

APPENDIX C

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE TOWN OF POUGHKEEPSIE AND
EFG/DRA HERITAGE, LLC
DATED AS OF JUNE 17, 2015**

LIST OF SCHEDULES

Schedule A Conceptual Plan

Schedule B Proposed Zoning Text Amendment

Schedule C Demolition Application Requirement Form

Schedule D Escrow Agreement

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) dated as of June 17, 2015, is by and between the **TOWN OF POUGHKEEPSIE**, a New York municipal corporation with Offices at 1 Overocker Road, Poughkeepsie, New York (“**Town**”) and **EFG/DRA Heritage, LLC c/o DRA Heritage LLC**, Development Manager, 47 River Road, Suite 200, Summit, New Jersey 07901 (“**Redeveloper**,” and collectively with the Town, the “**Parties**”).

RECITALS

WHEREAS, the Redeveloper has purchased the approximately 156 acre property located within the Town in the HRDD Zoning District formerly known as the Hudson River Psychiatric Center (“**HRDD Site**”), with the intent of redeveloping the HRDD Site with the residential, commercial, and recreational uses described in Section 1.1 of this Agreement (the “**Project**”); and

WHEREAS, the Town desires to facilitate the adaptive reuse and redevelopment of the HRDD Site in accordance with an integrated design plan creating residential areas, accessible neighborhood commercial centers and recreational spaces; and

WHEREAS, the Redeveloper has prepared a comprehensive conceptual plan in accordance with Section 210-30.C of the Town Zoning Code, entitled Concept Plan – Hudson Heritage, prepared by LRK, Inc., and dated April 28, 2015 and May 4, 2015, annexed hereto as Schedule “A” (“**Conceptual Plan**”), illustrating conceptually the Applicant’s proposed development of the HRDD Site; and

WHEREAS, the Redeveloper has also proposed certain amendments to the Town Zoning Code with respect to the regulations of the HRDD District, which are annexed hereto as Schedule “B” (“**Zoning Text Amendment**”); and

WHEREAS, the Town Board of the Town of Poughkeepsie (“**Town Board**”) has reviewed the Conceptual Plan and Zoning Text Amendment; and

WHEREAS, the Town Board preliminarily endorses the Conceptual Plan and the Zoning Text Amendment as presenting a suitable: (i) land use planning vision for the Project and redevelopment of the HRDD Site; and (ii) basis for a Development Master Plan (as hereinafter defined) for the HRDD Site; and

WHEREAS, the parties agree and acknowledge that, although by this Agreement the Parties covenant in good faith to diligently and reasonably perform their obligations hereunder, including review by the Town Board of the Conceptual Plan and the Zoning Text Amendment, the Town cannot commit to any particular outcome regarding the Project, or future related proposed projects, under the State Environmental Quality Review Act and the regulations promulgated thereunder (“**SEQRA**”) or any other laws or regulations governing review by the Town of the Project, and that the covenants, conditions and agreements set forth herein are subject to and conditioned upon compliance with each of the findings and determinations to be

made thereunder; and

WHEREAS, the Redeveloper and the Town are entering into this Agreement in order to set forth certain understandings between them with respect to: (i) commencing environmental review under SEQRA; (ii) undertaking the review of the Conceptual Plan, Zoning Text Amendment and all other elements of the Project pursuant to the Town Zoning Code, and all other applicable laws and regulations; (iii) certain parameters of design flexibility intended to achieve the Town's development goals for the HRDD Site; and (iv) the Redeveloper's pursuit of the Project in a timely and comprehensive manner; and

WHEREAS, in furtherance of the above, the Town Board has on this date approved this Agreement for execution by the Town Supervisor on behalf of the Town; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the Parties agree, as follows:

ARTICLE I

PROPOSED PROJECT

1.1 The Project. The Project is shown on the Conceptual Plan annexed hereto as Schedule "A." The Town generally supports the Conceptual Plan, which consists of the following: (i) residential dwelling units providing a diverse range of housing styles and densities, potentially including luxury townhouses, single-family homes, duplexes, apartments, lofts, and student housing, all of which would offer housing choices that satisfy the needs of residents at different stages in life and increasingly diverse household types (e.g., students, young families, professionals, and retirees) of a general quality comparable with market rate developments in the area, such as Hudson Pointe in Poughkeepsie, N.Y., Warwick Grove in Warwick, N.Y., and Summit Lane in Newburgh, N.Y. ("**Residential Uses**"); (ii) commercial spaces consisting of a mix of retail, restaurant, and lodging uses along with public spaces, sidewalks and similar amenities ("**Commercial Uses**"); (iii) approximately seventy-two (72) total acres of open space and recreational amenities as described in Section 1.4 below; and (iv) in order to promote pedestrian activity throughout the HRDD Site, a circulation network of streets, sidewalks and pathways linking the Residential Uses to the Commercial Uses as well as the open space and recreational amenities. The Parties shall also assess during the public review process whether connections across Route 9 to permit access between the HRDD Site and Quiet Cove Park and/or other properties located on the west side of Route 9 are physically and economically feasible. The Redeveloper anticipates that the Project will be constructed in two principal phases generally consisting of the development of: (i) the southern portion of the HRDD Site, located between the southern property boundary of the Site and Hudson View Drive ("**Southern Phase**"); and (ii) the northern portion of the HRDD Site, located between Hudson View Drive and the northern property boundary of the HRDD Site ("**Northern Phase**"). As shown in the Conceptual Plan, the Southern Phase of the Project shall contain mostly Commercial Uses with more limited Residential Uses, as well as public space dispersed throughout, resulting in an integrated and open commercial center. The Parties shall assess during the public review process whether a direct connection will be provided between the uses on the Southern Phase and the

commercial property immediately adjacent to the south of the HRDD Site currently containing a Home Depot and other retail businesses. The Northern Phase of the Project shall contain the majority of the Residential Uses, along with open and active recreational spaces. The Northern Phase also includes the adaptive reuse of the historic "Main/Administration Building," potentially as a hotel.

1.2 Development Master Plan Application. The Town agrees that the Conceptual Plan is a suitable basis for a "Development Master Plan" for the HRDD Site (a "**Development Master Plan**"). As soon as practicable, Redeveloper shall in accordance with Section 210-30.C and 210.66 of the Town Zoning Code and Article III below submit a formal application for approval of a Development Master Plan for the Project which is materially consistent with the Conceptual Plan. The application shall include plans having such level of detail as is reasonably necessary for the Town to commence review of the Project, including a conceptual site layout plan, and conceptual architectural drawings, as well as a conceptual construction phasing plan. The Parties acknowledge that the Development Master Plan and components of the Project may be modified during the review process based on environmental, planning, economic, and relevant considerations, including, but not limited to, potentially adding more public and green spaces in the Southern Phase. The Town's approval with respect to any such changes to the Development Master Plan shall not be unreasonably withheld or delayed, provided, that such changes are consistent with the Town's goals and vision for the redevelopment of the HRDD Site as articulated in Section A of the Zoning Text Amendment (Town Zoning Code Section 210-30(A), as proposed to be amended), and subject to any and all governmental reviews hereunder, including SEQRA review, and the related procedures set forth in Article III below.

1.3 General Design Parameters and Project Flexibility. The Parties acknowledge that market preferences and conditions, and other factors affecting Project composition and design, may change during the review of the Project, and that a certain degree of design flexibility is therefore needed to accommodate potential modifications to the Development Master Plan. The Parties hereby establish the parameters and thresholds listed below for the exercise of this design flexibility. Nothing herein shall be interpreted as a guarantee that the Town will approve a Project design with a program meeting the commercial square footage and residential density maximums set forth below, and the Town reserves its right to approve a Project design below said maximums based on the record prepared during the SEQRA and land use review process.

(a) General Design Guidelines.

- All architectural elements of the Project, including, but not limited to, building articulation and façade materials, landscaping, streetscapes, lighting and signage, shall facilitate a neighborhood design compatible with the overall historic character of the HRDD Site.

- The Residential and Commercial Uses of the Project shall

incorporate “green” building components, including efficient mechanical systems using current technology, bicycle racks and other sustainable building practices, rendering the Project eligible for certification under the LEED Green Building Rating System Standards appropriate for the subject uses.

(b) **Commercial Uses.**

- The total Nonresidential Floor Area (as such term is defined in the Town Zoning Code) of all Commercial Uses on the HRDD Site shall not exceed 430,000 square feet, inclusive of reusing the approximately 80,000 square foot “Main/Administration Building” in the Northern Phase for a commercial use, such as a hotel. In the event that the Main/Administration Building is not used for commercial purposes, then the total Nonresidential Floor Area of all Commercial Uses on the HRDD Site shall not exceed 350,000 square feet.
- No single building containing a Commercial Use shall consist of more than 165,000 square feet of Nonresidential Floor Area.

(c) **Residential Uses.**

- No more than 750 dwelling units shall be developed on the HRDD Site.
- Multi-family buildings shall be no higher than 4 stories and 50 feet.
- Other than single-family homes or student housing, no dwelling unit shall contain more than 3 bedrooms.
- A minimum of 10% of all dwelling units shall be designated for sale (as opposed to rental units).

1.4 Open Space and Recreational Amenities. The Project development program, as currently envisioned in the Conceptual Plan, includes approximately seventy-two (72) acres of open space (“**Project Open Space**”) to be maintained by the Redeveloper (or its successors and assigns, including, but not limited to, any homeowner’s associations and/or commercial property owner associations), and preserved in perpetuity through an appropriate recorded easement agreement. The Project Open Space shall include approximately twenty (20) acres of land left in a natural state for conservation or landscaped for scenic purposes. The Parties shall also evaluate during the review process whether the 18 acre “Great Lawn” area can feasibly accommodate concerts and other public uses. In addition, the Project development program, as currently envisioned in the Conceptual Plan, includes approximately fourteen hundred (1,400) linear feet of passive recreational trails, including a proposed connection to the

Dutchess County Rail Trail (but only if such Trail becomes accessible from the HRDD Site), and approximately seventy-two (72) acres of passive and active recreational space including land to be preserved in perpetuity through an appropriate recorded easement agreement ("**Project Recreational Space**"). The Parties shall determine during the review process whether the Project Recreational Space will be available for use by the general public. As part of the SEQRA review process, the Redeveloper shall also prepare an assessment of the present and anticipated future needs for parks, playgrounds and other active or passive recreational facilities in the Town based on projected population growth, including population attributed to the development of the proposed Residential Uses of the Project. Such assessment shall identify (i) the total acreage, location and use of all proposed Project Recreational Space that will be publicly accessible, (ii) the total acreage, location and use of all proposed Project Recreational Space that will be accessible only by occupants of the Residential Uses, and (iii) the acreage and location of all proposed Project Open Space. Pursuant to the Town Zoning Code, such assessment shall not consider any private yards within 100 feet of a principal structure to be Project Open Space. Such assessment shall be the basis upon which the Town Board shall determine whether the Project Recreational Space and Project Open Space are adequate in proportion to the impacts of the Project on the public recreational resources of the Town, and whether any fees in-lieu of recreation land and/or open space preservation are required under the Town Code and other applicable law.

