

CONTRACT of SALE

THIS CONTRACT made effective as of the ____ day of _____, 2015 by and between CITY OF POUGHKEEPSIE, a Municipal Corporation, having its offices at City Hall, 62 Civic Center Plaza, Poughkeepsie, New York 12601 (“**Seller**”) and PELTON PARTNERS, LLC, a New York Limited Liability Company, having its offices at 25 Van Wagner Road, Poughkeepsie, New York 12603 (“**Purchaser**”).

WHEREAS, the execution of this Contract of Sale (“**Contract**”), and prior thereto a Negative Declaration pursuant to the New York State Environmental Quality Review Act (“**SEQRA**”) have been approved by resolutions of the City of Poughkeepsie Common Council (“**Common Council**”); and

WHEREAS, the execution of this Contract by the Mayor of the City of Poughkeepsie and the transfer of title to the Premises hereinafter described pursuant to the terms of this Contract have been approved by the Common Council:

1. Seller agrees to sell fee simple title to certain real property described in Section 2 hereof together with all interests therein and appurtenances thereto (collectively the “**Premises**”) to Purchaser and Purchaser agrees to purchase the Premises from Seller on the terms and conditions set forth herein.
2. The Premises are located in the City of Poughkeepsie, Dutchess County, New York and are more specifically described in **Schedule “A”** annexed to this Contract and made a part of this Contract. This sale includes any land lying in the bed of any street or highway, opened or proposed, in front of or adjoining the Premises to the center line thereof.
3. A copy of a survey dated May 27, 2015 by J. William Komisar, L.L.S. showing the Premises in graphic form is annexed to this Contract and made a part of this Contract as **Schedule “B”**.

4. The description of the Premises in the deed of conveyance shall be the description in **Schedule "A"** as such description may be modified by a description with a survey by a licensed surveyor obtained by Purchaser at Purchaser's expense provided that such survey shall be certified, inter alia, to Seller (see Paragraph 16 following).

5. The Purchase Price is SIX HUNDRED THOUSAND (\$600,000.00) DOLLARS payable as follows:

- a. TEN THOUSAND (\$10,000.00) DOLLARS Deposit heretofore paid by Purchaser to City and;
- b. FIVE HUNDRED, NINETY THOUSAND (\$590,000.00) DOLLARS payable upon closing of title in US Dollars.

The Purchase Price may be modified as hereinafter set forth in this Contract.

6. All money payable on this Contract, except for Closing adjustments, and unless otherwise specified herein, shall either be:

- a. cash but not over ONE THOUSAND (\$1,000.00) DOLLARS;
- b. good, certified check of Purchaser or official check of any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York payable to the order of Seller; or
- c. by wire transfer.

7. Seller shall deliver such title as any title insurance company of Purchaser's selection authorized to transact business in New York State will approve and insure subject only to the exceptions, if any, set forth in this Contract and such additional exceptions as are a standard part of the policy of title insurance issued by the title insurance company providing title insurance for Purchaser.

8. Purchaser agrees to make application for a title report from a title company of Purchaser's selection promptly upon the execution of this Contract and to cause such title company to deliver a copy of the report to the attorney for Seller, Paul Ackermann, Esq., City of Poughkeepsie

Corporation Counsel, City Hall, 62 Civic Center Plaza, Poughkeepsie, New York 12601.

9. Seller and Purchaser each represent to the other that it has not utilized the services of any real estate broker in connection with this transaction. Purchaser and Seller each hereby agree to indemnify and hold harmless the other against the claim of any broker or agent for a commission due by reason of this sale by virtue of alleged dealings had by such claimant with the indemnifying party or a representative of the indemnifying party if such claim is proved in a court of competent jurisdiction. This indemnity shall include all costs of defending any such claim including reasonable attorney fees. The indemnifying party shall be notified immediately in writing of any such claim and shall undertake its defense.

