Transcript Document No. 2

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY

(TOWN OF HEMPSTEAD, NEW YORK)

and

BROOKE POINTE, LLC

LEASE AGREEMENT

Dated as of October 1, 2014

Town of Hempstead Industrial Development Agency
(Brooke Pointe, LLC 2014 Facility)

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SCHEDULE A Schedule of Definitions

THIS LEASE AGREEMENT, dated as of October 1, 2014 (the "**Lease Agreement**"), is between the TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 350 Front Street, 2nd Floor, Hempstead, New York 11550 (the "**Agency**"), and BROOKE POINTE, LLC (formerly known as Hewlett Harbor Point, LLC), a limited liability company, organized and existing under the laws of the State of New York, having an office c/o D & F Development Group LLC, 100 Schoolhouse Road, Levittown, New York 11756 (the "**Company**").

RECITALS

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "**State**"); and

WHEREAS, the aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State; and

WHEREAS, the aforesaid act further authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvement, and all real and personal property, including but not limited to machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act and Chapter 529 of the Laws of 1971, as amended (collectively, the "**Act**"), the Agency was created and is empowered to undertake the providing, financing and leasing of the Facility defined below; and

WHEREAS, the Agency has agreed to assist in the acquisition of an approximately 0.77 acre parcel of land located at 100 Gibson Boulevard, Village of Valley Stream, Town of Hempstead, Nassau County, New York (the "**Land**"), the acquisition, demolition, construction and equipping of an approximately 58,700 square foot four (4) story midrise building to be located thereon, including, but not limited to (i) the construction of 39 multifamily units consisting of nineteen (19)-1 bedroom units and twenty (20)-2 bedroom units, (ii) the installation of energy star appliances in each unit, common laundry space for the residents, and (iii) the construction of seventy-nine (79) onsite parking spaces (collectively, the "**Improvements and Equipment**"; and, together with the Land, the "**Facility**"), all to be leased by the Agency to the Company, to be used as a multifamily affordable housing facility, including the following as they relate to the appointment of the Company as Agent of the Agency with respect to the acquisition, construction, equipping and furnishing of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals

and other uses of tools, machinery and equipment in connection with the acquisition, demolition, construction, equipping and furnishing of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the acquisition, demolition, construction, equipping and furnishing of the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under such Facility; and

WHEREAS, the Company has agreed to lease the Land and the Improvements to the Agency pursuant to the terms of a certain Company Lease Agreement, dated as of October 1, 2014 (the "**Company Lease**"), by and between the Company and the Agency; and

WHEREAS, the Company has agreed to transfer title to the Equipment to the Agency pursuant to a Bill of Sale, dated the Closing Date (the "**Bill of Sale**"); and

WHEREAS, the Agency has agreed to sublease and lease the Facility to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions set forth in this Lease Agreement; and

WHEREAS, in order to define the Company's obligations regarding payments-in-lieu of taxes, the Agency and the Company will enter into a Payment-in-Lieu-of-Tax Agreement, dated as of October 1, 2014 (the "**PILOT Agreement**"), by and between the Agency and the Company, whereby the Company agrees to make, or cause to be made, certain payments in lieu of taxes to the Taxing Authorities (as defined therein); and

WHEREAS, the Company will enter into a Recapture Agreement, dated as of October 1, 2014 (the "**Recapture Agreement**"), from the Company to the Agency in order to reflect the repayment of obligations of the Company upon the occurrence of a Recapture Event (as defined therein); and

WHEREAS, as a condition to an inducement for the Agency to enter into and perform the transactions contemplated by this Lease Agreement, the Agency will require the Company to enter into an Environmental Compliance and Indemnification Agreement, dated as of October 1, 2014 (the "**Environmental Compliance and Indemnification Agreement**"), by and between the Company and the Agency.

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to construct and equip the Facility in accordance with the Plans and Specifications.

AGREEMENT

For and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

ARTICLE I
DEFINITIONS

All capitalized terms used in this Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A.

ARTICLE II
REPRESENTATIONS AND COVENANTS

Section 2.1 Representations and Covenants of Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established and validly existing under the provisions of the Act and has full legal right, power and authority to execute, deliver and perform each of the Agency Documents and the other documents contemplated thereby. Each of the Agency Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Agency.

(b) The Agency will acquire a leasehold interest in the Land and cause the Improvements to be constructed and the Equipment to be acquired and installed and will lease and sublease the Facility to the Company pursuant to this Lease Agreement, all for the Public Purposes of the State.

(c) By resolution adopted on December 18, 2013, the Agency determined that, based upon the review by the Agency of the materials submitted and the representations made by the Company relating to the Facility, the Facility would not have a "significant impact" or "significant effect" on the environment within the meaning of the SEQR Act.

(d) Neither the execution and delivery of any of the Agency Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Agency Documents and the other documents contemplated thereby, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law or ordinance of the State or any political subdivision thereof or of the Agency's Certificate of Establishment or By-Laws, as amended, or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-Laws, restriction, agreement or instrument, except for Permitted Encumbrances.

(e) Each of the Agency Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms.

(f) The Agency has been induced to enter into this Lease Agreement by the undertaking of the Company to utilize the Facility in the Town of Hempstead, New York in furtherance of the Public Purposes of the Agency.

