

AMENDMENT TO PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AMENDMENT TO PAYMENT IN LIEU OF TAXES AGREEMENT (this “**Amendment**”) is entered into effective December 11, 2019 (the “**Effective Date**”), by and between **CITY OF POUGHKEEPSIE INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation with offices at Poughkeepsie City Hall, 62 Civic Center, Poughkeepsie, New York 12602 (together with its successors and assigns, the “**Agency**”), and **EASTMAN & BIXBY REDEVELOPMENT COMPANY LLC**, a New York limited liability company with offices at 31-10 37th Avenue, Suite 500, Long Island City, New York 11101 (together with its successors and permitted assigns, the “**Company**”).

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 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, the Company and the Agency previously entered into a certain Payment In Lieu Of Taxes 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 Section 1(a) of 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, pursuant to Section 1(c) of the PILOT Agreement, the original term of the PILOT Agreement was forty (40) years; and

WHEREAS, in 2016 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 and the Company wish to amend the PILOT Agreement by (1) reducing the term of the PILOT Agreement so that the PILOT Agreement would expire on December 31, 2029 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 in full satisfaction of the Current Arrearages (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, 3rd 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; and

WHEREAS, following the conduct of such public hearing, at a regular meeting of the Agency duly convened and at which a quorum was at all times present, the Agency, by the affirmative vote of a majority of its members present authorized and approved the Financial Assistance and the execution and delivery of such agreements and documents necessary and appropriate for the provision of the Financial Assistance; and

WHEREAS, the Agency and the Company wish to enter into this Amendment for the purposes of effectuating the Financial Assistance on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged and agreed upon, the Agency and the Company hereby covenant and agree as follows:

Section 1. PILOT Agreement Affirmed. Except as expressly amended hereby, the PILOT Agreement is in all respects ratified and confirmed, and all of the terms, provisions and conditions thereof shall be and remain in full force and effect, and this Amendment and all of its terms, provisions and conditions shall be deemed to be a part of the PILOT Agreement. All capitalized terms used herein and not defined shall have the meanings given them in the PILOT Agreement. Nothing herein shall in any way prejudice, impair or affect the rights and remedies of the Agency or the Taxing Jurisdictions under the PILOT Agreement or otherwise. . No delay by the Agency or any Taxing Jurisdiction in immediately enforcing any rights related to any such failure and no such discussions, negotiations or reviews shall constitute or be construed as a release, waiver or modification of any of the Agency's or the Taxing Jurisdictions' rights or remedies. From and after the Effective Date, all references to the "PILOT Agreement" shall mean the PILOT Agreement as amended by this Amendment.

Section 2. Amendments to PILOT Agreement. The PILOT Agreement is hereby amended as follows:

2.1 Section 1(a) of the PILOT Agreement captioned "Agreement to Make Payments" is hereby amended in its entirety by deleting it in full and inserting in its place the following: " Commencing January 1, 2020 and on the first day of January each and every year during the term of this Agreement, there shall be due with respect to the Project Facility a PILOT payment in the amount of \$141,000.00 (the "**Annual PILOT Amount**"), such amount to be paid each year during the term hereof within thirty (30) calendar days following billing for such year's Annual PILOT Amount by the City.

2.2 Section 1(c) of the PILOT Agreement captioned "Term of PILOT" is hereby amended in its entirety by deleting it in full and inserting in its place the following: "Unless earlier terminated in accordance with this Agreement, this Agreement shall terminate at 11:59 p.m., prevailing eastern time, on December 31, 2029 whereupon the Project Facility shall return to the tax rolls of the Taxing Jurisdictions as fully taxable property effective January 1, 2030."

2.3 Section 7(a) of the PILOT Agreement captioned "**Events of Default**" is hereby amended by inserting the following as paragraph i) and renumbering existing paragraphs i), ii) and iii) as paragraphs ii), iii) and iv):

- i) "Failure of the Company to pay the Annual PILOT Amount when the same is

payable as set forth in Section 1(a) of this Agreement; or”

2.4 Section 7(a) of the PILOT Agreement captioned “**Events of Default**” is hereby further amended by inserting the word “other” between the words “any” and “amount” in renumbered paragraph ii) (i.e. former paragraph i)).

2.5 Section 8 of the PILOT Agreement captioned “**Remedies**” is hereby amended in part by inserting the following sentence at the end of paragraph (a) thereof: “Without limiting the foregoing provisions of this paragraph (a) or otherwise under this Section 8, in the event the Company fails to pay the Annual PILOT Amount when the same is payable as set forth in Section 1(a) of this Agreement, this Agreement shall automatically, and without further notice or demand by or on the part of the Agency, cease and terminate and the Project Facility shall immediately return to the real property tax rolls of the Taxing Jurisdictions as non-exempt taxable property.”