1.5 Zoning Text Amendment. The Parties contemplate amending the regulations of the HRDD District in order to facilitate the Project. Concurrent with submittal of an application for Development Master Plan approval, the Redeveloper shall petition the Town to adopt the Zoning Text Amendment set forth in Schedule "B" annexed hereto. Pursuant to Article III below, the Zoning Petition (as defined herein) and Zoning Text Amendment shall be reviewed in conjunction with the Development Master Plan. The proposed adoption of the Zoning Text Amendment and approval of the Development Master Plan, and all related actions and land use approvals including site plan approval of the Project, shall comprise the "Action" to be reviewed by the Town under SEQRA.

1.6 Project Construction Phases. The Redeveloper shall submit to the Town a conceptual phasing plan setting forth the specific construction phases of the Project, which shall be subject to modification as a result of SEQRA review of the Project, and in response to economic and marketplace conditions and factors. Subject to the foregoing, the Redeveloper currently anticipates that: (i) the Southern Phase will be the first principal phase of the redevelopment; (ii) the site improvements associated with the Southern Phase would be completed within two (2) years of the issuance of the building permit(s) for the first building(s) to be constructed in that phase (the "**Building Permit Date**"), subject to any Unavoidable Delays (as defined herein); and (iii) the improvements in the Northern Phase would be completed within ten (10) years of the Building Permit Date, subject to any Unavoidable Delays. Redeveloper agrees that notwithstanding the actual phasing carried out during the construction of the Project, the HRDD Site and all buildings currently thereon (whether to be demolished or preserved) shall continue to be secured, and maintained in the same general condition existing as of the date of this Agreement, subject to continuing deterioration as a result of weather and other natural causes, casualty, and vandalism. Nothing herein shall preclude the Redeveloper from pursuing demolition and/or construction associated with the Northern Phase prior to, or simultaneous with,

pursuing demolition and/or construction associated with the Southern Phase. The timeframes in this Section 1.6, below, are aspirational in nature, and do not constitute a binding commitment by the Parties.

ARTICLE II

DEVELOPMENT ACTIONS AND RESPONSIBILITIES

2.1 Demolition and Remediation at the HRDD Site. The Parties acknowledge that there exist on the HRDD Site recognized environmental conditions requiring remediation (“**Remedial Work**”). It is in the interest of the Redeveloper, as well as in the interest of the Town in its charge to protect the public health, safety and welfare of the Town residents, to ensure that such Remedial Work is performed as soon as practicable in accordance with all applicable regulations and laws. To accomplish this objective, the Redeveloper may pursue the following procedures prior to, simultaneous with, or after pursuing Development Master Plan approval for the Project.

(a) **Remedial Work.** Prior to the issuance of the first permanent or temporary Certificate of Occupancy for a specific Project use or uses, the Redeveloper shall provide the Town Building Department (or an environmental consultant designated by the Town Director of Municipal Development) with reasonably sufficient proof in the form of Certificates of Completion, Letters of No Further Action, Spill Closure Reports and/or other formal documentation issued by the New York State Department of Environmental Conservation (or any other necessary agency), establishing that all Remedial Work required in conjunction with the construction of the specific use(s) for which the Certificate of Occupancy is being issued has been completed in accordance with all applicable federal, state and local requirements.

(b) **Demolition Applications.** The Redeveloper may demolish one or more of the existing buildings on the HRDD Site in one more phases of demolition (each a “**Demolition Phase**”). The Redeveloper acknowledges that it must obtain from the Town, a demolition permit for each specific Demolition Phase (a “**Demolition Permit**”), in addition to obtaining any other required approvals for such demolition from all relevant federal and state authorities. The Redeveloper shall submit applications for Demolition Permits to the Town Building Department in accordance with the Demolition Application Requirement Form annexed hereto as Schedule “C.” Each Demolition Permit applications shall include, among other items: (i) a “Demolition Management Plan” identifying (a) each building the Redeveloper seeks to demolish (whether wholly or in part) in that specific Demolition Phase, (b) a phasing plan establishing the order in which the demolition of the buildings in that specific Demolition Phase shall occur, (c) the estimated duration of each Demolition Phase once commenced, and (d) the necessary erosion, stormwater control measures and other staging details for that specific Demolition Phase; and (ii) a storm water pollution prevention plan (“**SWPPP**”) for that specific Demolition Phase.¹ Nothing herein shall preclude the Redeveloper from submitting a consolidated Demolition Permit application seeking Demolition Permits for the entire HRDD

¹ In conjunction with the first application for a Demolition Permit, the Redeveloper may submit a “master demolition SWPPP,” which would be supplemented as each specific Demolition Phase is completed.

Site prior to the issuance of the Town Determinations (as defined in Section 3.4). The Town shall review Redeveloper's application(s) for a Demolition Permit (whether submitted in phases, or as a consolidated application, as the case may be) in an expeditious and good faith manner upon receipt. Within thirty (30) days after the Town Building Department determines that it has received all materials required in the Demolition Application Requirement Form and that the application is complete (a "**Complete Demolition Application**"), the Town Board may comment on the Complete Demolition Application if it so desires. Upon receipt of a Complete Demolition Application, and upon receiving comments from the Town Board, if any, and from New York State Historic Preservation Office ("**SHPO**"), as the case may be, the Town Building Department shall issue conditional Demolition Permits for each building identified in the Demolition Management Plan. The Demolition Permit shall contain certain conditions, including, among other items, that demolition of the subject building shall not commence unless and until the Redeveloper presents to the Town Building Inspector a certification from a duly licensed professional authorized to perform asbestos and lead abatement in New York State certifying that all lead and asbestos, if any, has been removed from said building in accordance with all federal and state law and regulations ("**Certificate of Abatement**"). Since the Redeveloper may pursue demolition of multiple buildings in multiple Demolition Phases, multiple Certificates of Abatement may be provided corresponding to all buildings in a particular Demolition Phase. To the extent necessary in order for Redeveloper to obtain Demolition Permits, the Town shall use reasonable, best efforts to support any applications, referrals or conferences the Redeveloper must pursue with SHPO and other state, regional and local agencies. The Town acknowledges that the issuance of a Demolition Permit is a ministerial act, and therefore a Type II action, for purposes of SEQRA, and that subject to the provisions of this Agreement, demolition may be performed by the Redeveloper before the Town Determinations are made.

(c) **Completion of Demolition.** Demolition of any building shall proceed diligently and continuously (subject to Unavoidable Delay) and be completed as soon as practicable after commencement. Completion of demolition shall be memorialized by the Town issuing a Certificate of Compliance after an inspection is conducted to confirm that demolition of the subject building(s) complied with the Demolition Management Plan in the Complete Demolition Application, and all applicable law, and after receipt by the Town of any certifications regarding said demolition from the Redeveloper as may be required by law. The Town shall perform diligently, and in good faith, all inspections of demolished buildings upon request from the Redeveloper. The Town shall not unreasonably withhold, condition, or delay the issuance of a Certificate of Compliance as provided herein.

(d) **Demolition in the Southern Phase and Northern Phase.** The Parties acknowledge that phasing of demolition shall be subject to modification as a result of SEQRA review of the Project, and in response to economic and marketplace conditions and factors, subject to the following conditions, which shall be incorporated into the Town Determinations, if applicable:

- (i) Redeveloper shall commence and subject to Unavoidable Delay complete demolition of all existing buildings in the Southern Phase as soon as practicable after the later of the dates that: (1) the Zoning Text

Amendment is adopted by the Town and becomes "final; (2) Redeveloper receives Development Master Plan approval for the Project and such approval becomes "final"; and (3) Developer receives subdivision approval for the Southern Phase, and such approval becomes "final." No Certificates of Occupancy shall be issued for uses in the Southern Phase until the demolition in the Southern Phase is completed; and

(ii) The date that a Certificate of Occupancy is issued for the first 200,000 square feet of new Nonresidential Floor Area for Commercial Uses on the HRDD Site constructed by the Redeveloper shall be the "**Northern Phase Demolition Trigger Date**". Thereafter, and subject to Unavoidable Delay, the following milestones shall apply:

(w) On the Northern Phase Demolition Trigger Date, Redeveloper shall provide to the Town, or cause its contractor(s) to provide to the Town, one or more customary performance bonds (the "**North and South Wings Demolition Bond**") reasonably satisfactory to the Town (as to the form, sufficiency, manner of execution and surety) securing the abatement and demolition of the North and South Wings of the Main/Administrative Building (i.e., the former ward buildings attached to the Main/Administrative Building extending to the north and south, hereafter referred to as the "**North and South Wings**"). The amount of the North and South Wings Demolition Bond shall be calculated based upon the contract cost for the abatement and demolition of the North and South Wings (such amount to be confirmed by the Town Engineer).

(x) As soon as practicable after the Northern Phase Demolition Trigger Date, Redeveloper shall provide the Certificates of Abatement for the North and South Wings ("**North and South Wings Certificates of Abatement**").

(y) As soon as practicable after providing the North and South Wings Certificates of Abatement to the Town, Redeveloper shall commence demolition of the North and South Wings, and shall thereafter diligently and continuously (subject to Unavoidable Delay) pursue demolition to completion. No other Certificates of Occupancy shall be issued by the Town in connection with the Project following the Northern Phase Demolition Trigger Date until the demolition of the North and South Wings is completed, unless otherwise agreed to in writing by the Parties.

(z) In the event that Redeveloper does not complete the

demolition of the North and South Wings within nine (9) months of the Northern Phase Demolition Trigger Date, subject to Unavoidable Delay, the Town shall have the right to draw upon the North and South Wings Demolition Bond to complete the demolition of the North and South Wings.

- (iii) Nothing in this subsection (d) shall preclude demolition earlier than set forth in this subsection and prior to the Zoning Text Amendment, Development Master Plan approval or any other Town Determination becoming “final,” provided, that such demolition is diligently and continuously completed. Upon commencing demolition, Redeveloper shall comply with all timeframes set forth in this subsection (d). Notwithstanding anything to the contrary contained herein, Developer shall be required to provide the North and South Wings Demolition Bond to the Town prior to commencing demolition of the North and South Wings, regardless of when such demolition shall be performed.
- (iv) For all purposes of this Agreement, the term “final” means that all periods/statutes of limitation for judicial review of the subject action shall have expired, with no Third Party Proceeding (as hereinafter defined) having been taken or commenced, or if taken or commenced, having been finally adjudicated or dismissed, to the satisfaction of Redeveloper.