(g) The Agency will execute, acknowledge (if appropriate) and deliver from time to time such instruments and documents which are necessary or desirable to carry out the intent and purposes of this Lease Agreement.

Section 2.2 Representations and Covenants of Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized and validly existing under the laws of the State of New York and has full legal right, power and authority to execute, deliver and perform each of the Company Documents and the other documents contemplated thereby. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company.

(b) Neither the execution and delivery of any of the Company Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Company Documents and the other documents contemplated thereby will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof as in effect as of the date of this Lease Agreement, the Company's Articles of Organization or its Operating Agreement, as amended, or any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Company under the terms of any such law, ordinance, Articles of Organization or its Operating Agreement, as amended, restriction, agreement or instrument, except for Permitted Encumbrances.

(c) The Facility and the design, acquisition, demolition, construction, equipping, furnishing and operation thereof will conform with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. The Company shall defend, indemnify and hold harmless the Agency from any liability, including reasonable attorney's fees, resulting from any failure by the Company to comply with the provisions of this subsection.

(d) Except as otherwise prohibited in any Mortgage in connection with the financing or refinancing of the acquisition, demolition, construction, equipping and furnishing of the Facility, the Company shall perform or cause to be performed for, and on behalf of the Agency each and every obligation of the Agency under and pursuant to any Mortgage in connection with the financing or refinancing of the acquisition, demolition, construction and equipping of the Facility.

(e) Each of the Company Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

(f) The Company will complete or has completed the demolition, construction and equipping of the Facility substantially in accordance with the terms and provisions of the Plans and Specifications.

(g) The Facility is and will continue to be a "Project" as such quoted term is defined in the Act, as such is in effect as of the date of this Lease Agreement. The Company will not take any action, or fail to take any action, which action or failure to act would cause the Facility to not constitute a "Project" as such quoted term is defined in the Act.

(h) The Company hereby represents to the Agency that the Agency's involvement with the Facility will not result in the removal of an industrial or manufacturing plant from one area of the State to another area of the State or in the abandonment of one or more plants of the Facility occupant(s) located in the State unless the Agency's involvement with the Facility (i) is reasonably necessary to discourage the Facility occupant(s) from removing such other plant or facility to a location outside the State, or (ii) is reasonably necessary to preserve the competitive position of the Facility occupant(s) in its respective industry.

(i) The Company agrees to take any actions deemed reasonably necessary by the Agency, or its Chairman, Vice Chairman, Executive Director and Chief Executive Officer, Deputy Executive Director and Chief Financial Officer, or any member or officer of the Agency, counsel to the Agency or Transaction Counsel, in order to ensure compliance with Sections 2.2(g), 2.2(h) and 9.3 of this Lease Agreement. Without limiting the generality of the foregoing, the Company will provide the Agency with any and all reasonably necessary information and materials describing proposed project occupants (other than residential sublessees) upon the reasonable request of the Agency.

(j) The Company, as agent for the Agency, shall comply with all provisions of the Labor Law, the Executive Law and the Civil Rights Law of the State applicable to the acquisition, demolition, construction, renovation, equipping and furnishing of the Facility and shall include in all construction contracts all provisions which may be required to be inserted therein by such provisions. The Company shall comply with the relevant policies of the Agency with respect to such laws which are set forth as Exhibit C attached hereto. The Company further agrees to use reasonable efforts to ensure that ninety percent (90%) of the workers hired by the Company, its contractors or sub-contractors for the performance of work in connection with the demolition, construction, renovation or equipping of the Facility shall be hired from within Nassau or Suffolk Counties, and that ninety percent (90%) of the building materials purchased by the Company, its contractors or sub-contractors used in connection with the acquisition, demolition, construction, renovation and equipping of the Facility shall be purchased from within Nassau or Suffolk Counties. Except as provided in the second and third sentences of this subsection, the

provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

(k) Facilities and property that are primarily used in making retail sales of goods and services to customers who personally visit the Facility will not constitute more than one-third (1/3) of the total costs of the Facility, except in accordance with New York General Municipal Law Section 862.

ARTICLE III
FACILITY SITE AND TITLE INSURANCE

Section 3.1 Agreement to Convey to Agency. The Company has conveyed or has caused to be conveyed to the Agency (i) a valid leasehold interest in the Land, including any structures or other improvements thereon, and (ii) lien-free title to the Equipment, in each case except for Permitted Encumbrances, and will convey or cause to be conveyed to the Agency lien-free title to the Equipment and Improvements acquired after the date hereof.

Section 3.2 Title Insurance.

(a) The Company has obtained or will obtain (i) a leasehold insurance policy for the benefit of the Agency insuring the Agency's leasehold interest in the Land and the Improvements in the amount of $500,000, and (ii) a mortgage title policy for the benefit of the Lender, if any, insuring the Lien on the Land and the Improvements in such amounts as shall be required by the Lender(s); in each case except for Permitted Encumbrances.

(b) During the term of this Lease Agreement, any proceeds or claims derived from the leasehold title insurance policy shall be used first to indemnify and hold the Agency harmless to its satisfaction; second to satisfy any claims on title; and third any excess shall be paid to the Company, subject to the lien of the Mortgage.