10. Closing means the settlement of the obligations of Seller and Purchaser to each other under this Contract, including the payment of the Purchase Price to Seller and the delivery to Purchaser of a Bargain and Sale Deed with Covenant Against Grantor's Acts in proper statutory form for recording so as to transfer full ownership (fee simple title) to the Premises, free of all encumbrances except as herein stated. The deed will contain a covenant by the Seller as required by Section 13 of the Lien Law. Seller shall pay the New York State tax for conveyance of real property pursuant to Tax Law Section 1402 unless this conveyance is exempt from the payment of such tax.

11. Any errors or omissions in computing apportionments at Closing shall be corrected. This provision shall survive the Closing of Title.

12. If there is anything affecting the sale which Seller is obligated to pay and discharge at Closing, Seller may use any portion of the Purchase Price to discharge it. As an alternative, Seller may deposit the money with the title insurance company employed by Purchaser and required by it to assure its discharge, but only if the title insurance company will insure Purchaser's title clear of the matter or insure against its enforcement out of the Premises.

13. If a title examination discloses judgments, bankruptcies or other returns against persons having names the same as or similar to that of Seller, Seller shall deliver a satisfactory detailed affidavit at Closing showing that they are not against Seller sufficient to cause the title company to omit such items.

14. If Purchaser defaults in the performance of its obligations under this Contract, Seller's sole remedy shall be to terminate this Contract and retain the downpayment.

15. If Seller defaults in the performance of its obligations under this Contract, Purchaser shall have such remedies as are available under law or equity, including but not limited to specific performance.

16. If Purchaser obtains a survey by a surveyor licensed in New York State, if such survey is certified to Seller, and if a copy of such survey map certified to Seller, with accompanying metes and bounds description is provided to Seller, then, and upon satisfaction of these conditions, Seller, at the request of Purchaser, will describe the Premises in the deed of Conveyance utilizing the Deed description provided by such survey and surveyor.

17. This Contract shall be interpreted and enforced under the laws of the State of New York. Any action or proceeding between Purchaser and Seller arising out of this Contract shall be brought and maintained in the courts of the State of New York in Dutchess County. The prevailing party in any legal action relating to the enforcement of this Contract shall be entitled to receive its reasonable attorney's fees and court costs incurred in connection therewith.

18. Any singular word or term herein shall also be read as in the plural whenever the sense of this Contract may require it.

19. This Contract may not be changed or cancelled except in writing.

20. This Contract shall also apply to and bind the distributees, heirs, executors, administrators, successors and assigns of the respective parties.
21. Each of the parties hereby authorize their attorneys to agree in writing to any changes in dates and time periods provided for in this Contract.
22. All prior understandings and agreements between Seller and Purchaser are merged in this Contract. This Contract completely expresses their full agreement.
23. This Contract is intended for the exclusive benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. There are no third party beneficiaries to this Contract.
24. In any construction of the terms of this Contract, none of its terms shall be construed against either Seller or Purchaser by reason of the fact that the Seller or Purchaser or their respective attorney drew the Contract since the final terms of this Contract are the result of negotiations by parties having equal bargain powers, with each of the parties having full access to legal representation.
25. The Premises will be delivered physically and legally free from occupancies and tenancies and in broom clean condition. Seller shall maintain heat in the existing structure at a minimum of 50 degrees fahrenheit or shall winterize the existing building if heat is not maintained.
26. During the time period commencing upon Seller's execution and delivery to Purchaser of a fully executed copy of this Contract, and expiring sixty (60) days thereafter (said 60-day period being referred to herein as the "Inspection Period"), Purchaser, at Purchaser's own cost and expense, may cause one or more studies, tests, analyses, reviews, "Phase I" and "Phase II" environmental assessments and other inquiries and investigation of the Premises (including but not limited to archeological testing, shovel tests, tests for lead and asbestos, and soil probing for rock and other soil conditions, the utilities and other facilities relating thereto) as Purchaser deems appropriate in order to determine whether the Premises are in a condition satisfactory to Purchaser. Seller shall allow entry on to the

Premises by Purchaser, and/or Purchaser's consultants and contractors for the purpose of carrying out Purchaser's Investigations. All physical activity performed as part of Purchaser's Investigations will be performed in a manner that will minimize any intrusion or alteration or disruption of the Premises. Upon the completion of Purchaser's Investigations, the Premises will be restored by Purchaser at Purchaser's expense substantially to the condition existing prior to the effectuation of Purchaser's Investigations. Purchaser agrees to hold harmless and indemnify Seller from any claims arising out of the acts or omissions of Seller in connection with Seller's entry on to the premises. Purchaser shall also provide liability insurance including Seller as a named insured in a form acceptable to the Corporation Counsel of the City of Poughkeepsie.

