" and together with the Eastman Land, the "Land") together with a certain 200,000 square foot building containing existing multi-family housing units located thereon (the "Bixby Facility") (known as the Bixby Apartments) (the Bixby Facility together with the Eastman Facility, the "Existing Facilities"), (2) the reconstruction and renovation (including site work thereof) of the Existing Facilities, (3) the acquisition and reconstruction and renovation (including site work thereof) of an approximately 5,000 square foot building located on the Bixby Land, in the City of Poughkeepsie in Dutchess County, New York for the purpose of housing a day care facility (the "Day Care Facility"; and, collectively with the Existing Facilities, the "Facility") and (4) the acquisition and installation therein and thereon of certain machinery and equipment related thereto (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); and

WHEREAS, pursuant to the PILOT Agreement, the Company agreed, among other things, to make certain payments annually to the Agency, on behalf of the respective Taxing Jurisdictions (as such term is defined in the PILOT Agreement), in the amounts as calculated pursuant thereto (each a "PILOT Payment" and collectively, the "PILOT Payments"); and

WHEREAS, in 2016 the City of Poughkeepsie (the "City") notified the Company that the method utilized to calculate the PILOT Payments up to that point in time was not in accordance with the provisions of the PILOT Agreement and the City accordingly revised its billings of the PILOT Payments in conformance with the provisions of the PILOT Agreement; and

WHEREAS, the Company advised the City that it was unable to pay either the arrearages for the PILOT Payments determined to be due for the period of time prior to 2016 by reason of the City's recalculation of the PILOT Payments or to pay the PILOT Payment due for the 2017 year; and

WHEREAS, pursuant to that certain Standstill Agreement, dated April 27, 2017, by and between the City and the Company (the "Original Standstill Agreement"), the City agreed, for a period of one (1) year, to forbear the collection of any outstanding arrears and to defer collection of payment in full of the PILOT Payment due for the calendar year 2017 in the amount of \$180,774.56 in consideration of the Company's payment of a portion of the PILOT Payment due for such calendar year in the amount of \$140,980.00; and

WHEREAS, for the calendar year 2018 the Company paid \$140,978 of the \$184,570.83 PILOT Payment due for such calendar year pursuant to the PILOT Agreement; and

WHEREAS, pursuant to that certain Standstill Agreement, dated April, 2019, by and between the Agency and the Company (the "2019 Standstill Agreement"), the Agency agreed to forbear the collection of any outstanding arrears and to defer collection of payment in full of the PILOT Payment due for the calendar year 2019 in the amount of \$188,077.68 in consideration of the Company's payment of a portion of the PILOT Payment due for such calendar year in the amount of \$140,978.00

WHEREAS, for the calendar year 2019 the Company paid \$140,978 of the \$188,077.68 PILOT Payment due for such calendar year pursuant to the PILOT Agreement;

WHEREAS, as of the date hereof the cumulative arrearages in PILOT Payments due to the Agency from the Company for the period of calendar years 2010 through 2019 total \$331,646.00 (the "Current Arrearages"); and

WHEREAS, the Company requested an opportunity to negotiate with the Agency a possible resolution of the payment of the Current Arrearages and the PILOT Payments due annually from and after 2020 during the remaining term of the PILOT Agreement; and

WHEREAS, pursuant to discussions had between the Agency, and representatives of the Agency, and the Company, and representatives of the Company, the Agency and the Company desire, for the purposes of avoiding potentially protracted, expensive litigation and achieving an outcome that will allow for the ongoing viability of the Project Facility, to resolve all outstanding matters existing as of the date hereof with respect to the PILOT Agreement, including the Current Arrearages on terms and conditions satisfactory to the Agency and the Company; and