2.2 Project Infrastructure. The Parties acknowledge that the Project will require undertaking improvements to and/or replacing infrastructure to service the HRDD Site, including, but not limited to, streets, roads, curbs, sanitary sewers, domestic water conveyances, storm water drainage facilities, and gas, electric, communications and other utility improvements and installations required as part of the Project (“**Project Infrastructure**”). The extent of required Project Infrastructure shall be evaluated and determined during the SEQRA review process. The Redeveloper hereby agrees that it (i) shall be responsible for funding and carrying out the design, engineering and construction of the Project Infrastructure, as well as obtaining all approvals from other governmental entities to undertake such work, (ii) shall oversee, or engage the services of one or more general contractors or construction managers who shall oversee, and shall be responsible for, the construction and installation of the Project Infrastructure, subject to applicable laws, and (iii) shall deliver any infrastructure improvements that are to be dedicated to any governmental authority free and clear of any liens or encumbrances. The Town shall support, assist and cooperate with the Redeveloper in its performance of such responsibilities, it being the intention of the Parties to establish a collaborative working relationship in furtherance of the Project Infrastructure development program. Such cooperation shall include taking all reasonable actions to expeditiously facilitate and review any petitions submitted by the Redeveloper to create or extend any sewer or water districts, provided that the costs of the creation or extension of such districts, including, but not limited to, the preparation of maps, upgrades of existing infrastructure and installation of all new infrastructure, shall be borne

exclusively by the Redeveloper.

2.3 Off-Site Improvements. The Parties acknowledge that the Project may require undertaking off-site improvements in order to mitigate identified potential adverse impacts of the Project, including, but not limited to, traffic calming measures, sight distance preservation, and landscaping (“**Off-Site Improvements**”). The extent of any Off-Site Improvements necessary to pursue the Project shall be evaluated and determined during the SEQRA review process. The Redeveloper hereby agrees that it (i) shall be responsible for funding and carrying out the design, engineering and construction of the Off-Site Improvements, as well as obtaining all approvals from other governmental entities necessary to pursue such work, (ii) shall oversee, or engage the services of one or more general contractors or construction managers who shall oversee, and shall be responsible for, the construction and installation of the Off-Site Improvements, subject to applicable laws, and (iii) shall deliver any infrastructure improvements that are to be dedicated to any governmental authority free and clear of any liens or encumbrances. The Town shall support, assist and cooperate with the Redeveloper in its performance of such responsibilities, it being the intention of the Parties to this Agreement to establish a collaborative working relationship in furtherance of any necessary Off-Site Improvements development program.

2.4 Public Funding. Nothing in this Agreement shall preclude funding of Project Infrastructure and/or Off-Site Improvements, in whole or part, from governmental sources other than the Town. The Town shall cooperate with the Redeveloper in the pursuit of any such funding, including but not limited to joining in applications to funding sources and creating “special districts” and other similar mechanisms for funding of infrastructure improvements, provided that the costs of the creation of such districts and mechanisms shall be borne exclusively by the Redeveloper, and the Town shall not as a result be required to incur any financial liability. Notwithstanding the foregoing, the Town shall not have an affirmative duty hereunder to approve any application for such funding, but shall have the obligation to expeditiously and in good faith consider all applications. Any such application shall be reviewed expeditiously by the Town in good faith (provided Redeveloper submits to the Town all relevant supporting documents and materials), and any determination shall be in accordance with all applicable laws and regulations.

ARTICLE III

LAND USE REQUIREMENTS

3.1 Applications for Land Use Approvals. The Redeveloper at its sole cost and expense shall as soon as practicable following the execution of this Agreement, submit (i) a petition to the Town Board for adoption of the Zoning Text Amendment (“**Zoning Petition**”), and (ii) an application for Development Master Plan approval in accordance with Section 1.2 above (“**Development Master Plan Application**,” and collectively with the Zoning Petition, the “**Land Use Applications**”). From and after such submission, the Parties shall endeavor in good faith to meet all applicable milestones set forth in Section 3.4 (“**Project Milestones**”), which the parties acknowledge are only aspirational. The Redeveloper agrees that all plans, specifications, drawings, reports and similar technical material supplied to the Town in support of the Land Use

Applications shall contain reasonably sufficient detail and information of sufficient quality so as to permit the Town and its professional staff and consultants to understand and evaluate any potential impacts of the Project, as well as evaluate any measures proposed by the Redeveloper to mitigate such impacts (“**Project Materials**”). Provided the Redeveloper supplies the Town with complete Project Materials, the Town shall use all reasonable effort to meet all applicable Project Milestones, including scheduling special meetings of the Town Board and/or joint meetings between the Town Board and the Town Planning Board, as reasonably necessary. Nothing herein, however, requires the Town or Redeveloper to conduct any review or take any action prior to a minimum time period prescribed by statute or regulation.

3.2 Environmental Quality Review. Redeveloper shall, at its sole cost and expense, undertake all studies and applications required in order for the Town to conduct a “coordinated” review in compliance with SEQRA, and to pursue any other applicable land use proceedings with respect to the Project. The Town shall fully cooperate with and diligently assist the Redeveloper and its consultants in furtherance of the studies, applications and proceedings for which the Redeveloper is responsible under this Article, it being understood and agreed that such cooperation and assistance shall include, but shall not be limited to, the facilitating of interviews and on-going consultations with the Town and other governmental officials and the prompt dissemination of information (including technical and statistical data), the Redeveloper and/or its consultants may request from time to time. The Parties acknowledge that the Town has not undertaken any commitment to approve or implement the Land Use Applications or any Project element described therein, and that no such commitment may be made by the Town unless and until the SEQRA process is concluded. The Parties further acknowledge that the SEQRA findings to be made by the Town and other governmental entities may require the Project, or portions thereof, as well as the Zoning Text Amendment, Development Master Plan and/or subsequent site plan or subdivision applications, to be modified, reduced in scope or rejected, in whole or in part, based on the record of the SEQRA review proceeding.

3.3 Project Milestones. The Redeveloper and the Town shall diligently and in good faith submit and review all Project Materials in order to meet the “Project Milestones” set forth below. All Project Milestones shall be subject to extension for Unavoidable Delay or by the written consent of both Parties. Notwithstanding anything to the contrary contained herein, a Party shall not be in default, nor subject to any financial or other penalty or adverse action, for failing to meet a Project Milestone. The following Project Milestones shall apply:

(a) **Commencement of Land Use Applications and Coordinated SEQRA Reviews.** Upon Redeveloper’s submission of the Land Use Applications, including the payment of all application fees in accordance with the Town Code, as well as the submission of Part I of a Full Environmental Assessment Form (“**EAF**”), the Town Board shall place the Land Use Applications on its next regularly scheduled meeting agenda. During such regularly scheduled meeting, the Town Board shall (i) accept the Land Use Applications, (ii) declare its intent to serve as the Lead Agency pursuant to SEQRA, and direct its staff to circulate expeditiously to all potential Involved and Interested Agencies a Notice of Intent to serve as Lead Agency (the date on which such notice is distributed hereinafter referred to as the “**NOI Circulation**”), (iii) refer the Land Use Applications to the Town Planning Board for review and report pursuant to

Sections 201-66(C) and 210-154 of the Town Zoning Code (“**Advisory Report**”), and (iv) refer the Zoning Petition to the Dutchess County Department of Planning and all other necessary governmental bodies pursuant to Section 210-155 of the Town Zoning Code.

(b) **Thirty (30) Days after NOI Circulation.** On or around thirty (30) days after the NOI Circulation (or at the next regularly scheduled Town Board public meeting thereafter), Redeveloper shall present to the Town Board a draft scope of a draft environmental impact statement (“**DEIS**”) pursuant to the requirements set forth in 6 NYCRR Section 617.8 (“**Draft Scope**”). During such meeting, the Town Board shall (i) adopt a Resolution declaring itself Lead Agency for SEQRA purposes in accordance with the applicable law and implementing regulations, (ii) issue a Positive Declaration pursuant to SEQRA, (iii) circulate the Draft Scope to all Involved Agencies, as well as make the Draft Scope available to all other parties pursuant to 6 NYCRR Section 617.8, and (iv) schedule, and thereafter conduct on such date, a public scoping session in accordance with 6 NYCRR Section 617.8.

(c) **Forty-Five (45) Days after Town’s Receipt of Draft Scope.** On or around forty-five (45) days after the receiving the Draft Scope, the Town Board shall provide the Redeveloper with a final written scope in accordance with 6 NYCRR Section 617.8 (“**Final Scope**”).

(d) **One Hundred Twenty (120) Days after Redeveloper’s Receipt of Final Scope.** On or around one hundred twenty (120) days after the Redeveloper is provided with a Final Scope, (i) the Redeveloper shall provide to the Town Board a DEIS, with a request for a determination by the Town Board of adequacy in accordance with 6 NYCRR Section 617.9, and (ii) the Town Planning Board shall provide the Town Board with its Advisory Report. In order to expedite the Town Board’s review of the adequacy of the DEIS, as well as the Planning Board’s issuance of the Advisory Report, Redeveloper may from time to time submit proposed chapters of the DEIS to the Town Board and its consultants, and the Parties’ respective consultants may meet with the Town Board and/or Town Planning Board to review said chapters. The Town Board and Planning Board shall conduct joint meetings if necessary to expedite such review.

(e) **Sixty (60) Days after Receipt of DEIS.** On or around sixty (60) days after the Town Board receives the DEIS (or at the next regularly scheduled Town Board public meeting thereafter), the Town Board shall render a determination of adequacy pursuant to 6 NYCRR Section 617.9. In the event that the Town Board determines the DEIS is inadequate for public review, then the Parties shall comply with the timeframes set forth in 6 NYCRR Section 617.9 pertaining to resubmission of a draft EIS determined to be inadequate. Upon a determination that the DEIS is adequate for public review, the Town Board shall (i) direct its staff to circulate a Notice of Completion pursuant to 6 NYCRR Section 617.12, (ii) declare the Development Master Plan Application complete in accordance with Section 210-66 of the Town Zoning Code, and (iii) schedule, and subsequently conduct, at least one (1) combined public hearing on the DEIS in accordance with 6 NYCRR Section 617.9, as well as on the Zoning Text Amendment and Development Master Plan pursuant to Sections 210-66 and 210-156 of the Town Zoning Code (the “**Public Hearing**”).

(f) **Ninety (90) Days after DEIS is Deemed Adequate for Public Review.**

On or around ninety (90) days after the Town Board closes the Public Hearing, the Redeveloper shall submit to the Town Board a final environmental impact statement (“FEIS”) in accordance with 6 NYCRR Section 617.9. Upon the Town Board determining that the FEIS is complete in accordance with 6 NYCRR Section 617.9, the Town Board shall direct its staff to circulate a Notice of Completion pursuant to 6 NYCRR Section 617.12 (“Notice of Completion”).

(g) **Sixty (60) Days after Circulating a Notice of Completion.**

On or around sixty (60) days after the Town circulates the Notice of Completion (or at the next regularly scheduled Town Board public meeting thereafter), the Town Board shall adopt a Findings Statement pursuant to 6 NYCRR Section 617.11 (“Findings Statement”). Upon adopting the Findings Statement, the Town Board shall (i) either adopt, or decline to adopt, the Zoning Text Amendment, and (ii) either approve, deny, or approve with conditions the Development Master Plan Application.