27. If Purchaser, in Purchaser's sole discretion, is not satisfied with the results of Purchaser's Investigations as set forth in Paragraph 26 preceding, Purchaser may terminate the Contract by written notice to Seller prior to the expiration of the Inspection Period. Upon such termination, there will be no further rights or recourse as between Purchaser and Seller.

28. The purchase price set forth in Paragraph 5 preceding is predicated upon the obtaining by Purchaser of land use approvals, as hereinafter defined, for 39 multi-family dwelling units. In the event that Purchaser obtains land use approvals for less than 39 dwelling units but not less than 33 dwelling units, the purchase price shall be reduced by FIFTEEN THOUSAND (\$15,000.00) DOLLARS for each dwelling unit less than 39 dwelling units for which land use approvals have been obtained; provided, however, that the purchase price shall not be less than FIVE HUNDRED TEN THOUSAND (\$510,000.00) DOLLARS notwithstanding the number of dwelling units for which land use approvals have been obtained. In the event that Purchaser obtains land use approvals for less than 33 dwelling units, Purchaser, at Purchaser's sole election, may proceed to close title pursuant to the terms of this Contract or may terminate this Contract.

29. The term "land use approvals" for purposes of this Contract shall mean site plan approval, area variances, certificates of appropriateness by the City of Poughkeepsie Historic District Commission, and such other approvals, if any, as may be required in order to obtain a building permit or permits for

the construction of the project for which land use approvals have been obtained. The term “land use approvals” also includes the satisfaction of all conditions contained in any conditional approvals. Purchaser reserves the right to terminate this Contract if any of the conditions contained in any conditional approvals are unacceptable to Purchaser.

30. Upon the execution of this Contract, Purchaser shall make application with all reasonable diligence and expedition for the obtaining of the land use approvals. Purchaser agrees to cooperate with and work with an Advisory Design Committee for the purpose of preparing and submitting a revised site plan. Such advisory design committee shall include a representative of the Poughkeepsie Alliance, a representative of Scenic Hudson, two members of the City of Poughkeepsie Common Council , and two individuals who reside and/or work in the vicinity of the premises to be selected by Purchaser. Each participating organization shall have the right to choose their representative(s), and the right to decline participation, if they so choose.

31. The reference to “obtaining of land use approvals” includes the passage of such period of time as constitutes the statutes of limitations for the judicial challenge to any of the approvals within the “land use approvals” and the passage of such time without any judicial challenge. In the event of any such judicial challenge, Purchaser, in Purchaser’s sole discretion, may terminate this Contract or may proceed with this transaction with the times for Purchaser to close being extended until the obtaining of final judicial determinations that are not appealable upholding the issuance of any challenged land use approvals.

32. The contingency contained in this Contract for obtaining land use approvals shall have a time duration of twenty-four (24) months commencing upon Seller’s execution and delivery to Purchaser of this Contract. Purchaser shall have the option of extending the twenty-four (24) month contingent period for an additional six (6) months in the event that land use approval applications remain pending as of the expiration of the initial twenty-four (24) month contingency for obtaining all land use approvals. The time limits herein set forth shall be extended on a day for day basis by such time periods during which judicial challenges, if any, leading to non

appealable determinations are pending. Closing shall take place within sixty (60) business days of the obtaining of all land use approvals including the satisfaction of all conditions in any conditional approvals as such time periods may be extended as hereinafter set forth. The contingency for obtaining land use approvals is inserted for the benefit of Purchaser and is waivable by Purchaser.