Section 3.3 Subordination of Lease Agreement. This Lease Agreement and any and all modifications, amendments, renewals and extensions hereof is subject and subordinate to any Mortgage and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

Section 3.4 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Facility and the interest therein to be conveyed by this Lease Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Facility and the leasehold interests therein are securing the financial obligations of the Company. The Facility and the leasehold interests therein secure the obligations of the Company to the Agency under the PILOT Agreement, the Recapture Agreement, the Environmental Compliance and Indemnification Agreement and this Lease Agreement, including the Company's obligation to acquire, demolish, construct, equip, furnish and maintain the Facility on behalf of the Agency and the Company's obligation to indemnify and hold harmless the Agency.

ARTICLE IV
ACQUISITION, CONSTRUCTION, EQUIPPING AND FURNISHING OF FACILITY; MAKING OF THE LOAN

Section 4.1 Acquisition, Demolition, Construction, Equipping and Furnishing of Facility.

(a) The Company agrees that, on behalf of the Agency, it will acquire, lease, construct, equip and furnish the Facility substantially in accordance with the Plans and Specifications.

(b) The Company may revise the Plans and Specifications from time to time without the consent or approval of the Agency; provided that the Facility shall retain its overall configuration and intended purposes and shall remain a "Project" as defined in the Act.

(c) Except as set forth in Section 6.2 hereof, title to all materials, equipment, machinery and other items of Property incorporated or installed in the Facility shall vest in the Agency immediately upon the Company's obtaining an interest in or to the materials, equipment, machinery and other items of Property. The Company shall execute, deliver and record or file all instruments reasonably necessary or appropriate to so vest such title in the Agency and shall take all action reasonably necessary or appropriate to protect such title against claims of any third Persons.

(d) The Agency hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency (i) to acquire, demolish, construct, equip and furnish the Facility in accordance with the Plans and Specifications, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for constructing the Improvements and acquiring and installing the Equipment with the same powers and with the same validity as the Agency could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in the construction of the Improvements and the acquisition and installation of the Equipment from funds made available therefor in accordance with this Lease Agreement, and (iv) to ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt, or writing in connection with construction and completion of the Improvements and the acquisition and installation of the Equipment, and to enforce the provisions of any contract, agreement, obligation, bond or other performance security.

(e) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1.

(f) The Company, as agent for the Agency, shall comply with all provisions of the Labor Law of the State applicable to the acquisition, demolition, construction and equipping of the Facility and shall include in all construction contracts all provisions which may be required to be inserted therein by such provisions. Except as provided in the

preceding sentence, the provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

Section 4.2 Certificates of Completion. To establish the Completion Date, the Company shall deliver to the Agency and the Lender, if any (i) a certificate signed by an Authorized Representative of the Company (a) stating that acquisition, demolition, construction, equipping and furnishing of the Facility has been completed in accordance with the Plans and Specifications therefor, as same may be revised in accordance with Section 4.1(b) and (b) stating that the payment of all labor, services, materials and supplies used in such acquisition has been made or provided for; and (ii) such certificates as may be satisfactory to the Lender, including without limitation, a final or temporary certificate of occupancy, if applicable. The Company agrees to complete the acquisition, demolition, construction, equipping and furnishing of the Facility on or before December 31, 2016 (the "**Completion Date**").

Section 4.3 Completion by Company.

(a) The Company agrees to pay, for the benefit of the Agency, all costs of constructing and equipping the Improvements and the acquisition and installation of the Equipment in accordance with the Plans and Specifications. Title to all portions of the Facility installed or constructed at the Company's cost or expense shall immediately upon such installation, construction or equipping vest in the Agency. The Company shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's leasehold interest in the Facility.

(b) The Company shall not be entitled to any reimbursement for such excess cost or expense from the Agency nor shall it be entitled to any diminution or abatement of any other amounts payable by the Company under this Lease Agreement.

Section 4.4 Remedies to be Pursued Against Contractors, Subcontractors, Materialmen and their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety or other Person which the Company deems reasonably necessary, and in such event the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding.

Section 4.5 Construction Signage. The Agency shall have the right to erect on the Facility site at the Agency's own cost and expense a standard sign stating that economic

benefits in connection with the Facility has been provided through the Agency. The sign shall be located on the site in an area consented to by the Company.

Section 4.6 Sales Tax Exemption.

(a) Agency's Exempt Status. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of Sales and Use Taxes. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required. Notwithstanding the foregoing, the Agency makes no representation to the Company, any Agent or any third party that any Sales Tax Exemption is available under this Lease Agreement.

(b) Scope of Authorization of Sales Tax Exemption. The Agency hereby authorizes the Company, subject to the terms and conditions of this Lease Agreement, to act as its agent in connection with the Facility for the purpose of effecting purchases and leases of Eligible Items so that such purchases and leases are exempt from the imposition of Sales and Use Taxes. The Agency's authorization with respect to such Sales Tax Exemption provided to the Company and its Agents pursuant to this Lease Agreement and any Sales Tax Agent Authorization Letters issued hereunder shall be subject to the following limitations:

(i) The Sales Tax Exemption shall be effective only for a term commencing on the Closing Date and expiring upon the earliest of (A) the termination of this Lease Agreement, (B) the Completion Date, (C) the completion of the Facility as provided in Section 4.2 hereof, or (D) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2.