(h) **Site Plan and Subdivision Approvals.**

In the event that the Town Board adopts the Zoning Text Amendment and approves the Development Master Plan Application, then as soon as practicable after such approval, the Redeveloper shall submit to the Town Planning Board a complete application for site plan and related subdivision approval (and for approval of any proposed special permit uses) to in accordance with the Findings Statement and the approved Development Master Plan construct the first component of the Southern Phase of the Project to be constructed based on then prevailing market and economic conditions. The Redeveloper shall thereafter use commercially reasonable efforts, subject to prevailing market and economic conditions, to submit application(s) for site plan and related subdivision approval to construct and operate the remainder of the Southern Phase, as well as the Northern Phase.

3.4 Changes to Reflect SEQRA Findings and/or Findings of all Governmental Agencies; Development Agreement Superseded by Town Determinations.

The Town agrees to act reasonably in connection with all procedures and actions taken pursuant to SEQRA and the Town Zoning Code with respect to the Land Use Applications. The Parties acknowledge, however, that the Findings Statement to be made by the Town, as well as the findings of all other governmental entities with jurisdiction over the Project, may require the Project, or portions thereof, as well as the Zoning Text Amendment and/or the Development Master Plan, to be modified, reduced in scope or rejected, in whole or in part. Notwithstanding any provision of this Agreement, the Parties acknowledge and agree that: (i) this Agreement shall terminate upon the issuance by the Town of the Findings Statement and approval or denial of the Land Use Applications (collectively, the “Town Determinations”); (ii) the understandings and agreements expressed herein shall in their entirety and all respects be superseded by the Town Determinations, including, if applicable, the approved Master Development Plan; and (ii) nothing in this Agreement requires the Redeveloper to pursue the Project, as modified, or reduced in scope.

ARTICLE IV

TRANSFERS

4.1 Transfers of Ownership and/or Development Rights. The Redeveloper represents that it is the fee owner of the HRDD Site, and the sole holder of any rights to pursue the Project, or any other demolition, construction, improvement, redevelopment, and/or occupancy at the HRDD Site. Notwithstanding, the Parties acknowledge that Redeveloper intends to convey and assign certain portions of the HRDD Site and Project. The Redeveloper represents and agrees for itself, its members, managers and any successors in interest thereof, that neither the Redeveloper, nor any members or managers of the Redeveloper, shall be permitted to assign, transfer, or convey any portion of the HRDD Site, or a controlling interest in the Redeveloper, unless (i) written notice is provided to the Town at least forty-five (45) days in advance of such transfer (a "**Transfer Notice**"), and (ii) the proposed transferee acknowledges in writing that as a successor in interest to the Redeveloper it is bound by all the terms and conditions of this Agreement, the relevant land use approvals, SEQRA Findings Statement, and all other Town Determinations insofar as they relate to the interest being transferred, and shall assume all responsibilities and duties required of the "Redeveloper" referred herein with respect to the interest being transferred.

ARTICLE V

CONSULTANT EXPENSES; CERTAIN APPLICATION COSTS

5.1 Redeveloper's In-house Services. The Redeveloper shall at its own expense supply its own services and expertise.

5.2 Reimbursable Municipal Expenses. In addition to other costs to be paid as described in this Agreement, and fees legally required to be paid to the Town as part of the zoning and building permit review process, the Redeveloper shall reimburse the Town for all of the reasonable costs and expenses paid by the Town to its consultants for reviewing (i) the Action in accordance with SEQRA (subject to SEQRA's statutory fee limitation), (ii) the Land Use Applications, (iii) any site plan and subdivision applications, and (iv) Demolition Permit applications, and for all other reasonable third party consultant expenses incurred by the Town in furtherance of the Project (including, but not limited to, environmental consultant costs), and, subject to Section 5.3, below, costs of defending a Third Party Proceeding (as defined herein) ("**Reimbursable Municipal Expenses**"), subject to the periodic review and approval by the Redeveloper of the Reimbursable Municipal Expenses in accordance with the Escrow Agreement attached hereto as Schedule "D" ("**Escrow Agreement**"). Subject to Redeveloper's right to dispute bills and invoices presented to it hereunder, the Town shall pay Reimbursable Municipal Expenses in accordance with the terms and conditions of the Escrow Agreement (subject to Redeveloper's obligation to replenish said Escrow as set forth therein). Upon the execution of this Agreement and the Escrow Agreement (attached hereto as Schedule "D") by all Parties hereto, the Redeveloper shall deposit with the Town an advance in the amount of Fifty Thousand (\$50,000.00) Dollars, which funds shall be held in a separate account maintained by the Town (the "**Escrow Account**"), and applied solely to the payment of Reimbursable

Municipal Expenses. The Town shall provide the Redeveloper with written notice if the funds in the Escrow Account are reduced below \$10,000.00. In the event that the Escrow Account is reduced below \$10,000.00, the Redeveloper shall deposit an additional sum of money so as to maintain the Account at or near \$25,000.00, as well as satisfy any and all outstanding Reimbursable Municipal Expenses, within fifteen (15) days of receiving notice from the Village that the Escrow Account amount is below \$10,000.00. In the event of a dispute concerning Reimbursable Municipal Expenses the Parties shall promptly pursue the dispute resolution procedures contained in the Escrow Agreement, provided, however, that such dispute shall not be cause for non-performance by any party of any of its obligations hereunder, unless the Escrow Account contains less than \$10,000.00. In the event that the Escrow Account contains funds less than \$10,000.00, and the Redeveloper fails or refuses to make additional deposits satisfying any and all outstanding Reimbursable Municipal Expenses and bringing the balance of the Escrow Account to or above \$25,000.00, then notwithstanding anything to the contrary contained or agreed to in any other contract or agreement between the Town and the Redeveloper, the Town, and any of its employees, consultants, agents and/or representatives, shall at its option, be released from any requirement, liability or obligation from further participation in the review of the Project, or cooperation with the Redeveloper therewith until such additional deposit(s) are made.

5.3 Litigation. Nothing in this Agreement shall require Redeveloper to: (i) commence any action or proceeding to defend this Agreement, the Town Determinations, or any aspect of the Project; or (ii) defend, or participate in the defense of any action or proceeding brought by any third party (a “**Third Party Proceeding**”). If the Redeveloper in its discretion elects to defend a Third Party Proceeding, then the Developer shall reimburse the Town for the reasonable legal fees incurred by the Town for its defense of such Third Party Proceeding, provided that: (i) the attorney selected by the Town shall be reasonably acceptable to the Redeveloper; and (ii) such Third Party Proceeding shall not settled without the consent of the Redeveloper.

ARTICLE VI

DISPUTE RESOLUTION; ARBITRATION; TERMINATION

6.1 Mandatory Good Faith Resolution of All Disputes Hereunder. In the event that a Party believes a material breach or default of a substantive provision in this Agreement has occurred, such party shall deliver to the other party a notice setting forth the substantive term(s) of the Agreement allegedly in breach, as well as the basis for the party’s belief that that its counterpart has committed a material breach of such provision (“**Dispute Notice**”). Upon the other party receiving a Dispute Notice, the Parties shall cooperate in good faith to explore a resolution of the dispute. Such good faith cooperation shall include conducting at least one (1) meeting between designated representatives of each party with authority to resolve such conflict within seven (7) days of the receipt of the Dispute Notice. Thereafter, the Parties shall use all commercially reasonable efforts to resolve the dispute in good faith. In the event such dispute cannot be resolved within a reasonable time, which shall not exceed thirty (30) days from the receipt of a Dispute Notice (unless the Parties agree in writing to extend such period), the Parties shall not terminate the Agreement, but instead may institute arbitration in

accordance with this Section.

6.2 Arbitration Provisions. In the event that a dispute is not resolved in accordance with Section 6.1 above, then either party to this Agreement may initiate arbitration proceedings under this Section, which shall be conducted in accordance with the following provisions:

(a) **Initiation.** If either party elects to initiate arbitration proceedings hereunder, it shall do so by giving written notice to that effect to the other party. Within seven (7) days after the service of such notice, the Parties shall agree upon, and appoint, an arbitrator. The arbitrator chosen pursuant to this Section shall be a disinterested person who shall not be an employee of, consultant to, or otherwise associated with the Parties, and the arbitrator chosen shall have at least eight (8) years of experience in the State of New York in the particular issues involved in a calling connected with the dispute. If the Parties cannot agree on an arbitrator within the time above specified, then the President or any other executive of the American Arbitration Association shall, on written application of either Party, appoint an arbitrator in accordance with the criteria set forth herein. Within seven (7) days after the notification for the appointment, the arbitrator chosen shall commence any hearings and investigations as s/he deems appropriate to resolve the dispute.

(b) **Location of Meetings.** All meetings and other arbitration proceedings under this Section shall be held or conducted in Westchester, Putnam or Dutchess Counties.

(c) **Limited Issues and Remedies.** The arbitration shall be limited to the question(s) at issue. The arbitrator shall determine the appropriate remedy to resolve the dispute consistent with the Parties' intent as expressed in this Agreement, and with the goal of keeping the review of the Project progressing in a diligent and commercially reasonable manner. The remedies available to the arbitrator shall include, but not be limited to: (i) providing the Parties with an additional time period to rectify or "cure" the alleged breach of this Agreement, and relieving the non-breaching party from any duties under this Agreement until such breach is rectified or "cured"; (ii) requiring specific performance without awarding any party damages; and/or (iii) declaring a default warranting termination of the Agreement in accordance with Subsection 6.2(d) below ("**Default Warranting Termination**"). In no event shall any Party be entitled to direct, indirect, consequential, or punitive damages as a remedy. In rendering such decision, the arbitrator shall not add to, subtract from or otherwise modify the provisions of this Agreement, or modify any aspect of the Project. The foregoing, however, shall not prevent the arbitrator from determining the applicable provisions of this Agreement and interpreting and construing such provisions. The arbitrator shall render a decision within fifteen (15) days after his/her appointment pursuant to Subsection 6.2(a) above. Said determination shall be binding upon the Parties, and shall not be subject to review in a court action, except a determination that a Default Warranting Termination has occurred. Such decision shall be in writing and counterpart copies thereof shall be delivered to each of the Parties, who agree to abide thereby, and any judgment may be entered thereon in any court of competent jurisdiction and may be enforced in accordance with the laws of the State of New York.

(d) **Default Warranting Termination.** The arbitrator shall not find a Default Warranting Termination of this Agreement against either party unless the arbitrator makes specific findings that the defaulting or breaching party's actions or inactions relating to its material obligations hereunder constitute extreme or egregious unreasonableness under a rational commercial person standard, including, but not limited to, the failure by either Party to diligently pursue or review the Land Use Approvals, or undertake demolition in accordance with the terms hereunder. In the event that the arbitrator declares that a Default Warranting Termination has occurred, this Agreement shall be terminated.

(e) **Fees.** The Parties shall share equally in the fees and expenses of the arbitrator appointed in accordance with this Agreement. The party substantially prevailing in the arbitration shall be entitled to recoup all costs of the arbitrator, together with all reasonable legal and other costs and expenses incurred by such prevailing party in connection with the arbitration.