33. The purchase price includes all contributions to Seller by Purchaser previously discussed between Seller and Purchaser for Wheaton Park and Donegan Park and includes all City fees that may be charged to Purchaser other than planning, development, building and IDA application and review fees.

34. Purchaser, in addition to the purchase price, shall make a Twenty-Five (\$25,000.00) Dollar contribution to Seller simultaneously with closing to be utilized by Seller for a proposed pocket park across the street from the Premises. Purchaser, if Seller requests, at Purchaser's sole expense shall provide a schematic site plan for such pocket park at the expense of Purchaser.

35. The recitation of land use approvals includes an area variance to limit the parking spaces to be included on the site plan to be submitted by Purchaser to 1.5 parking spaces for each two bedrooms of development.

36. As part of Purchaser's application to the City of Poughkeepsie Planning Board for site plan approval, Purchaser may request the approval by the Planning Board of land banking of some portion of the 1.5 parking spaces that may be required. The location and number of spaces to be land banked including the protocol for building such spaces if necessary shall be determined as part of site plan review.

37. The Premises includes an existing building referred to as the "Pelton Mansion". Purchaser, as part of its application for land use approvals, shall provide for the restoration of the exterior of the Pelton Mansion in an historically appropriate manner. It is understood that the restoration of the exterior as recited is subject to the requirements for a Certificate of Appropriateness by the City of Poughkeepsie Historic District Commission.

38. There is annexed as Schedule "D" a recitation of the existing physical condition of the Pelton Mansion as of the time of execution of this Contract. Seller agrees to secure the Pelton Mansion and to maintain the Pelton Mansion in its existing physical condition as set forth in Schedule "D". To the extent that the Pelton Mansion is damaged, the risk of loss for such damage is upon Seller. Purchaser reserves the right to terminate this Contract in the event of such damage or to seek a mutually agreeable reduction in price sufficient to cover the additional cost to Purchaser for repair or restoration of such damage.

39. Purchaser, in good faith, and at Purchaser's sole discretion, will seek to obtain a not-for-profit or governmental tenant for all or a portion of the Pelton Mansion provided that any such user is able to reach agreement with Purchaser for rental and leasehold terms including a rental rate acceptable to Purchaser. In the event that no such tenant is interested in the use of the Pelton Mansion, or in the further event that Purchaser does not reach agreement with any such tenant for the use of all or a portion of the Pelton Mansion, then, and in such event, Purchaser may use the Pelton Mansion for dwelling units or other purposes permitted by the zoning code and the land use approvals to be obtained by Purchaser. Dwelling units placed in the Pelton Mansion shall be counted in the computation of the number of dwelling units set forth in Paragraph 28 preceding. Purchaser's obligation to seek to obtain a not-for-profit or governmental tenant as recited above is limited to a tenant whose use is permitted by the City of Poughkeepsie Zoning Law at the premises.

40. The Premises are currently tax exempt by reason of ownership by Seller. Purchaser's obligation to close title is contingent upon Purchaser obtaining final approval, including the passage of the statute of limitations for the obtaining of a non appealable judicial determination if such approval is challenged by a lawsuit, of a sales tax and mortgage tax exemption and a Payment In Lieu Of Tax Agreement (PILOT) from the City of Poughkeepsie Industrial Development Agency (CPIDA) for Purchaser's development. If Purchaser terminates this Contract by reason of inability to obtain CPIDA assistance that is acceptable to Purchaser, the Deposit shall not be refunded

to Purchaser but, rather, shall remain with Seller.