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company is in material default, beyond any applicable cure period, under this Lease Agreement until such default is cured to the reasonable satisfaction of the Agency.

(iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Lease Agreement.

(iv) The Sales Tax Exemption shall only be utilized for Eligible Items which shall be purchased, incorporated, completed or installed for use only by the Company at the Facility (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Item to a Person as shall not constitute the Company), it being the intention of the Agency and the Company that the sales and use tax exemption shall not be made available with respect to any Eligible Item unless such item is used solely by the Company at the Facility.

(v) The Sales Tax Exemption shall not be used for any Ineligible Item.

(vi) The Sales Tax Exemption shall not be used to benefit any person or

entity, including any tenant or subtenant located at the Facility, other than the Company, without the prior written consent of the Agency.

(vii) By execution by the Company of this Lease Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of the Sales Tax Exemption by the Company or by any Agent is strictly for the purposes stated herein.

(viii) Upon the Termination Date, the Company and each Agent shall cease being agents of the Agency, and the Company shall immediately notify each Agent in writing of such termination and that the Sales Tax Agent Authorization Letter issued to any such Agent is likewise terminated.

(ix) The Company agrees that the aggregate amount of Sales Tax Savings realized by the Company and by each Agent of the Company in connection with the Facility shall not exceed in the aggregate the Maximum Sales Tax Savings Amount.

(c) Procedures for Appointing Agents. If the Company desires to seek the appointment of a contractor, a subcontractor or other party to act as the Agency's agent (an "**Agent**") for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this Lease Agreement, it must complete the following steps:

(i) General Municipal Law Section 874(9) and Form ST-60 and the regulations relating thereto require that within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity. Accordingly, for each Agent, the Company must complete and submit Form ST-60 to the Agency.

(ii) The appointment of each such Agent as an agent for the Agency shall be effective only upon execution by the Agency and the Agent of a Sales Tax Agent Authorization Letter in the form attached hereto as Exhibit E, following receipt of the completed Form ST-60 by the Agency. The determination whether or not to approve the appointment of an Agent shall be made by the Agency, in its sole but reasonable discretion. If executed, a completed copy of the Sales Tax Agent Authorization Letter shall be sent to the Company. The Company shall provide a copy of such executed Sales Tax Agent Authorization Letter together with a copy of this Lease Agreement to the Agent within five (5) Business Days after receipt thereof by the Company.

(iii) The Company shall ensure that each Agent shall observe and comply with the terms and conditions of its Sales Tax Agent Authorization Letter and this Lease Agreement.

(d) Form ST-60 Not an Exemption Certificate. The Company acknowledges that the executed Form ST-60 designating the Company or any Agent as an agent of the Agency shall not serve as a sales or use tax exemption certificate or document. Neither the Company nor any other Agent may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(e) Form ST-123 Requirement. As an agent of the Agency, the Company agrees that it will, and will cause each Agent to, present to each seller or vendor a completed and signed Form ST-123 for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any Agent, as agent for the Agency, for the construction, repair and equipping of the Facility. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. The Company shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six years from the date thereof. For each Agent the Form ST-123 shall be completed as follows: (i) the "Project Information" section of Form ST-123 should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

(f) Form ST-340 Filing Requirement. The Company shall annually (currently, by each February 28th with respect to the prior calendar year) file a Form ST-340 with NYSDTF with a copy to the Agency, in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of NYSDTF, of the value of all Sales Tax Savings claimed by the Company and each Agent in connection with the Facility. Should the Company fail to comply with the foregoing requirement, the Company and each Agent shall immediately cease to be agents of the Agency in connection with the Facility without any further action of the Agency and the Company shall immediately and without demand notify each Agent appointed by the Agency in connection with the Facility of such termination.

(g) Sales Tax Registry Filing Requirement. No later than August 1st of each year, the Company shall file with the Agency a completed Sales Tax Registry, in the form attached hereto as Exhibit F, which accounts for all Sales Tax Savings realized by the Company and each Agent during the prior annual period ending on the preceding June 30th (or such shorter period beginning on the Closing Date and ending on the preceding June 30th), unless the Termination Date occurred prior to such June 30th. Within ten (10) days after the Termination Date, the Company shall file with the Agency a completed Sales Tax Registry which accounts for all Sales Tax Savings realized by the Company and each Agent during the period from the preceding July 1st to the Termination Date.

(h) Special Provisions Relating to State Sales Tax Savings.

(i) The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, Agents, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3) (the "**Special Provisions**"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Lease Agreement and the Special Provisions, the Special Provisions shall control.

(ii) The Company acknowledges and agrees that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company State Sales Tax Savings taken or purported to be taken by the Company, any Agent or any other person or entity acting on behalf of the Company to which the Company is not entitled or which are in excess of the Maximum Sales Tax Exemption Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company failed to comply with a material term or condition to use property or services in the manner required by this Lease Agreement. The Company shall, and shall require each Agent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the "**Commissioner**") to assess and determine State Sales and Use Taxes due from the Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(i) Subject to the provisions of Section 4.6(h) hereof, in the event that the Company or any Agent shall utilize the Sales Tax Exemption in violation of the provisions of this Lease Agreement or any Sales Tax Agent Authorization Letter, the Company shall promptly deliver notice of same to the Agency, and the Company shall, upon demand by the

Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Company or any Agent (as applicable).

