

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT made as of February 11, 2004, between the CITY OF POUGHKEEPSIE INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), a public benefit corporation organized and existing under the laws of the State of New York, and 400 MAIN LLC, a New York limited liability company (the "Company"), a joint venture.

WITNESSETH:

WHEREAS, the Agency was created pursuant to Chapter 1030 of Laws of 1969 of the State of New York and pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York, as amended (collectively, the "Act"), as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Agency has determined and agreed to provide certain financial assistance to the Company in accordance with a resolution of the Agency adopted on December 17, 2003 and a Straight Lease Agreement (with an obligation to purchase) dated as of (the "Lease") with respect to the Project described below; and

WHEREAS, 400 Main LLC (the "Company") has presented an application (the "Application") to the Agency, a copy of which was presented at the Agency's meeting on February 18, 2003 and copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of the following: (A) construction on a vacant, brownfield lot located in a qualified, low income census tract on Main street in the City of Poughkeepsie, County of Dutchess and State of New York lying between Main Street and Mill Street and formerly known as 413 through 451 Main Street, inclusive, and 366 Mill Street, together with various other unnumbered contiguous parcels constituting a total of approximately 1.6 acres (hereafter the "Land") of a new three story structure containing 54 residential units and 7,150 square feet of commercial space, surface parking for 61 vehicles, a 5,000 square feet of backyard play area and 27,000 square feet of open space (hereafter the "Facility")(the Land and the Facility hereafter collectively referred to as the "Project Facility"), the residential units to be restricted to families earning not more than 60% of area median income for a period of 50 years; and (B) the granting of certain "financial assistance" (within the meaning of Section 854[14] of the Act) with respect to the foregoing, including the Lease of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and potential exemptions from real estate transfer taxes, sales tax and mortgage recording taxes (collectively with the "Financial Assistance");

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes and assessments imposed upon real property and improvements acquired by it or under its jurisdiction or control; and

WHEREAS, the Agency has previously adopted a Uniform Tax Exemption Policy to provide guidelines for the claiming of real property, sales and use tax and mortgage recording tax abatements; 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 Poughkeepsie (the "City"), the Poughkeepsie City School District and Dutchess County (collectively, the "Taxing Jurisdictions") with respect to the Project Facility located on the land described at Exhibit A; and

WHEREAS, this Agreement deviates from the Agency's Uniform Tax Exemption Policy, has been approved by the Agency after the notice and hearing required by the Act, and does not require the consent of the Taxing Jurisdictions;

NOW, THEREFORE, in consideration of the Agency's execution of the Lease and provision of financial assistance for the purposes of acquiring an interest in the Project Facility and constructing improvements thereto, and in consideration of the covenants herein contained, it is mutually agreed as follows (capitalized terms not otherwise defined herein having the meanings set forth in the Lease:

Section 1. Payment in Lieu of Taxes—Project Facility.

(a) Agreement to Make Payments. During the term of this Agreement, the Company agrees to make payments annually to the Agency, on behalf of the respective taxing jurisdictions, as a payment in lieu of the real property taxes payable with respect to the Project Facility. The amount payable in each year shall be as follows:

During the construction period, the PILOT Payment will be equal to the taxes to be paid on the current assessed value of the unimproved property.

After construction completion, the PILOT Payment will be equal to 6.4% of Project Revenue (defined as total annual gross revenue collected from the Project, including commercial income). Annually, Lessee shall submit a certified, audited financial statement of the operation of the Project setting forth Project Revenues and the total payments in lieu of taxes due calculated at 6.4% of Project Revenue (the "Audit Amount"); at that time, Lessee shall pay the difference, if any, between the Audit Amount and payments made by Lessee for the preceding fiscal year; in the event the payments made exceed the Audit Amount, Lessee shall be credited the amount of the excess.

Notwithstanding the above, at no time during the term of this Agreement shall an annual payment in lieu of taxes be greater than 100% of the real property taxes that would have been levied on the property in that year if the property were owned by the Company without any Agency participation, and without ownership or participation by any other entity which is exempt from real property taxes (for the purposes of this Agreement, "Non-Exempt").