41. Purchaser agrees to include within its application for site plan approval a provision for limited public access on the Premises for passive activities such as walking areas and sitting benches on a portion of the Premises with rules and regulations for time of access, conduct during access and other rules of behavior. The purpose of this paragraph is to allow limited public access in a manner that is consistent with the private use of the Premises. The location of the area for public access shall be determined by the approved site plan to be granted by the City of Poughkeepsie Planning Board. There is (annexed as Schedule "C") a one-sheet preliminary site plan showing a hatched area indicating a limited public access area. Purchaser agrees that the revised site plan that it submits to the City of Poughkeepsie Planning Board will contain a, limited public access area having not less than the hatched area shown on Schedule "C". The limited public access area will be designed to be ADA compliant. While it is understood and accepted that the Purchaser intends to construct a new structure on the western side of the property, (as shown on the site plan shown on Schedule "C") and northwest of the existing Pelton House, the Purchaser's design of the revised and final site plan will work towards creating additional public access area if such area can be integrated in to the Purchaser's final development plan. The exact boundaries of the public access area, as well as access to this area, will be defined in the approved site plan to be granted by the City of Poughkeepsie Planning Board. The final approved limited public access area shall not be modified by the seller, purchaser or other party without approval by the City of Poughkeepsie Planning Board.

42. Purchaser's obligation to close is contingent upon Purchaser obtaining a commitment from an institutional mortgage lender for a construction loan including funds to finance the closing of title and a permanent loan - both on commercially reasonable terms. This financing contingency shall terminate not later than sixty (60) days from the date of land use approvals as such date is set forth in this Contract.

43. The reasonable expenses of title examination, survey, engineering fees, planning fees, and legal fees are hereby made liens on the Premises

collectible out of the Premises. Such liens shall not continue after default in performance of the Contract by Purchaser.

44. Seller makes the following representations and warranties, each of which is material, and is relied upon by Purchaser:

- a. By entering into this Contract or conveying the Premises to Purchaser, Seller will not thereby breach any contract to which Seller is a party or violate any judgment, order, or decree of any Court or arbitrator that is binding on Seller;
- b. No action, litigation, government investigation concerning the transaction provided for in this Contract is pending;
- c. To the best of Seller's knowledge and belief (without any duty of inquiry or investigation) no material that is classified as a hazardous substance, hazardous waste, toxic material, or pollutant under any federal, state or local law or regulation or that causes or may cause a health hazard or nuisance upon, or a waste to the Premises exist at, in, on, under or about the Premises;
- d. The execution, delivery and performance of this Contract by Seller has been duly and validly authorized by the Common Council of the City of Poughkeepsie;
- e. This Contract is a valid and binding obligation of Seller and is enforceable according to its terms;
- f. Seller is the lawful and sole owner of the Premises in fee simple and has the right to sell the Premises to Purchaser;
- g. Seller will have good, marketable and insurable title to the Premises at closing, free and clear of all liens, security interest, encumbrances, charges, claims, liabilities and obligations as

herein elsewhere set forth;

The foregoing representations and warranties shall remain true at all times from the execution of this Contract through closing date or thereafter if this Contract provides for survival after closing.

45. Purchaser makes the following representations and warranties, each of which is material and is relied upon by Seller:

- a. Purchaser is a New York Limited Liability Company validly existing and in good standing under the laws of the State of New York and Purchaser has all requisite power and authority to enter into and execute this Contract;
- b. The execution delivery and performance of this Contract by Purchaser has been duly and validly authorized by Purchaser and is a valid and binding obligation of Purchaser and is enforceable according to its terms.
- c. By entering into this Contract, or by closing title pursuant to this Contract, Purchaser will not thereby breach any other obligation to which Purchaser is a party or violate any judgment, order or decree of any court or other arbitrated that is binding on Purchaser.

The forgoing representations and warranties shall remain true at all times from the execution of this Contract through closing date or thereafter if this Contract provides for survival.

46. Closing of title shall take place at City of Poughkeepsie, City Hall, or at the location designated by the lender providing financing for Purchaser's purchase of the Premises and construction of the project.

47. Purchaser may assign this Contract to Steven Tinkelman and/or Wayne Nussbickel individually or to an entity in which Steven Tinkelman

and/or Wayne Nussbickel have not less than a fifty (50%) percent ownership interest.

48. All notices given under this Contract shall be in writing and shall be sent postage prepaid by either:

- a. Certified Mail Return Receipt Requested; or
- b. Delivery on the next business day with a nationally recognized express courier; or
- c. Email.