6.3 Termination. Notwithstanding Sections 6.1 and 6.2, above, or any provision of this Agreement, in the event the Town materially breaches a substantive provision in this Agreement, such material breach/default is not resolved in accordance with Section 6.1, and the Redeveloper elects not to arbitrate pursuant to Section 6.2, then the Redeveloper may terminate this Agreement, in which event the Redeveloper: (i) shall not be entitled any other remedies set forth hereunder; and (ii) shall promptly pay to the Town any then due and unpaid Reimbursable Municipal Expenses, and thereafter, unless the Redeveloper elects to withdraw the Land Use Applications, review of the Project by the Town shall proceed in accordance with applicable law, and subject to the Escrow Agreement.

ARTICLE VIII

MISCELLANEOUS

7.1 Ability to Execute and Deliver. The Redeveloper warrants that it is a limited liability company duly organized under the laws of the State of New York, has all necessary power, corporate or otherwise, to execute, deliver and carry out this Agreement and to perform all obligations hereunder, and has taken all necessary action to authorize the execution, delivery and performance of this Agreement. The Town warrants that it is a municipal corporation duly organized under the laws of the State of New York, has all necessary power, corporate or otherwise, to execute, deliver and carry out this Agreement and to perform all obligations hereunder, and has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

7.2 Negotiated Document. The Parties acknowledge that the provisions and language of this Agreement have been negotiated, and agree that no provision of this Agreement shall be construed against any party by reason of such party having drafted such provision of this Agreement.

7.3 No Partnership Created. It is understood and agreed that no agreement of partnership is intended hereby and nothing herein shall be deemed or construed to constitute the Town jointly the partner of the Redeveloper or constitute either the agent of the other such as to permit or empower the Town or the Redeveloper to bind the other to financial or

other obligations to third parties nor constitute or give rise to any joint ownership or joint venture in violation of any constitutional or other provision of New York law.

7.4 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles.

7.5 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Agreement by signing any such counterpart.

7.6 **Captions.** The captions of this Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

7.7 **Gender, Etc.** As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.

7.8 **No Third Party Beneficiaries.** Except as may be expressly provided to the contrary in this Agreement, nothing contained in this Agreement shall or shall not be construed to confer upon any person other than the parties hereto, any rights, remedies, privileges, benefits or causes of action to any extent whatsoever.

7.9 **Successors and Assigns.** The agreements, terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and, except as otherwise provided herein, their respective successors and permitted assigns.

7.10 **Further Assurances.** Each party hereto shall do all acts and things and make, execute and deliver such written instruments as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement.

7.11 **No Amendment.** Neither this Agreement nor any provisions hereof may be changed, modified, amended, supplemented, altered, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against who enforcement of the change, modification, amendment, supplement, alteration, waiver, discharge or termination is sought, and, if required by any mortgage document, the applicable lender has consented thereto.

7.12 **Unavoidable Delay.** Notwithstanding any provision of this Agreement, the performance by the Town and Redeveloper of their respective obligations under this Agreement, and all time periods for the performance of all such obligations, shall be subject to Unavoidable Delay, and shall be tolled day for day during a period of Unavoidable Delay. For the purposes of this Agreement, Unavoidable Delay means any delay, obstruction or interference resulting from any act or event which has a material adverse effect on a party's rights or duties, provided such act or event is beyond the reasonable control of such party after pursuing all diligent efforts to remedy the delaying condition in an expedient and efficient manner and was

not separately or concurrently caused by any negligent or willful act or omission of such party and/or could not have been prevented by reasonable actions on such party's part, including, but not limited to, delay, obstruction, or interference resulting from:

(a) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, war, blockage or insurrection, riot or civil disturbance;

(b) any legal proceeding commenced by any third party seeking judicial review of this Agreement and/or of any governmental approvals for any proposed Project or Infrastructure required therefor, and any restraint of law (e.g., injunctions, court or administrative orders, or legal moratorium imposed by a court, or administrative or governmental authority);

(c) the failure of any utility or municipal entity to provide and maintain utilities, services, water and sewer lines and power transmission lines to the HRDD Site, which are required for the construction, as contemplated in this Agreement;

(d) any unexpected or unforeseen subsurface condition at the HRDD Site inconsistent with typical background conditions of a similar site, which shall prevent construction of, or require a material redesign or change in the construction of (or materially adversely affect the completion schedule for) the Project or of Infrastructure, such determination to be made by a qualified engineer;

(e) strikes, work stoppages or other substantial labor disputes;

(f) the failure or inability of any subcontractor or supplier to furnish supplies or services if such failure or inability is itself caused by Unavoidable Delay and could not have been reasonably prevented and the affected party cannot reasonably obtain substitutes therefore;

(g) governmental delay in completion of environmental review procedures, where such delay is not the result of negligent or willful acts or omissions of the party claiming Unavoidable Delay, or the failure of the Redeveloper to provide the Town with complete Project Materials; and

(h) governmental delay on the part of Federal, State or County governmental entities, with respect to the granting of permits, approvals or determinations, or with respect to the transfer of property or rights therein, or in completion of Project infrastructure, Off-site Improvements, or Remediation Work, where such delay is not the result of negligent or willful acts or omissions of the party claiming Unavoidable Delay.

7.13 Inconsistent Provisions. This Agreement supersedes in its entirety the Exclusivity and Planning Agreement between the Parties.

7.14 Entire Agreement. This Agreement, together with the Schedules hereto, contain all of the promises, agreements, conditions, inducements and understandings between and amongst the parties hereto concerning the proposed Project and there are no promises,

agreements, conditions, inducements or understandings, oral or written, expressed or implied, between them other than as expressly set forth herein and therein.

7.15 No Recourse. All covenants, stipulations, promises, agreements and obligations of the Redeveloper and the Town contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Redeveloper and the Town respectively, and not of any officer, partner, member, shareholder, agent, servant or employee of the Redeveloper or of the Town in any capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Agreement, or otherwise based or in respect thereof, shall be had against any past, present or future officer, partner, member, shareholder, agent, servant or employee of the Redeveloper or of the Town or any member of the Redeveloper, either directly or through the Redeveloper or any successor thereto or any person executing this Agreement. It is expressly understood that this Agreement is an obligation of the Redeveloper and of the Town and that no personal liability whatever shall attach to, or is or shall be incurred by, any such officer, partner, member, shareholder, agent, servant or employee of the Redeveloper or of the Town or any member of the Redeveloper, either directly or through the Redeveloper or any successor thereto or any person executing this Agreement. Any and all such personal liability of, and any and all such rights and claims against, every such officer, partner, member, shareholder, agent, servant or employee of the Redeveloper or of the Town under or by reason of the obligations, covenants, or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

7.16 Notice. Any notice, demand, request or other communication which under the terms of this Agreement must or may be given or made or served by either of the Parties hereto shall be in writing and shall be given or made by mailing the same by registered or certified mail, express courier, or by hand delivery, addressed as set forth below:

If to the Town: Town of Poughkeepsie
1 Overocker Road
Poughkeepsie, New York 12603
Attention: Neil A. Wilson, Esq., Director of Municipal Development

with a copy to: Zarin & Steinmetz
Town of Poughkeepsie Special Land Use Counsel
81 Main Street, Suite 415
White Plains, New York 10601
Attention: Michael Zarin, Esq.

If to the Redeveloper: EFG/DRA Heritage, LLC
c/o DRA Heritage LLC, Development Manager
47 River Road, Suite 200,
Summit, N.J. 07901
Attention: Nicholas Minoia, Managing Partner

With a copy to: Peter J. Wise
DelBello Donnellan Weingarten Wise & Wiederkehr, LLP
One North Lexington Avenue, 11th Floor
White Plains, New York 10601

And to: EnviroFinance Group, LLC
Business/Environmental Manager
4601 DTC Boulevard, Suite 130
Denver, Colorado 80237
Attention: Chief Executive Officer

Richard I. Cantor, Esq.
Teahan & Constantino
2780 South Road, P.O. Box 1969
Poughkeepsie, New York 12601

Either of the Parties hereto or their counsel may designate by notice in writing a new or other address to which such notice or demand shall thereafter be given, made or mailed.

7.17 Covenant of Good Faith and Fair Dealing. The Parties recognize that the successful planning and execution of the Project and their respective ability to perform their obligations under this Agreement will require cooperation between them. Accordingly, this Agreement imposes an obligation of good faith and fair dealing on the Redeveloper and the Town in the performance and enforcement of their respective rights and obligations hereunder. The Parties, with a shared commitment to honesty and integrity in the performance and administration of this Agreement, agree to the following mutual duties: (i) each will be held to a standard of good faith and fair dealing in the performance of its duties and obligations under this Agreement, (ii) each will function within the laws and statutes applicable to their duties and responsibilities, (iii) each will cooperate to facilitate the other's performance, (iv) each will avoid hindering the other's performance, (v) each will respond promptly and completely to the reasonable requests of the other, (vi) each will proceed to fulfill its obligations under this Agreement diligently and honestly, (vii) except as otherwise provided in this Agreement for the giving or the withholding of the Town's consent, approval or the like in its or its sole and arbitrary or absolute discretion, each agrees to use all commercially reasonable efforts to discharge their respective obligations under this Agreement and to assist each other in discharging their obligations under this Agreement which are dependent in any measure in another Party's performance, and (viii) each will cooperate in the common endeavor of completing the performance and administration of this Agreement and the consummation of the transactions contemplated by this Agreement in a timely and efficient manner. Except as otherwise provided in this Agreement for a consent or approval to be given or withheld in the sole and arbitrary discretion of a Party, all other consents and approvals required or, desired of any party shall be promptly addressed and not unreasonably withheld, conditioned or delayed; provided, further, no party shall claim that the exercise, pursuant to the express provisions of this Agreement, of a party's sole, absolute or arbitrary discretion shall be deemed a breach of this Section.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

TOWN OF POUGHKEEPSIE

By: _____
Hon. Todd Tancredi, Town Supervisor

EFG/DRA HERITAGE, LLC

By: 
Name: NICK MIODIN
Title: Managing Partner

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

TOWN OF POUGHKEEPSIE

By: *Todd Tarcredi*
Hon. Todd Tarcredi, Town Supervisor

EFG/DRA HERITAGE, LLC

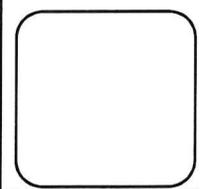
By: _____
Name:
Title

SCHEDULE A

Conceptual Plan



ALTERATION OF THIS DRAWING, EXCEPT BY A LICENSED P.E. IS ILLEGAL. ANY ALTERATION BY A P.E. MUST BE INDICATED AND BEAR THE APPROPRIATE SEAL, SIGNATURE AND DATE OF ALTERATION.