2.6 Section 17 of the PILOT Agreement captioned “**Notices**” is hereby amended in its entirety by deleting it in full and inserting in its place the following:

“All notices required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given (i) one day after delivery to a nationally recognized overnight delivery service; or (ii) three (3) business days after being mailed by certified or registered mail, in either case addressed to the applicable party at the addresses and the attention of the parties set forth below or such other address as such party may designate from time to time by giving written notice:

To the Agency: City of Poughkeepsie Industrial Development Agency
Poughkeepsie City Hall
62 Civic Center
Poughkeepsie, New York 12061
Attention: Chair

with copies to: Harris Beach PLLC
445 Hamilton Avenue
Suite 1206
White Plains, New York 10601
Attn: City of Poughkeepsie IDA Counsel.

To the Company: Eastman & Bixby Redevelopment Company LLC
31-10 37th Avenue,
Suite 500
Long Island City, New York 11101
Attention: William Deignan

with copies to: Law Offices of Vincent J. Catalano
4 Liberty Street
Poughkeepsie, New York 12601
Attn: Vincent J. Catalano, Jr., Esq.

2.7 Exhibit B to the PILOT Agreement is amended by deleting it in its entirety. All references to Exhibit B in the PILOT Agreement are hereby deleted in full.

Section 3. Payment of Arrearages. The Company shall make a payment to the Agency in the

aggregate amount of \$108,000 in full satisfaction of the Current Arrearage as follows: (i) \$20,000 shall be paid by the Company and received by the Agency by no later than December 31, 2019, 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 the Company and received by the Agency no later than June 30, 2020 and the balance by no later than December 31, 2020. All payments pursuant to this Section shall be made to the Agency at the following address:

City of Poughkeepsie Industrial Development Agency
Poughkeepsie City Hall
62 Civic Center
Poughkeepsie, New York 12061
Attention: Chair

Section 4. Payment of Agency Legal Fees. The Company has paid the legal fees of the Agency's counsel in the amount of \$3,700.00 in connection with the provision of the Financial Assistance and the execution and delivery of this Amendment.

Section 5. Additional Events of Default. The Company's failure to fully and timely comply with any of the terms of Section 3 of this Amendment, shall automatically, and without further notice or demand by or on the part of the Agency, constitute an Event of Default under the PILOT Agreement 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 of the Taxing Jurisdictions as non-exempt taxable property.

Section 6. Representations and Warranties. The Company confirms the accuracy of and remakes as of the date hereof all of its representations, warranties and covenants contained in Section 12(b) of the PILOT Agreement. The Company further represents and warrants to the Agency that all necessary action relating to authorization of the execution and delivery of this Amendment and the performance of the terms, covenants and conditions of and on the part of the Company hereunder has been taken. This Amendment constitutes the legal, valid and binding obligation of the Company, enforceable in accordance with its terms. The Company no defenses, offsets, claims, or counterclaims with respect to its obligations arising under the PILOT Agreement or this Amendment. The execution and delivery by the Company of this Amendment, and the performance by the Company of this Amendment, will not violate any provision of law or the Company's Articles of Organization or Operating Agreement or organizational or other documents or agreements. The execution, delivery and performance of this Amendment, and the consummation of the transactions contemplated thereby will not violate, be in conflict with, result in a breach of, or constitute a default under any agreement to which the Company is a party or by which any of its properties is bound, or any order, writ, injunction, or decree of any court or governmental instrumentality, and will not result in the creation or imposition of any lien, charge or encumbrance upon any of its properties.

Section 7. Binding Effect; No Assignment. This Agreement shall be binding upon and inure to the benefit of the respective parties, and their successors, legal; representatives and permitted assigns. The Company may not assign its rights or obligations under the PILOT Agreement without the prior written consent of the Agency.

Section 8. Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, and by facsimile or other electronic signature, each of which counterparts when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

Section 9. Severability of Provisions; Captions; Attachments. Any provision of this Amendment that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. The several captions to sections and subsections herein are inserted for convenience only and shall be ignored in interpreting the provisions of this Amendment.

Section 10. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York applicable to contracts made and to be performed in the State of New York. The parties hereby consent to the jurisdiction of courts of the State of New York located in Dutchess County over all matters relating to this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be signed as of the date first set forth above.

CITY OF POUGHKEEPSIE INDUSTRIAL DEVELOPMENT AGENCY

By: Melanie Vetter
Name: Melanie Vetter
Title: Chair

EASTMAN & BIXBY REDEVELOPMENT COMPANY LLC

By: William Deignan
Name: William Deignan
Title: President