(j) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (y) to indicate in reasonable detail those costs for which the Company or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Company under this Section 4.6.

ARTICLE V
DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1 Demise of Facility. The Agency hereby subleases and leases the Facility, consisting of the Land as particularly described in Exhibit A attached hereto, the Improvements and the Equipment as particularly described in Exhibit B attached hereto, to the Company and the Company hereby takes the Facility from the Agency upon the terms and conditions of this Lease Agreement.

Section 5.2 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Facility (subject to Sections 3.3, 8.3 and 10.2 and 11.1 hereof) and the subleasehold and leasehold estate created hereby shall commence on the Closing Date and the Company shall accept possession of the Facility on the Closing Date.

(b) Except as provided in Section 10.2 hereof, the subleasehold and leasehold estate created hereby shall terminate at 11:59 p.m. on December 31, 2035, or on such earlier date as may be permitted by Section 11.1 hereof (the "**Lease Term**").

(c) Except as provided in Sections 3.3, 8.3 and 10.2 hereof, the Agency shall neither take nor suffer or permit any action to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

Section 5.3 Rents and Other Amounts Payable.

(a) The Company shall pay to the Agency on the Closing Date the balance of the Agency's administrative fee in the amount of $97,329.74 (equal to the administrative fee of $95,511.74 plus the public hearing notice and transcript costs of $818.00, plus the

initial compliance fee of $2,500.00, less the $1,500.00 application fee previously paid to the Agency). The Company shall pay basic rent for the Facility as follows: One Dollar ($1.00) per year commencing on the Closing Date and on each January 1 thereafter during the term of this Lease Agreement. In addition, the Company shall pay to the Agency an annual compliance fee of $1,000 on or before January 1 of each year commencing on January 1, 2015 and continuing through the term of the Lease Agreement.

(b) In addition to the payments of basic rent pursuant to Section 5.3(a) hereof, throughout the Lease Term, the Company shall pay to the Agency as additional rent, within thirty (30) days of receipt of demand therefor, the reasonable expenses of the Agency and the members thereof incurred (i) by reason of the Agency's ownership or leasing of the Facility, or (ii) in connection with the carrying out of the Agency's duties and obligations under the Agency Documents, the payment of which is not otherwise provided for under this Lease Agreement. The foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Agency; provided, however, except as provided in Section 5.3(a) above with respect to the annual compliance fee, the Agency does not charge any ongoing annual fee.

(c) The Company, under the provisions of this Section 5.3, agrees to make the above-mentioned payments in immediately available funds and without any further notice in lawful money of the United States of America. In the event the Company shall fail to timely make any payment required in Section 5.3(a) or 5.3(b), the Company shall pay the same together with interest on such payment at a rate equal to two percent (2%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such payment was due until the date on which such payment is made.

Section 5.4 Obligations of Company Hereunder Unconditional.

(a) The obligations of the Company to make the payments required in Section 5.3 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein, shall be a general obligation of the Company, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees (i) it will not suspend, discontinue or abate any payment required hereunder, (ii) it will not fail to observe any of its other covenants or agreements in this Lease Agreement, and (iii) in the event that this Lease Agreement is terminated before any Loan or Loans have been paid in full or provision for such payment shall have been made, then the Company will accept the reconveyance of the Facility from the Agency subject to the Lien of any Mortgage and subject to any other Liens recorded against the Facility in favor of any Lender securing the Loan or Loans.

(b) The Company and the Agency hereby agree that the obligations and liabilities of the Company hereunder are the absolute and unconditional obligations and liabilities of the Company and not the obligations and liabilities of any officer, director or employee of the Company, and that no officer, director or employee of the Company shall have any obligation or liability hereunder, except arising in connection with the gross

negligence, recklessness, willful, misconduct or criminal activity of such officer, director or employee of the Company.

Section 5.5 Payment of Additional Moneys in Prepayment of Loan. In addition to any other moneys required or permitted to be paid pursuant to this Lease Agreement, the Company may, subject to the terms of any Note and any Mortgage, pay moneys to any Lender to be used for the prepayment of any Loan at such time or times and on such terms and conditions as is provided in such Note and such Mortgage.

Section 5.6 Rights and Obligations of the Company upon Prepayment of Loan. In the event any Loan shall have been paid in full prior to the termination date specified in Section 5.2(b) hereof (i) all references in this Lease Agreement to such Lender, such Note and such Mortgage applicable to such Loan shall be ineffective, and (ii) the Company shall be entitled, at its option, to the exclusive use, occupancy and enjoyment of the Facility from the date of such payment until the scheduled expiration of the Lease Term, on all of the terms and conditions hereof, except that the Company shall not be required to carry any insurance for the benefit of any such Lender, or the Company may, at its option, require the Agency to convey the Facility to the Company pursuant to the terms of Section 11.3 hereof. In the event of any such payment or the making of any such provision, the Agency, at the sole cost of the Company, shall obtain and record or file appropriate discharges or releases of the applicable Mortgage and any other security interest relating to the Facility or this Lease Agreement.