Following the 50th year, this PILOT Agreement will terminate and the Project will be returned to the tax rolls and taxed at standard rates that would be applicable to the Project if the Project were Non-Exempt. In no event shall the Company be entitled to receive tax benefits under this Agreement relating to the Project for more than fifty (50) years. Any amount of payment in lieu of payments due for a portion of a taxable year shall be paid pro rata. The provisions of this section shall survive the termination of the Agreement

Each year the aggregate annual payment in lieu of tax amount set forth above shall be allocated among the Taxing Jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected Taxing Jurisdiction had the Project Facility not been tax exempt due to the status of the Agency, with each PILOT payment being pro-rated based on the tax rate for the City/County Taxes which would become a lien as of the January 1 payment date (or the immediately preceding January 1 in the case of a payment made upon Construction Completion), and on the tax rate for the School Taxes which would become a lien as of the August 1 next preceding the payment due date. In accordance with Section 874(3) of the Act, payments in lieu of taxes received by the Agency shall be remitted to each of the taxing Jurisdictions within thirty days of receipt.

(b) Assessment; Effective Date of Exemption. The Company and the Agency shall cooperate in taking such action, at the expense and request of the Company, as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Jurisdictions, including without limitation ensuring that an exemption form shall be filed with the appropriate officer or officers of each respective Taxing Jurisdiction.

Such exemption shall be effective as of the earliest possible date following the Closing, not later than the first tax year of each Taxing Jurisdiction following the tax status date of such Taxing Jurisdiction occurring subsequent to the date the Agency becomes the owner or ground lessee of record of the Facility, and subsequent to the timely filing of the exemption forms.

(c) Term of PILOT. The tax benefits provided for herein with respect to the Project Facility shall be deemed to commence in the first year in which the Company receives any tax benefit relative to the Project Facility. Except as further provided in Section 1(f), this Agreement shall terminate on the date the Project Facility is no longer subject to the Lease, whether as a result of early termination pursuant to Article XI thereof, or any event of default thereunder. Unless earlier terminated in accordance with this Agreement, this Agreement shall terminate on the "Termination Date", as that term is defined in Section 5.2 (a) of Article V of the Lease Agreement. In no event shall the Company be entitled to receive tax benefits under this Agreement relative to the Project Facility for more than fifty (50) consecutive years.

(d) In the final year of the term of this Agreement, the Project Facility shall be assessed by the appropriate local taxing jurisdiction responsible for establishing real property tax assessment, as of the taxable status date of the final year of the term of this Agreement, currently March 1, 2053. The purpose of such tax assessment is for the restoration of the Project Facility to the regular tax roll commencing January 1, 2053 as to the City/County taxes and July 1, 2054 as to the School Taxes. The assessment established by the appropriate local taxing jurisdiction in the final year of the term of this Agreement shall be subject to the Company rights pursuant to Section 5 of this Agreement.

Section 2. Special Assessments.

The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special *ad valorem* levies. During the period of the exemption, the Company shall pay service charges, special *ad valorem* levies, special assessments and improvement district charges or similar tax equivalents which are or would be levied upon or with respect to the Project by the Taxing Jurisdictions if the Project Facility were owned by the Company and the Agency had no interest in the Project Facility.

Section 3. Place of Payment.

Payments in lieu of taxes required to be made by the Company shall be mailed via First Class mail through the United States Postal Service or personally delivered to:

City of Poughkeepsie Industrial Development Agency
Attn: Finance Commissioner, City of Poughkeepsie
62 Civic Center Plaza, P. O. Box 300
Poughkeepsie, New York 12602

or such other address as the Agency will inform the Company in writing.

Section 4. Termination.

In the event that Agency's interest in the Project Facility is transferred from the Agency to the Company pursuant to the terms of the Lease, and the Company is ineligible for continued tax exemption in its own right or under any other tax incentive program, the Company agrees to pay at the next tax lien date to each of the taxing jurisdictions an amount equal to the taxes and assessments which would have been levied on the Project Facility if the Project Facility had been classified as fully taxable, pro rata for the unexpired portion of the year of transfer. The provisions of this Section shall survive the termination of the Agreement.

Section 5. Company Rights.

(a) 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 Project Facility.

(b) The Company retains and 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 Project Facility, with respect to any proposed assessment or change in assessment with respect to the Project Facility by any of the Taxing 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.

(c) Should the Company be required to pay and duly pay in any calendar year to any Taxing Jurisdiction any amounts in the nature of general property taxes with respect to the Project Facility (other than amounts described in Section 9[a] or [2]), then the Company's obligation to make payments in lieu of property taxes for such calendar year to such Taxing Jurisdiction shall be reduced by the amounts which the Company shall have so paid to such Taxing Jurisdiction in such calendar year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Jurisdiction or as to any payment in lieu of property taxes due to such Taxing Jurisdiction in any other calendar year.