THE Chazen COMPANIES
 Engineers/Surveyors
 Planners
 Environmental Scientists
 Landscape Architects

Dutchess County Office:
 21 Fox Street Poughkeepsie, NY 12601
 Phone: (845) 454-3980

Capital District Office:
 547 River Street Troy, NY 12180
 Phone: (518) 273-0035

North Country Office:
 375 Bay Road Queensbury, NY 12804
 Phone: (518) 812-0513

HUDSON HERITAGE

OVERALL CONCEPT PLAN

TOWN OF POUGHKEEPSIE, DUTCHESS COUNTY, NEW YORK

drawn SL	checked SM
date 05/18/15	scale 1"=150'
project no. 81402.00	
sheet no. 3	



Residential Program	LINE	DATE
Multi-family units	001	05/18/15
Town-house units	005	11-15'
Single family dwelling units	002	
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designed	SL	checked	SL
date	05/18/15	scale	1"=150'
project no.	81402.00	sheet no.	5

HUDSON HERITAGE
CONCEPT PLAN - RESIDENTIAL AREA
 TOWN OF POUGHKEEPSIE, DUTCHESS COUNTY, NEW YORK

CHAZEN ENGINEERING, LAND SURVEYING
 LANDSCAPE ARCHITECTURE CO., D.P.C.
 Office Locations:
 Dutchess County Office: 21 Fox Street, Poughkeepsie, NY 12550, Phone: (845) 854-3880
 Capital District Office: 547 New Street, Poughkeepsie, NY 12550, Phone: (815) 773-0005
 North Country Office: 375 Bay Road, Poughkeepsie, NY 12554, Phone: (815) 812-0013

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SCHEDULE B

Proposed HRDD Zoning Text Amendment

SCHEDULE B

Chapter 210. ZONING

Article V. Town Center District Regulations

§ 210-30. Historic Revitalization Development (HRDD) District.

A. District purpose. This district applies to the former New York State Psychiatric Center on Route 9 in the Fairview section of the Town near the boundary with the Town of Hyde Park. Until such time as an application for a master development plan has been approved by the Town Board as set forth in this section, no permits for the use of the property, or for construction, reconstruction, or site work, shall be issued, except as set forth in Subdivisions C and D following. This district serves the following specific purposes:

- (1) Promote the preservation and adaptive reuse of landmark structures in historic districts and historically significant open spaces- where feasible.
- (2) Promote the preservation of open space by clustering of dwellings units and concentrating mixed development within a "new-urban" design plan- an integrated design plan creating residential areas and accessible neighborhood commercial centers and recreational spaces.
- (3) Promote a mix of commercial and residential uses within a planned community environment- where building bulk and architecture, as well as the location of use types, complement each other and harmonize with open spaces and the surrounding landscape.
- (4) Promote pedestrian activity through a safe and walkable environment and establish, where appropriate, sidewalk connections to adjacent residential neighborhoods- an integrated circulation network of streets, sidewalks and other pathways linking the residential, commercial and recreational areas in the HRDD.

B. Permitted uses within a national landmark building and contributing area, and designated or eligible federal historic districts the HRDD District shall be as follows, with the type, size, height and location of all uses subject to approval of a development master plan ~~Development Master Plan~~ by the Town Board, and site plan review and approval by the Planning Board:

- (1) Art galleries, workshops or retail shops associated with arts, crafts or fine arts.
- (2) Artists' live-work facilities.
- (3) Bars, taverns.
- (4) Building materials sales and storage (screened) subject to Section 210-59 of this Chapter.
- (5) Business parks, subject to § 210-60 of this Chapter.
- (6) Clinics.
- (7) Health clubs; indoor recreation facilities; outdoor recreation facilities- subject to Sections 210-97 and 210-98 of this Chapter.
- (8) Hotels, motels, conference centers, banquet facilities, inns, bed and breakfast establishments subject to Sections 210-55, 210-75 and 210-77 of this Chapter.

(9) Laundromats, dry cleaners.

(10) Libraries.

(11) Nurseries, greenhouses and vegetable stands.

(12) Offices, including professional and medical offices.

(13) Personal service businesses.

(14) Public or semipublic uses such as live theaters, concert halls, museums or meeting rooms suitable for social, civic, cultural or educational activities.

(15) Places of religious worship subject to Section 210-95 of this Chapter.

(16) Residential housing, which may be owner-occupied, provided for rental, or a combination thereof, and, if provided for sale, to be owned in fee simple, condominium, or cooperative ownership, which housing may include any of the following, or any combination thereof:

(a) Dwellings, single-family.

(b) Dwellings, two-family.

(c) Dwellings, multiple-family.

(d) Flats, studios, and residential apartment units located in multiple-family dwellings, or in mixed-use buildings.

(e) Combination building: a building containing a combination of two or more dwelling unit types, which may include any of the following: single-family attached, flats, or two-story apartments, any of which may be arranged beside, above, or under other unit types.

(f) Mixed-use building: a building that combines one or more dwelling unit types, which may include, without limitation, single-family attached, flats, or two-story apartments, any or which may be arranged beside, above, or under each other or in combination with other, nonresidential, uses, including, without limitation, residential flats or townhouses over or within buildings partially devoted to retail, commercial, small-scale light industrial, or other nonresidential use, as regulated herein.

~~(6) Hotels, motels, conference centers, banquet facilities, inns, bed & breakfast establishments.~~

~~(7) Libraries.~~

~~(8) Mixed-use buildings, containing combinations of two or more of the residential, commercial and small-scale light industrial uses permitted in the HRDD.~~

~~(9) Offices, business offices, professional offices.~~

~~(10) Personal service businesses, no drive-in or drive-through.~~

~~(11) Public or semipublic uses such as live theaters, concert halls, arts cinemas (not exceeding 400 seats), museums or meeting rooms suitable for social, civic, cultural or educational activities; places of religious worship.~~

~~(12) Restaurants, no drive-in or drive-through.~~

~~(13) Retail uses.~~

(17) Restaurants subject to the provisions of §210-101 and 102 of this Chapter, as well as such other conditions the Town Board may impose.

(18) Retail businesses, including banks, bakeries, delicatessens and other retail businesses providing goods and services primarily to the immediate neighborhood, including bakeries, banks, delicatessens, and personal services, no drive-in or drive-through.

~~(14)-(19)~~ School-age child or elderly day-care facilities, subject to § 210-65 of this Chapter.

~~(15)-(20)~~ Schools, nursery schools.

~~(16)-(21)~~ Service businesses, no drive-in or drive-through.

~~(17) Solely within buildings existing on the date of adoption of this chapter, and not exceeding a footprint of 25,000 square feet, or a total floor area of 50,000 square feet, the following small-scale light industrial uses, provided that no permanent outdoor storage shall be permitted, as determined by the Town Board, and appropriate screening is provided:~~

~~(a) Cabinet or woodworking shops or similar crafting work with metal, stone, textile, clothes or ceramics, as approved by the Town Board.~~

~~(b) Nonprocessing storage facilities.~~

~~(c) Printing and publishing.~~

~~(18)-(22)~~ Supermarkets.

(23) Movie theaters.

(24) Light industrial uses.

(25) Mixed-use buildings containing two or more permitted residential and commercial uses.

(26) Other uses as approved by the Town Board as part of a development master plan. Development Master Plan.

~~C. Permitted uses in areas of the HRDD outside the national landmark building and contributing area, and designated or eligible state and/or federal historic district shall be as follows, subject to approval of a development master plan by the Town Board and site plan review and approval by the Planning Board:~~

~~(1) All uses specified in Subsection B above, as provided therein.~~

~~(2) Building materials sales and storage (screened).~~

~~(3) Business parks, subject to § 210-60.~~

~~(4) Catalog showrooms, clothing stores.~~

~~(5) Clinics.~~

~~(6) Restaurants.~~

~~(7) Supermarkets.~~

~~(8) Laundromats, dry cleaners.~~

~~(9) Nurseries, greenhouses and vegetable stands.~~

~~(10) Personal service businesses.~~

~~(11) Retail businesses.~~

~~(12) Service businesses.~~

~~(13) Theaters.~~

~~(14) Small scale light industrial uses as approved by the Town Board as part of a development master plan, having a similar impact to those allowed in Subsection C above, provided that: (1) no individual building housing such a use has a footprint greater than 25,000 square feet, and (2) that the maximum floor area per said building does not exceed 50,000 square feet; and (3) no permanent outdoor storage shall be permitted, as determined by the Town Board, and appropriate screening is provided.~~

~~(15) (27) Accessory uses as approved by the Town Board as part of a development master plan Development Master Plan.~~

D.C. Development master plan required. Due to the unique nature of redevelopment of the HRDD property, except as set forth in this Subsection C, there are no minimum or maximum height, area and bulk requirements have been applied through this chapter in the HRDD. As a result, no application for site plan, special use permit, subdivision, or variance approval for any development project in the HRDD shall be reviewed or approved until a development master plan has been approved by the Town Board in accordance with the procedures set forth herein and in § 210-66 of this chapter Chapter. In addition, with the exception of repairs and ordinary building maintenance, subject to obtaining permits for such work, and with the further exception of demolition as permitted or authorized pursuant to the Town Code, no building permit or certificate of occupancy shall be issued for any development project in the HRDD until a development master plan Development Master Plan has been approved by the Town Board in accordance with the procedures set forth herein and in § 210-66 of this chapter Chapter.

(1) Maximum residential density. The maximum residential density shall be 750 residential units.

~~(a) Except as provided for under the bonus incentive provisions below, no more than 300 residential units shall be 750 residential units permitted within the HRDD property.~~

~~(b) As an incentive to facilitate and enhance the preservation and protection of open space and existing historic structures, an additional 150 residential units shall be permitted within the HRDD property, provided:~~

~~[1] The approved master development plan preserves as permanent open space that portion of the HRDD property known as the "great lawn" consisting of approximately 18 acres of contiguous open space located generally to the west of the main historic building complex; and~~

~~[2] The approved master development plan preserves for adaptive reuse the remaining portion of the national landmark building consisting of ±269,099 square feet.~~

~~(c) As an incentive to provide greater nonretail commercial square footage within the property, an additional 100 residential units shall be permitted within the HRDD property, provided:~~

~~[1] The approved master development plan provides for the construction of a minimum of 100,000 square feet of office space.~~

- ~~(d) Under no circumstances shall more than 750 residential units be permitted within the HRDD property. Approval for any residential units beyond 550 shall be at the sole discretion of the Town Board after consideration of the Planning Board's recommendation.~~
- ~~(e) The preservation and adaptive reuse of the historic structure and provision of the minimum square footage for office space shall be phased in accordance with a phasing plan approved by the Town Board.~~
- (2) Maximum nonresidential development density. The maximum nonresidential development density shall be 350,000 square feet. In the event that the 80,000 square foot "Main /Administrative Building" is adaptively reused as a hotel, this maximum nonresidential development density may be increased to 430,000 square feet solely to accommodate such reuse. Approval for any nonresidential density beyond ~~350~~430,000 square feet shall be at the sole discretion of the Town Board as part of the Development Master Plan after consideration of the Planning Board's recommendation.
- (3) Area and bulk requirements. Area and bulk requirements for both residential and nonresidential uses (principal and accessory), including minimum lot area, minimum yards, minimum setbacks, building height, and other bulk and lot standards such as buffers, shall be determined and approved by the Town Board in its sole discretion as part of the Development Master Plan after consideration of the Planning Board's recommendation.
- (4) In considering the ~~master development plan~~Development Master Plan application, the Town Board shall determine whether the application ~~meets~~is consistent with the ~~criteria~~purposes of the HRDD set forth in Subsection A above, as well as the design standards for approval of a ~~development master plan and shall also~~Development Master Plan set forth in Subsection D below. The Town Board shall establish any conditions of approval.~~The Town Board shall also establish its~~ consistent with the purposes of the HRDD and design standards, including requirements with respect to land use intensity and/or dwelling unit density, building height, lot and bulk standards, signage standards, and the land uses that will be permitted, including any accessory uses. ~~In considering the application, the Town Board shall determine whether the application meets the criteria for approval of a development master plan and shall also establish any conditions of approval. Conditions~~Such conditions of approval may include, without limitation:
- (a) Restrictions on the quantity, type and location of each permitted land use; as well as the size and height of the building in which any use will be located;
- (b) Responsibility for implementation of on-site and off-site infrastructure improvements demonstrated as necessary to service the ~~master~~planned development ~~plan project;~~
- (c) Provisions for the permanent preservation, and maintenance of required open spaces and buildings or sites of significant historical and/or archaeological value;
- (d) The establishment of standards, including design, performance and/or bulk standards, as determined appropriate by the Town Board, to govern the future approval by the Planning Board of detailed subdivisions and/or site plans ~~for~~

individual sections of the proposed development by the Planning Board; as set forth in Subsection C (7) below;