ARTICLE VI
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Facility by Company.

(a) The Company shall not abandon the Facility or cause or permit any waste to the Improvements. During the Lease Term, the Company shall not remove any part of the Facility outside of the jurisdiction of the Agency and shall (i) keep the Facility in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); and (iii) after the Completion Date operate the Facility in a sound and economic manner.

(b) The Company from time to time may make any structural additions, modifications or improvements to the Facility or any part thereof, provided such actions do not adversely affect the structural integrity or value of the Facility and provided further that the construction and equipping of the Facility in accordance with the Plans and Specifications shall not require the consent of the Agency. The Company may not make any changes to the footprint of the Facility, any additions expanding the square footage of the Facility (including the addition of any stores whether above or below ground) or make any additions, modifications or improvements to the Facility, which will materially and/or adversely affect the structural integrity or value of the Facility without the prior written consent of the Agency, which such consent shall not be unreasonably withheld or delayed. All such additions, modifications or improvements made by the Company shall become a

part of the Facility and the Property of the Agency. The Company agrees to deliver to the Agency all documents which may be reasonable necessary or appropriate to convey to the Agency title to such Property and to perfect or protect the Lien of the Mortgage.

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 8.10 hereof, the Company or any permitted sublessee or sub-sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur (i) if any Event of Default has occurred and is continuing; or (ii) if any such removal shall materially and adversely affect the structural integrity of the Facility or materially impair the overall operating efficiency of the Facility for the purposes for which it is intended, and provided further, that if any damage is occasioned to the Facility by such removal, the Company agrees to promptly repair such damage at its own expense.

Section 6.3 Taxes, Assessments and Utility Charges.

(a) Subject to the exemptions from real property taxes as provided under the PILOT Agreement and the exemptions from New York State Sales and Use Tax, the Company agrees to pay, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, payments in lieu of taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Facility or any part or component thereof, or the rental or sale of the Facility or any part thereof, and any taxes levied upon or with respect to the income or revenues of the Agency from the Facility; (ii) all utility and other charges, including service charges, incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Facility; (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; and (iv) all payments under the PILOT Agreement and the Recapture Agreement; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such proceedings, the Company (i) shall pay such taxes, assessments or other charges so contested under protest during the period of such proceedings and any appeal therefrom or (ii) may permit the taxes, assessments or other

charges so contested to remain unpaid during the period of such proceedings and any appeal therefrom, provided, however, that (x) neither the Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings, and (y) the Company shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings or reasonably requested by the Agency.

(c) The Agency agrees that if it or the Company contests any taxes, assessments or other charges as provided in paragraph (b) hereof, all refunds, if any, will be applied in accordance with the PILOT Agreement to the extent applicable.

(d) Within thirty (30) days of receipt of written request therefor, the Company shall deliver to the Agency official receipts of the appropriate taxing authorities or other proof reasonably satisfactory to the Agency evidencing payment of any tax which the Company is required to pay pursuant to Section 6.3(a) hereof.

Section 6.4 Insurance Required. At all times throughout the Lease Term, including, when indicated herein, during the Construction Period, if any, the Company shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by facilities of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Improvements with allowances for various coverages such as Flood and Earthquake to be sublimited, exclusive of footings and foundations, paving, underground facilities and sitework, as determined by a recognized appraiser or insurer selected by the Company, but in no event less than the greater of $1,000,000 or the amount as may be required by any Lender. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance which the Company or any permitted sublessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or any permitted sublessee who are located at or assigned to the Facility. This coverage shall be in effect from and after the Completion Date or on such earlier date as any employees of the Company, any permitted sublessee, any contractor or subcontractor first occupy the Facility.

(c) Insurance protecting the Agency and the Company against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 8.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than $1,000,000 (combined

single limit for personal injury, including bodily injury or death, and property damage); comprehensive automobile liability insurance covering all owned if any non-owned and hired autos, with a limit of liability of not less than $1,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage); and excess liability coverage, in an amount not less than $5,000,000 combined single limit or equivalent, protecting the Agency and the Company against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

(d) During the Construction Period, if any (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Company shall carry, or cause any general contractor to carry, liability insurance of the type and providing the minimum limits set forth below:

i. Workers' compensation and employer's liability with limits in accordance with applicable law.

ii. Comprehensive general liability providing coverage for:

Premises and Operations
Products and Completed Operations
Owners Protective
Contractors Protective
Contractual Liability
Personal Injury Liability
Broad Form Property Damage
(including completed operations)
Explosion Hazard
Collapse Hazard
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than $1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

iii. Comprehensive auto liability, including all owned if any, non-owned and hired autos, with a limit of liability of not less than $1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

iv. Excess "umbrella" liability providing liability insurance in excess of the coverages in (ii) and (iii) above with a limit of not less than $5,000,000.