Section 6. Mortgage Recording Tax and Sale and Use Tax.

The Company shall be entitled to exemption from mortgage recording tax and sale and use taxes to the full extent permitted by New York State Law, provided that the Company shall timely file with the New York State Commissioner of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the project in full compliance with Section 874(8) of the New York General Municipal Law, in the form and at the times required thereby.

Section 7. Events of Default.

(a) Any one or more of the following events shall constitute an event of default under this Agreement:

(i) Failure of the Company to pay any amount due and payable by it pursuant to this Agreement, and continuance of such failure for a period of thirty (30) days after written notice to the Company stating that such payment is due and payable; or

(ii) failure of the Company to observe and perform any other covenant, condition of agreement on its part to be observed and performed hereunder, and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided, however, that such failure shall not constitute an event of default hereunder if such failure is subject to cure but cannot reasonably be remedied within said thirty (30) day period, and the Company shall have commenced to cure such failure within said thirty (30) day period and shall thereafter diligently proceed with such cure and the same is remedied within ninety (90) day of the written notice referred to in this paragraph; or

(iii) any warranty, representation or other statement by or on behalf of the Company contained in this Agreement shall prove to have been false or untrue in any material respect on the date when made or on the effective date of this Agreement.

(b) In addition, an event of default hereunder shall constitute an event of default under the Lease. Upon the occurrence of an event of default hereunder resulting from the failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefore under the Lease, among other remedies, the right to terminate the Lease and convey its interest in the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

Section 8. Remedies.

(a) Whenever any event of default under this Agreement shall have occurred and be continuing, the Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performances and observance of the obligations, agreements and covenants of the Company under this Agreement.

(b) If the Company should default in performing any of its obligations, covenants or agreement under this Agreement and the Agency or any Taxing Jurisdiction should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand, pay to the Agency or such Taxing Jurisdiction, as the case may be, on only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

(c) No remedy herein conferred upon or reserved to the Agency or any Taxing Jurisdiction is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(d) No delay or omission in exercising any remedy shall impair any such remedy or construed to be a waiver thereof. It shall not be necessary to give any notice other than as expressly required under this Agreement. In the event any provision contained in this Agreement should be breached and thereafter duly waived by the part or parties so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

Section 9. Additional Enforcement Rights of Taxing Jurisdictions.

(a) Enforcement. In accordance with Section 874(6), a Taxing Jurisdiction which has not received a payment in lieu of taxes due to it under this Agreement may commence legal action in any court of competent jurisdiction directly against the Company. In such an action, the Taxing Jurisdiction shall be entitled to recover the amount due, the late payment penalty, interest, expenses, costs and disbursements together with the reasonable attorneys fees necessary to prosecute such action. Nothing herein shall be construed as providing an affected Taxing Jurisdiction with the right

to use and recover from the Agency which has not received payments in lieu of taxes from the Company.

(b) Late Payment Penalties. In accordance with Section 874(5), payments in lieu of taxes which are delinquent under this Agreement shall be subject to a late payment penalty of five percent of the amount due which shall be paid by Company to the affected Taxing Jurisdiction at the time the payment in lieu of taxes is paid. For each month, or part thereof, that the payment in lieu of taxes is delinquent beyond the first month, interest shall accrue to and be paid to the affected tax jurisdiction on the total amount due plus a late payment penalty in the amount of one percent per month until the payment is made.

Section 10. Special Obligations.

Notwithstanding any statement or representation to the contrary contained herein or in any of the Project Documents, the obligations and agreements of the Agency contained herein and in the other Project Documents and in any other instrument or document executed in connection therewith and any instrument or document supplemental thereto shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State, or the City and neither the State, or the City shall be liable hereon or thereon, and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Project Facility. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (A) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or request and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than ten (10) days shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, and (B) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (C) if the Agency refused to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand and (2) if requested by the Agency shall furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

Notwithstanding any provision of this Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (i) the Agency shall have been requested to do so in writing by the Company, and (ii) if compliance with such request is reasonably expected to result in the incurrence by the Agency, or any member, officer, agent (other than the Company), servant or employee of the Agency, of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability and for the reimbursement of all such fees, expenses and other costs.

Section 11. Representations and Warranties.