- (e) Requirements related to the phasing, timing and/or sequencing of the proposed development and related improvements; and
 - (f) Any other items relating to the health, safety and general welfare of the public.
- (5) Pursuant to To facilitate the approval ~~or conditional approval~~ of a ~~development master plan~~ Development Master Plan, the Town Board may enter into a development agreement or memorandum of understanding with the applicant. The purpose of such development agreement or memorandum of understanding shall be to establish, in writing and for the benefit of both parties, the specific parameters of the approval which ~~has been may be~~ granted by the Town Board ~~and upon which the applicant may rely in proceeding to arrange the financing and construction of the planned development~~, including any public improvements and/or land dedications required in connection therewith, and which the applicant may use to plan the financing and construction of the planned development.
- (6) The Town Board and the Planning Board may conduct joint meetings to facilitate Development Master Plan review.
- (7) Development master plan and site plan review required. The applicant shall submit a conceptual development master plan for the HRDD tract, which shall be reviewed and approved by the Town Board in accordance with Section 210-66 of this Chapter, and refined during the review process, and which shall upon approval be the Development Master Plan for the HRDD tract. After Town Board approval of the Development Master Plan, the planned development may be divided for purposes of, among other things, sale, leasing and other transfers, mortgaging, and financing, into separate development sites that contain any one or more of the approved uses, and each such development site may be the subject of individual site plan review and approval by the Planning Board, provided that: (i) all uses shall only be developed in accordance with any phasing plan approved by the Town Board as part of a development master plan; and (ii) prior to commencing construction of any development site or phase of the development, all demolition required to perform the development of such site or phase must be completed, and all State designated landfills on the portion of the land to be developed shall be closed, and remediated in accordance with all applicable federal, state and local requirements. Any Development Master Plan approval shall include conditions requiring that the applicant provide assurances, where appropriate as determined by the Town and the applicant in any applicable agreements, or other understandings, that demolition will be completed in a timely and complete manner. Each separate site plan shall conform to the site plan design standards set forth in Section 210-152 of this Chapter, except as provided in this Section 210-30. Prior to issuing any site plan approval(s), the Planning Board shall certify that the proposed site plan conforms to all conditions placed on the development master plan by the Town Board. The area, bulk and other dimensional requirements of the of the HRDD set forth in this Section 210-30 and established by the Town Board as part of the approved Development Master Plan shall apply to the entire land area of the HRDD tract as a whole, whether or not the HRDD tract is or will remain in one ownership, and shall not apply to individual or subdivided development sites and parcels.

D. Design standards for the HRD District shall be as follows:

(1) Comprehensive design. The HRD District allows flexibility to encourage innovative site planning and design. The planning process shall begin with an overall conceptual development ~~plan (i.e., the development~~ master plan) for the entire HRDD tract. This conceptual development master plan will address overall design, appropriate treatment for various land uses, and plans for ingress, egress, internal traffic circulation and utility service. consistent with the purposes of the HRDD set forth in Subsection A above. With respect to each building proposed in the conceptual development master plan, the applicant shall set forth the proposed use or uses of such building designated in terms of one or more of the use categories permitted in Subsection B above. Where portions of the proposed development are located in different geographic or topographic areas, the conceptual development master plan shall describe ~~the ranges of uses in each distinct area, and~~ how such areas will be separated or connected, as the case may be. ~~After approval of the conceptual development plan, the redevelopment of the HRD District may be divided into HRDD sections that contain various land use elements (e.g., commercial, residential, small-scale light industrial, etc.), and each HRDD section will be the subject of individual site plans and review.~~

(2) Design standards applicable to all buildings and uses.

~~(a) Uses proposed~~In addition to the design standards for ~~property abutting land developed for or zoned for residential use shall include a one hundred foot setback from the adjoining district. The setback shall be landscaped to a depth of not less than 25 feet in a location as approved by the Town Board. The landscaping shall consist of a mixture of evergreen and deciduous plantings. In approving a development master plan,plans set forth in Section 210-66 of this Chapter, the following standards shall apply to all buildings and uses in the ~~Town Board shall use its discretion to establish appropriate landscape buffer setbacks for redevelopment projects involving the adaptive reuse or the redevelopment of existing structures and previously disturbed land areas.~~ HRDD.~~

(a) Area and bulk requirements, including buffers, shall be as determined as set forth in Subsection C(3) set forth above.

(b) Architectural elements shall be used to provide visual interest and promote integration of design elements.

(c) Groups of related buildings shall be designed to present a visually attractive appearance in terms of combination and juxtaposition of architectural style and massing of buildings.

(d) Shared parking facilities are encouraged where feasible. The Planning Board shall ensure that appropriate cross-easements for use and ingress and egress to shared parking facilities are filed with the County Clerk as part of development plan approval. Where appropriate, the Planning Board may allow on-street parking, provided the street width is adequate to safely accommodate on-street parking.

(e) Building façade lines shall be varied to the extent practical to provide an interesting interplay of buildings and open spaces.

(f) The layout of residential areas shall create neighborhoods areas of appropriate scale and design, providing entrance features, landscaping, pedestrian and vehicular circulation suitable to the type of housing provided, as well as any

appropriate linkages to the commercial and recreational uses within the HRDD.

The Town Board shall find that the size, height and massing of any building, the number of residential units in each building and neighborhood area grouping of buildings is appropriate. The use of a mix of residential building and housing types is encouraged.

- (g) New buildings shall be designed with consideration of ~~their appearance from vantage points both within and outside of~~ the HRD District. Form, scale and massing of new adjacent buildings ~~shall not overpower the national landmark building or any other contributing building in the HRDD to ensure that the architecture and scale of all buildings harmonize with the integrated planned development and its surrounding landscape.~~
- (h) Residential neighborhoods and commercial/retail areas shall include pedestrian circulation and appropriate connection to the other elements of the HRDD, including ~~the shopping, commercial and recreation, and other support services that serve the residential component. uses.~~ Such a circulation system may include paved or unpaved walkways and bikeways of appropriate width to serve their intended function.
- (i) Appurtenances on buildings and auxiliary structures, such as mechanical equipment, water towers, carports, garages or storage buildings, shall receive architectural treatment consistent with that of principal buildings.
- (j) The Planning Board shall conduct an architectural review as part of site plan review.

F.-E. Additional design standards for national landmark buildings and contributing buildings and the historic Olmstead/Vaux landscape.

- (1) The portion of the development master plan, which covers the national landmark building and its contributing area, or any designated or eligible state and/or federal historic districts, including any new construction therein, should ~~follow traditional patterns of development, with prominent~~ include provisions for pedestrian activity, which may include village squares, sidewalks, and other walking paths and alleyways. The development master plan shall provide development that is sensitive to the national landmark building and contributing area as well as any designated or eligible state and/or federal historic districts.
- (2) The applicant shall prepare and submit to the Planning Board, for approval as part of site plan review for any proposed development at or adjacent to the appropriate section national landmarked building and its contributing area, or any designated or eligible state and/or federal historic districts, proposed design guidelines specifications for architectural design elements, including scale, height, massing, architectural details, materials, and color for any aspects of the buildings visible from public streets, paths, or parks. Design guidelines shall also be submitted to ~~cover~~ address landscape layout, location, and plant materials, and street and landscape lighting. The guidelines may provide for flexibility of standards in individual cases that do not impair the implementation of the overall design concept. The Planning Board may also require that the design guidelines address specified bulk, location, or parking design elements relating to the development. The Planning Board may require that any required design guidelines be referred to as part of the recorded in homeowners' association (HOA) or condominium documents.

- (3) The applicant shall demonstrate to the Planning Board that the State Historic Preservation Officer (SHPO) and, where applicable, the National Park Service (NPS) have been consulted regarding any proposed exterior alteration of the landmark building or a contributing building, ~~and regarding design guidelines for infill development in the eligible national register district, or landscape.~~
- ~~(4) Site plan criteria. The site plan for a HRDD project shall conform to the site plan design standards as set forth in § 210-152 of this chapter.~~
- ~~(5)~~ (4) Nothing herein shall be construed as to prevent the issuance of a building permit for repair of a building or structure so long as such repair is reviewed and approved by the Town of Poughkeepsie Building Department in advance of initiating any such work and does not result in the expansion of said building or structure, and the repair is necessary to prevent the deterioration of the building or structure or to prevent or remove an unsafe condition.

SCHEDULE C

Demolition Application Requirement Form

SCHEDULE C

Demolition Application Requirement Form

- Completed application form for each building
- Application fee for each building
- Asbestos Survey of each buildings/structures to be demolished
- Names and license/certifications for each demolition and abatement contractor
 - Provide insurance certifications for each contractor
- Abatement / Demolition Management Plan establishing for each Demolition Phase (as defined in Section 2.1(b) of the Development Agreement):
 - Site Plan showing existing buildings, and the structures (or portions thereof) to be removed
 - Phasing plan establishing the order in which the abatement and demolition of the buildings in that specific Demolition Phase shall occur
 - Staging areas
 - Dust control plan
 - Disposal destinations
 - Truck routing
 - Proposed hours of operation
 - Statement of procedures to ensure abatement work complies with all state and federal regulations concerning asbestos removal (Note: Applicant is solely responsible for ensuring its contractors, agents and representatives comply with said regulations)
- Storm Water:
 - Storm water management and erosion control plan if total land disturbance for entirety of demolition work is less than one acre
 - Storm Water Pollution Prevention Plan (SWPPP) if total land disturbance for entirety of demolition work is over one acre

SCHEDULE D

Escrow Agreement

ESCROW AGREEMENT

ESCROW AGREEMENT ("Agreement") made this 17th day of June, 2015, by and between TOWN OF POUGHKEEPSIE, having its principal offices located at 1 Overocker Road, Poughkeepsie, New York 12603 (the "Town"), and EFG/DRA HERITAGE, LLC, c/o DRA Heritage LLC, Development Manager, 47 River Road, Suite 200, Summit, New Jersey ("Developer").