(e) A policy or policies of flood insurance in an amount not less than the greater of $1,000,000 or the amount that may be required by any Lender or the maximum amount of flood insurance available with respect to the Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon

presentation of evidence satisfactory to the Agency and any Lender that no portion of the Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required by Section 6.4(a) and (e) shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies evidencing the insurance required by Section 6.4 (a) and (e) hereof shall contain a standard New York non-contributory mortgagee clause showing the interest of any Lender and shall provide for payment to any Lender of the Net Proceeds of insurance resulting from any claim for loss or damage thereunder, and all policies of insurance required by Section 6.4 hereof shall provide for at least thirty (30) days' prior written notice to the Agency and any Lender of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 6.4(c) hereof shall name the Agency and any Lender as additional insureds. All policies evidencing the insurance required by Section 6.4(d)(ii), (iii) and (iv) shall name the Agency and the Company as additional insureds. The Company acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a) and the Net Proceeds thereof have been or may be granted by the Agency to any Lender pursuant to the Mortgage, and the Company consents thereto. Upon request of any Lender, the Company will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default under any Mortgage) to any Lender the policies of insurance required under Section 6.4(a), so and in such manner and form that any Lender shall at all times, upon such request and until the payment in full of any Loan, have and hold said policies and the Net Proceeds thereof as collateral and further security under any Mortgage for the payment of any Loan. The policies required under Section 6.4(a) shall contain appropriate waivers of subrogation.

(b) The policies (or a certificate and binder) of insurance required by Section 6.4(a), (c) and (e) hereof shall be deposited with the Lender and the Agency on or before the Closing Date. A copy of the policy (or a certificate and binder) of insurance required by Section 6.4(d)(ii), (iii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any Construction Period. The Company shall deliver to the Agency and any Lender before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.5(a) hereof. Prior to the expiration of each such policy or policies provided under Section 6.4, the Company shall furnish to the Agency certificates relating to a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Lease

Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Lease Agreement as the Agency and any Lender may from time to time reasonably require.

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 6.4(a) and (e) hereof shall be applied as provided in Section 7.1 hereof, and (ii) the Net Proceeds of the insurance required by Section 6.4(b), (c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.7 Right of Lender or Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, payments in lieu of taxes pursuant to the PILOT Agreement, assessment or other governmental charge required to be paid by Section 6.3 hereof, (ii) to maintain any insurance required to be maintained by Section 6.4 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Facility or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's Lien which is recorded or filed against the Facility or any part thereof (unless contested in accordance with the provisions of Section 8.9(b) hereof), or (v) to pay any other amount or perform any act required to be paid or performed by the Company hereunder, the Agency may pay or cause to be paid such tax, payments in lieu of taxes pursuant to the PILOT Agreement, assessment or other governmental charge, premium for such insurance or any such other payment, or may perform any such act. No such payment shall be made or act performed by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency, with a copy of such notice being given to the Company, and in the case of any tax, assessment or governmental charge or the amounts specified in clauses (iii) and (iv) hereof, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this Lease Agreement, unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Company. The Company shall, on demand, reimburse the Agency for any amount so paid or for expenses or costs incurred in the performance of any such act by the Agency pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon from the date of payment of such amount, expense or cost by the Agency at one percent (1%) in excess of the Prime Rate.

ARTICLE VII
DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction of the Facility.

(a) If the Facility or any part or component shall be damaged or destroyed and such damage or destruction exceeds $100,000 (in whole or in part) at any time during the Lease Term:

(i) the Agency shall have no obligation to replace, repair, rebuild, restore or relocate the Facility;

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement or the PILOT Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated);

(iii) the Company shall promptly give written notice thereof to the Agency and any Lender;

(iv) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the Company, or if there is a Mortgage in effect, to the applicable Lender or Lenders to the extent provided in the applicable Mortgage, and except as otherwise provided in Section 11.1 and subsection (d) hereof, shall be applied by such Lender pursuant to the terms of the Mortgage or Mortgages;

(v) if the Facility is not replaced, repaired, rebuilt, restored or relocated, as provided herein and in Section 7.1(b) hereof, this Lease Agreement shall be terminated at the option of the Agency, the Facility reconveyed subject to any Mortgage, and the provisions of Sections 11.2 and 11.3 hereof shall apply.

(b) Any replacements, repairs, rebuilding, restorations or relocations of the Facility by the Company after the occurrence of such damage or destruction shall be subject to the following conditions:

(i) the Facility shall be in substantially the same condition and value as an operating entity as existed prior to the damage or destruction, to the extent permitted by law;

(ii) the Facility shall continue to constitute a "Project" as such term is defined in the Act; and

(iii) the Facility will be subject to no Liens, other than Permitted Encumbrances.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts (provided that the Company shall be entitled to contest any payments that it in good faith disputes) and shall automatically become a part of the Facility as if the same were specifically provided herein.

(d) If the Company shall exercise its option to terminate this Lease Agreement pursuant to Section 11.1 hereof, any Net Proceeds derived from insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If an Event of

Default hereunder shall have occurred and be continuing and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.

(e) If the entire amount of the Loan, if any, and interest thereon and all other amounts due then and owing to the Agency hereunder have been fully paid, all such remaining Net Proceeds shall be paid to the Company.

Section 7.2 Condemnation.