WHEREAS, for purposes of effectuating such resolution the Agency wishes to amend the PILOT Agreement by (1) reducing the term of the PILOT Agreement by ten (10) years so that the PILOT Agreement would expire on December 31, 2029 (instead of December 31, 2039) whereupon the Project Facility would return to the tax rolls as fully taxable property effective January 1, 2030, (2) reducing the payments under the PILOT Agreement during the proposed 10-year term such that the annual payment by the Company will be in the fixed annual amount of \$141,000, and (3) providing for the payment by the Company to the Agency in 2019 and 2020 of a certain sum or sums determined by the Agency to be necessary to satisfy certain past-due obligations of the Company under the PILOT Agreement (collectively, the "Financial Assistance"); and

WHEREAS, pursuant to Section 859-a of the Act, on Wednesday, November 13, 2019, at 6:30 p.m., local time, at Common Council Chambers, Poughkeepsie City Hall, 62 Civic Center Plaza, 3<sup>rd</sup> Floor, Poughkeepsie, New York 12601, the Agency held a public hearing with respect to the proposed Financial Assistance being contemplated by the Agency whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views;

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby determines that providing the proposed Financial Assistance and entering into an agreement with the Company to amend the PILOT Agreement for purposes of providing the proposed Financial Assistance constitutes a Type II Action pursuant to the New York State Environmental Quality Review Act, Article 8 of the New York State Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617.1 et. seq., as amended.

Section 2. The Agency hereby approves the provision of Financial Assistance to the Company in accordance with the following terms and conditions: (i) the term of the PILOT Agreement is hereby reduced by ten (10) years so that the PILOT Agreement shall expire on December 31, 2029 (instead of December 31, 2039) whereupon the Project Facility shall return to the tax rolls as fully taxable property effective January 1, 2030, (2)

the annual payments by the Company under the PILOT Agreement during the proposed 10-year term shall, effective January 1, 2020, be in the fixed annual amount of \$141,000, due and payable when billed annually by the City, (3) the Company shall make a payment to the Agency in the aggregate amount of \$108,000 in settlement in full of the Current Arrearage as follows: (i) \$20,000 shall be paid by the Company to the Agency within 30 days following the effective date of this resolution, and (ii) the balance of \$88,000 shall be paid in no more than two (2) equal installments of \$44,000 each prior to the end of 2020, the first of which shall be due and payable by no later than June 30, 2020 and the balance by no later than December 31, 2020, (4) the Company shall pay the legal fees of the Agency's counsel heretofore and hereafter incurred in connection with the provision of the Financial Assistance, including any fees incurred in connection with the preparation, negotiation and execution of any documents in connection with the provision of the Financial Assistance, and (5) in the event the Company fails to fully and timely comply with any of the terms of the Financial Assistance as hereinbefore set forth, the Company shall be in default under the PILOT Agreement, as amended pursuant hereto, in which event the PILOT Agreement and any lease and/or leaseback agreement by and between the Agency and the Company in connection with the Project Facility shall immediately cease and terminate and the Project Facility shall immediately return to the real property tax rolls as non-exempt taxable property.

Section 3. 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 agreements, amendments, 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 4. Due to the complex nature of this transaction, the Agency hereby authorizes its Chair or the Vice Chair of the Agency to approve, execute and deliver such further agreements, documents and certificates as the Agency may be advised by counsel to the Agency to be necessary or desirable to effectuate the foregoing, such approval to be conclusively evidenced by the execution of any such agreements, documents or certificates by the Chair of the Agency, and all acts heretofore taken by the Agency with respect to the Financial Assistance are hereby approved, ratified and confirmed.

Section 5. This resolution shall take effect immediately.

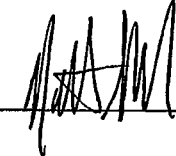
STATE OF NEW YORK            )  
  ; SS.:  
COUNTY OF DUTCHESS        )

I, the undersigned Secretary of the City of Poughkeepsie Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the City of Poughkeepsie Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on the 13<sup>th</sup> day of November, 2019, 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 resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 13<sup>th</sup> day of November, 2019.

  
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Secretary