All such notices shall be sent to the following addresses or such addresses as are changed by the parties by notices given as herein set forth:

- a. To Seller, City of Poughkeepsie, New York, Attention John C. Tkazyik, Mayor, City Hall, 62 Civic Center Plaza, Poughkeepsie, New York 12601 with a copy to City of Poughkeepsie, Attention Corporation Counsel, City Hall, 62 Civic Center Plaza, Poughkeepsie, New York 12601;
- b. To Purchaser, Pelton Partners, LLC, c/o Steven Tinkelman, 25 Van Wagner Road, Poughkeepsie, New York 12603 with a copy to Teahan & Constantino LLP, 2780 South Road, P.O. Box 1969, Poughkeepsie, New York 12601, Attention Richard I. Cantor, Esq.

Notices shall be deemed given as of the date such notice is postmarked if sent by certified mail, or is placed with a nationally recognized express courier if sent by express courier, or email notice is sent and received.

49. This Contract may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one in the same instrument.

50. This Contract shall not be binding on Purchaser or Seller until it is executed by both parties and delivered by each party to the other.

51. If the title search or the survey ordered by Purchaser, or either of them, disclose exceptions or other matters to which Purchaser objects and written notice thereof is given by Purchaser to Seller, Seller shall have until closing (but in any event at least fifteen (15) days after its receives notice of Purchaser's objections) in which to cause such defects to be removed or insured over by the Title Company selected by Purchaser at Seller's expense in the form of affirmative title insurance coverage or endorsement (collectively "Curative Endorsements") in form and substance acceptable to Purchaser. If Seller fails to secure the removal of or the receipt of Curative Endorsements over such title or survey defects or gives written notice to Purchaser that it cannot remedy any such defects (in each case other than with respect to liens and encumbrances to secure indebtedness which are of a definite or ascertainable dollar amount and which Seller shall be unconditionally obligated to remove concurrently with the closing and in which no event shall be permitted hereunder) then, the Purchaser, at Purchaser's election, may elect to accept such title as Seller can convey (with the right with respect to each then unremoved unpermitted exception to deduct from the purchase price amounts secured by any unpermitted lien or monetary encumbrance of a definite or ascertainable amount) or may on that ground reject the acceptance of the deed conveying such title. Upon such rejection, this Contract shall terminate.

52. Seller shall deliver the premises in a physical condition described as "as is" as of the time of the execution of this Contract as documented in Exhibit "D" annexed.

53. Seller disclaims representations concerning surface or subsurface soil conditions or water conditions, and suitability of the premises for building purposes. The disclaimers contained in this paragraph are intended to be specific disclaimers sufficient to preclude any subsequent claim for misrepresentation or failure to disclose.

54. The premises are conveyed subject to the Building and Zoning Laws of the City of Poughkeepsie as such laws exist as of the date of execution of this Contract. The provisions of this Paragraph shall survive the closing of title.

55. All prior statements and representations by Purchaser in a response to a Request for Proposal are superceded by the terms of this Contract.

56. The deed to be delivered pursuant to this Contract shall contain provisions requiring Purchaser, if required by law for the work proposed by Purchaser, to obtain a Building Permit for the work described in the land use approvals obtained pursuant to this Contract within one (1) year of the date of the deed (which shall be dated the day of closing of title) and to obtain a Certificate of Occupancy for all of the approved development, or, if development is approved in phases, for the first phase of the development within two (2) years from the obtaining of a building permit. Such deed provision shall be subject to the lien of any mortgage placed on the premises in connection with the development of the premises.

57. The deed to the premises shall contain a restrictive covenant in form and substance satisfactory to the City of Poughkeepsie Corporation Counsel that no self-service credit or coin operated telephone shall be placed on the exterior of the Premises.

CITY OF POUGHKEEPSIE

BY: _____
JOHN C. TKAZYIK, MAYOR

PELTON PARTNERS, LLC

BY: _____
STEVEN TINKELMAN
MANAGING MEMBER