WITNESSETH:

WHEREAS, the Town and Developer have entered into a certain Development Agreement dated June 17, 2015 (the "Development Agreement"), with respect to the proposed mixed-use redevelopment (the "Project") of the approximately 156 acre site owned by Developer and formerly known as the Hudson River Psychiatric Center (the "Project"); and

WHEREAS, pursuant to Section 5.2 of the Development Agreement, Developer is responsible and shall reimburse the Town for all of the reasonable costs and expenses paid by the Town to its Consultants for reviewing (i) the Action in accordance with the State Environmental Quality Review Act ("SEQRA") (subject to SEQRA's statutory fee limitation), (ii) the Land Use Applications, (iii) any site plan and subdivision applications, and (iv) Demolition Permit applications, and for all other reasonable third party consultant expenses incurred by the Town in furtherance of the Project (including, but not limited to, environmental consultant costs), and, subject to Section 5.3 of the Development Agreement, costs of defending a Third Party Proceeding ("Reimbursable Municipal Expenses"); and

WHEREAS, pursuant to Section 5.2 of the Development Agreement, Developer agreed to establish an Escrow Account to be used to pay Reimbursable Municipal Expenses in accordance with the terms and conditions of the Development Agreement and this Agreement; and

WHEREAS, the Town and Developer desire to appoint the Town Comptroller as escrow agent ("Escrow Agent"), to hold and administer the Escrow Account and to act in accordance with the provisions of this Agreement, and Escrow Agent agrees to serve in such capacity; and

WHEREAS, capitalized terms used but not defined in this Agreement shall have the meaning given to them in the Development Agreement.

NOW THEREFORE, in consideration of the mutual terms, covenants, and conditions contained herein, and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties agree as follows:

1. Escrow Agent. The Town and Developer hereby appoint Escrow Agent to act in accordance with the provisions of this Agreement, and authorize Escrow Agent to receive, deposit and withdraw funds from the Escrow Account to pay Reimbursable Municipal Expenses in accordance with this Agreement.

2. Initial Deposit. Escrow Agent acknowledges that on or about August 11, 2014, Developer delivered to Escrow Agent a check in the sum of Fifteen Thousand (\$15,000) Dollars (the "Initial Deposit"), and on or about March 30, 2015, delivered to Escrow Agent a check for Sixty Thousand (\$60,000) Dollars, as an Additional Deposit (as hereinafter defined). The Initial Deposit, and all Additional Deposits, shall be deposited in an interest bearing escrow account maintained by the Town, and all interest earned thereon shall be credited to the Escrow Account, for the account of Developer.
3. Term. Developer agrees that the Escrow Account shall be maintained until the later of:
(i) the date the last of the Town Determinations to be granted becomes final (which for purposes of this Agreement means that all periods/statutes of limitation for judicial review of the Town Determinations shall have expired, with no Third Party Proceeding having been taken or commenced, or if taken or commenced, having been finally adjudicated or dismissed); and (ii) the date all bills and invoices for Reimbursable Municipal Expenses have been received by Escrow Agent and paid in full in accordance with this Agreement (the "Termination Date"); provided, however, in no event shall any funds remain on deposit in the Escrow Account more than thirty (30) days after the Termination Date.
4. Additional Deposit(s).
 - (a) The Escrow Account shall be replenished by Developer to Twenty Five Thousand (\$25,000.00) Dollars (the "Minimum Balance") at any time after the date of this Agreement that the Escrow Account balance is below Ten Thousand (\$10,000.00) Dollars.
 - (b) Developer agrees to replenish the Escrow Account as set forth in Section 4(a) of this Agreement by making one or more additional deposits ("Additional Deposit(s)") in such amount or amounts as the Escrow Agent, in its reasonable discretion, shall determine is necessary to be deposited to the Escrow Account in order to maintain the Minimum Balance and satisfy all Invoices (as defined below) outstanding at the time the Escrow Agent requests that the Developer provide an Additional Deposit. All such Additional Deposit(s) shall be made by Developer within fifteen (15) business days after written request for same is given by Escrow Agent to Developer.
 - (c) In the event Developer fails or refuses to make an Additional Deposit in such amount and in the manner required in Sections 4(a) and 4(b) of this Agreement, then notwithstanding anything to the contrary in the Development Agreement or any other contract or agreement between the Town and Developer, the Town, and its employees, consultants, agents and/or representatives, shall, at the Town's option, be released from any requirement, liability or obligation to perform any further or additional services with respect to the Project unless and until such Additional Deposit is made.

5. Escrow Account. The Escrow Account shall be held by the Town in escrow and used only for the payment of Reimbursable Municipal Expenses, upon the following terms and conditions:

- (a) Use of Escrow Account. In the event that the Town incurs Reimbursable Municipal Expenses in connection with the development of the Project, Developer agrees that Escrow Agent shall, on behalf the Town and Developer, use funds on deposit in the Escrow Account to pay such Reimbursable Municipal Expenses.
- (b) Submission of Invoices. The Town shall require all bills and/or invoices from outside counsel and third-party professional consultants (each a "Consultant," and collectively, "Consultants") for Reimbursable Municipal Expenses (each an "Invoice," and collectively, "Invoices") to set forth, with reasonable specificity, (i) a description of the work performed, (ii) total time spent performing such work, (iii) the charge for such work, including individual billing rates, (iv) a specific statement of any disbursements charged, and (v) the total fees charged under that Invoice, and to that date under the current and all prior Invoices. Invoices shall be submitted by Consultants to the Escrow Agent, with a copy simultaneously provided to Developer as set forth in Section 6, below.
- (c) Approval of Invoices. Unless Escrow Agent receives a written objection from Developer to an Invoice within fifteen (15) business days after Developer's receipt of a copy of such Invoice, Escrow Agent shall promptly release from the Escrow Account, and pay, the invoiced amount (subject to receipt of an Additional Deposit, if the funds then on deposit in the Escrow Account are insufficient to pay the invoiced amount) Developer's written objection shall specifically describe the disputed tasks and associated costs. Notwithstanding the foregoing or anything to the contrary in this Agreement, Escrow Agent may pay from the Escrow Account any undisputed portion of any Invoice.
- (d) Appeal Procedure. In the event Developer shall object to an Invoice, Developer shall first endeavor in good faith to resolve such dispute with the Consultant by contacting the Town Director of Municipal Development, who will arrange the appropriate conversations with said Consultant, as necessary, as part of the dispute resolution process directly with the Consultant. If the dispute is not resolved within fifteen (15) days after Escrow Agent's receipt of Developer's written objection, Escrow Agent shall refer such dispute to the Town Board of the Town for review and determination. Escrow Agent shall provide the Town Board with true and correct copies of all written records relevant to the dispute, and the Town Board shall examine the record and issue a written decision regarding the reasonableness of the disputed payment. The determination of the Town Board shall be binding. This appeal process shall

not hinder or delay the performance of services by Consultants or review of the Project by the Town.

6. Notice. All notices required or desired to be given hereunder shall be in writing, shall be sent by e-mail (provided that if sent by e-mail, a copy shall also be given by first class mail), by nationally recognized overnight courier service, or certified mail, return receipt requested, addressed to the party for whom intended, and shall be deemed received upon the earlier of receipt or two (2) days after sending or mailing. Notices by fax will not be accepted. The notices shall be addressed as follows:

If to the Town: Town of Poughkeepsie
1 Overocker Road
Poughkeepsie, New York 12603
Attention: Neil A. Wilson, Esq., Director of Municipal
Development

with a copy to: Zarin & Steinmetz
Town of Poughkeepsie Special Land Use Counsel
81 Main Street, Suite 415
White Plains, New York 10601
Attention: Michael Zarin, Esq.

If to the Developer: EFG/DRA Heritage, LLC
c/o DRA Heritage LLC, Development Manager
47 River Road, Suite 200
Summit, New Jersey 07901
Attention: Nicholas Minoia, Managing Partner

With a copy to: DelBello Donnellan Weingarten Wise & Wiederkehr, LLP
One North Lexington Avenue, 11th Floor
White Plains, New York 10601
Attention: Peter J. Wise, Esq.

And to: EnviroFinance Group, LLC
Business/Environmental Manager
4601 DTC Boulevard, Suite 130
Denver, Colorado 80237
Attention: Chief Executive Officer

Richard I. Cantor, Esq.
Teahan & Constantino
2780 South Road, P.O. Box 1969
Poughkeepsie, New York 12601

or to such other address as either party shall desire by notice to the other party hereto.

7. Accounting. Escrow Agent shall provide to the Town and Developer a full written accounting of the Escrow Account and all payments to Consultants within thirty (30) days after any written request for such accounting.
8. Refund of Escrow Account. Within thirty (30) days after the Termination Date, Escrow Agent shall pay to Developer the balance of the funds on deposit in the Escrow Account.
9. Consultants Bound. The Town shall require all Consultants to acknowledge this Agreement, and agree as a condition of engagement to be bound by the terms and provisions of this Agreement.
10. Indemnity. Escrow Agent undertakes to perform only such duties as are specifically set forth in this Escrow Agreement. Escrow Agent shall not be liable for any action taken or omitted by Escrow Agent in good faith and believed by Escrow Agent to be authorized hereby or within the rights or powers conferred upon it hereunder, nor shall Escrow Agent be liable for any mistake of fact or error of judgment or for any acts or omissions of any kind, unless caused by Escrow Agent's own willful misconduct or gross negligence. Developer hereby indemnifies Escrow Agent and holds Escrow Agent harmless from and against any and all loss, damages, liability, claims, cost and expense, including reasonable attorneys' fees, incurred by the Escrow Agent in connection with Escrow Agent's duties hereunder, except to the extent that any of the same shall result from the willful misconduct, or grossly negligent act or omission, of Escrow Agent.
11. Entire Understanding. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof, who hereby acknowledge that there have been and are no representations, warranties, covenants or understandings other than those expressly set forth herein.
12. Modification. Neither this Agreement nor any provision hereof, shall be amended or modified, or deemed amended or modified, except by an agreement in writing duly subscribed and acknowledged with the same formality as this Agreement.
13. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties, their related entities, successors and assigns.
14. Interpretation. All matters regarding and/or affecting the interpretation of this Agreement and the rights of the parties hereto, shall be governed by the laws of the State of New York.
15. Severability. Should any provision contained within this Agreement be determined to be invalid or illegal, such invalidity or illegality shall not affect in anyway any other provision hereof, all of which shall continue, nevertheless, in full force and effect.

[Nothing further on this page; signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

TOWN OF POUGHKEEPSIE.

By: _____

Name: Todd Tancredi

Title: Supervisor

EFG/DRA HERITAGE, LLC

By: DRA Heritage LLC

By: _____

Name: Nicholas Minoia

Title: Managing Partner

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

TOWN OF POUGHKEEPSIE.

By: Todd Tancredi
Name: Todd Tancredi
Title: Supervisor

EFG/DRA HERITAGE, LLC
By: DRA Heritage LLC

By: _____
Name: Nicholas Minoia
Title: Managing Partner