(a) Agency Representations. The Agency makes the following representations:

(i) The Agency is a public benefit corporation duly organized under the Act, has the full legal right, power and authority to enter into this PILOT Agreement, and has the power to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Project Facility, the Project Facility will constitute a "project," as such quoted term is defined in the Act. By proper actions, the Agency has duly authorized the execution and delivery of, and its performance under, the Project Documents to which it is a party.

(b) Company Representations, Warranties and Covenants. The Company makes the following representations, warranties and covenants:

(i) The Company is a New York limited liability company duly organized, validly existing and in good standing under the laws of the State and is authorized under the laws of the State to do business in the State, has the power to enter into the Project Documents to which it is a party and to perform the transactions contemplated thereby and its obligations hereunder and by proper action has duly authorized the execution and delivery of such Project Documents and the performance of its obligations thereunder.

(ii) The Company is not in default under, or in violation of, any indenture, mortgage, declaration, lien, lease, contract, note, order, judgment, decree or other instrument of any kind to which any of its assets are subject, and the execution, delivery and compliance by the Company with the terms and conditions of the Project Documents to which it is a party do not and will not conflict with or constitute or result in a default by the Company in any material respect under or violation of, (1) the Company's articles of organization or operating agreement, (2) any agreement or other instrument to which the Company is a party or by which, to the Company's knowledge, it is bound, or (3) any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Company or its property, and no event has occurred and is continuing which, with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

(iii) The Company acknowledges and agrees that the Agency makes no representation with respect to the tax exempt status of all or any portion of the Project Facility.

(iv) The Company shall comply with the terms and conditions of the Installment Sale Agreement, including without limitation Sections 2.2(m) and (n) hereof.

Section 12. Amendment.

This Agreement may not be amended or terminated except by an instrument in writing executed by the Agency and the Company.

Section 13. Binding Effect.

This Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Agreement are intended to be for the benefit of the Agency and the respective Taxing Jurisdictions.

Section 14. Severability.

If any provision of the Agreement shall be held to be invalid or illegal and unenforceable by any court of competent jurisdiction, such provision shall be deemed severable and the remainder shall remain in full force and effect.

Section 15. Applicable Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Section 17. Notices.

All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be addressed as follows:

(i) IF TO THE ISSUER:

City of Poughkeepsie Industrial Development Agency
Municipal Building
P. O. Box 300
Poughkeepsie, New York 12602
Attention: Stephen J. Wing, Esq.

(ii) IF TO THE COMPANY:

400 Main LLC
230 Wyoming Avenue
Kingston, Pennsylvania 15704

WITH COPY TO:

Duvernay & Brooks, LLC
210 Eleventh Avenue – Suite 404
New York, New York 10001
Attn: Ms. Joni Brooks

AND TO:

RCC Credit Facility L.L.C.
625 Madison Avenue – 5th Floor
New York, New York 10022
Attn: Executive Vice President

AND TO:

Nixon Peabody LLP
437 Madison Avenue
New York, New York 10022
Attn: John L. Kelly, Esq.

IN WITNESS WHEREOF, the parties hereto have entered into this Payment in Lieu of Taxes Agreement as of the day and date first written above.

CITY OF POUGHKEEPSIE INDUSTRIAL
DEVELOPMENT AGENCY

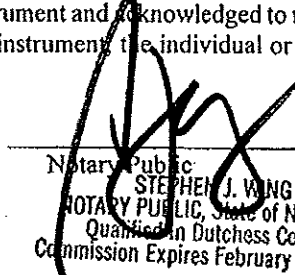
By: 

400 MAIN LLC

By: 

STATE OF NEW YORK)
) s.s.:
COUNTY OF DUTCHESS)

On the 6th day of February, 2004, before me, the undersigned, a notary public in and for said state, personally appeared Nancy Cozean, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument the individual or the person(s) on behalf of which the individual acted, executed the instrument.


Notary Public
STEPHEN J. WING
NOTARY PUBLIC, State of New York
Qualified in Dutchess County
Commission Expires February 28, ~~2006~~

STATE OF NEW YORK)
) s.s.:
COUNTY OF NEW YORK)

On the 11th day of February, 2004, before me, the undersigned, a notary public in and for said state, personally appeared Mark H. Dombay, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person(s) on behalf of which the individual acted, executed the instrument.


Notary Public

VICTORIA L. GRADY
Notary Public, State of New York
Registration # 02GR5083105
Qualified in Monroe County
My Commission Expires July 15, 2006