(a) If title to or use of the Facility shall be taken by Condemnation (in whole or in part) at any time during the Lease Term:

(i) the Agency shall have no obligation to replace, repair, rebuild, restore or relocate the Facility or to acquire, by construction or otherwise, facilities of substantially the same nature as the Facility ("**Substitute Facilities**");

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement or the PILOT Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated or Substitute Facilities are acquired);

(iii) the Company shall promptly give written notice thereof to the Agency and each Lender;

(iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be paid to the Company, or if there is a Mortgage in effect, to the applicable Lender pursuant to the terms of the applicable Mortgage, and except as otherwise provided in Section 11.1 and subsection (d) hereof, applied by the Lender pursuant to the terms of the Mortgage; and

(v) if the Facility is not replaced, repaired, rebuilt, restored or relocated, as provided herein and in Section 7.2(b) hereof, this Lease Agreement shall be terminated at the option of the Agency, the Facility reconveyed subject to any Mortgage, and the provisions of either Sections 11.2 and 11.3 hereof shall apply.

(b) Any replacements, repairs, rebuilding, restorations, relocations of the Facility by the Company after the occurrence of such Condemnation or acquisitions by the Company of Substitute Facilities shall be subject to the following conditions to the extent permitted by law:

(i) the Facility or the Substitute Facilities shall be in substantially the same condition and value as an operating entity as existed prior to the Condemnation to the extent permitted by law;

(ii) the Facility or the Substitute Facilities shall continue to constitute a "project" as such term is defined in the Act;

(iii) the Facility or the Substitute Facilities will be subject to no Liens, other than Permitted Encumbrances; and

(iv) any other conditions required under the Loan Documents.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts (provided that the Company shall be entitled to contest any payments that it in good faith disputes) and shall automatically become a part of the Facility as if the same were specifically described herein.

(d) If the Company shall exercise its option to terminate this Lease Agreement pursuant to Section 11.1 hereof, any Net Proceeds derived from the Condemnation shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If any Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.

(e) If the entire amount of the Loan, if any, and interest thereon and all other amounts due then and owing to the Agency hereunder have been fully paid, all such remaining Net Proceeds shall be paid to the Company.

Section 7.3 Condemnation of Company-Owned Property. The Company shall be entitled to the proceeds of any Condemnation award or portion thereof made for damage to or taking of any Property which, at the time of such damage or taking, is not part of the Facility.

Section 7.4 Waiver of Real Property Law Section 227. The Company hereby waives the provisions of Section 227 of the Real Property Law of the State or any law of like import now or hereafter in effect.

ARTICLE VIII
SPECIAL COVENANTS

Section 8.1 No Warranty of Condition or Suitability by Agency. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE COMPANY WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE FACILITY. THE

COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY, ON BEHALF OF ITSELF IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 8.2 Hold Harmless Provisions.

(a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for loss or damage to Property or injury to or death of any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Facility or the Land or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, demolishing, constructing, equipping, furnishing, owning and leasing of the Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Sections 4.1(d) and 4.6 of this Lease Agreement and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Lease Agreement (including without limitation this Section) or any of the other documents delivered on the Closing Date by the Agency), and any other reasonable expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, officers, members, agents (except the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect

after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Agency, or its members, directors, officers, agents and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its members, directors, officers, agents or employees by any employee or contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 8.3 Right to Inspect Facility. The Agency and its duly authorized agents shall have the right at all reasonable times to inspect the Facility upon reasonable advance written notice to the Company, subject to the rights of the residential tenants.

Section 8.4 Company to Maintain Its Existence. The Company agrees that during the Lease Term it will maintain its existence, will not dissolve, liquidate or otherwise dispose of substantially all of its assets. The Company agrees that during the Lease Term, it will not without written notice to the Agency: (i) consolidate with or merge into another entity, (ii) permit one or more entities to consolidate with or merge into it or (iii) permit any subsequent sale, transfer or conveyance (not including any transfer or conveyance as security) of an interest in the Company that results in a change in control and the Company shall provide to the Agency copies of all filings required under the Securities Act, if any, with respect to any of the events referred to in clauses (i)-(iii) above. The direct and indirect owners of the Company may transfer, convey, sell or otherwise dispose of their respective ownership interests in the Company in connection with any estate planning upon written consent of the Agency, which consent shall not be unreasonably withheld, delayed or conditioned, but shall be subject to the dates of the Agency's board meetings.

Section 8.5 Qualification in State. The Company throughout the Lease Term shall continue to be duly authorized to do business in the State.

Section 8.6 Agreement to File Annual Statements and Provide Information. The Company shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) of the New York State General Municipal Law. The Company shall submit copies of such annual statements to the Agency at the time of filing with the Department of Taxation and Finance. The Company shall also provide the Agency with such information necessary for the Agency to comply with Section 874(9) of the General Municipal Law. The Company further agrees, whenever requested by the Agency to provide and certify or cause to be provided and certified such information concerning the Company and/or such sublessees, their finances, operations, employment and affairs necessary to enable the Agency to make any report required by law, governmental

regulation including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005, or the Public Authorities Reform Act of 2009, each as amended from time to time, or any of the Agency Documents or Company Documents, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller, and such information shall be provided within thirty (30) days following written request from the Agency.

Section 8.7 Books of Record and Account; Financial Statements. The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and affairs of the Company.

Section 8.8 Compliance With Orders, Ordinances, Etc.

(a) The Company, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee, sub-sublessee or occupant of the Facility to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof or to the acquisition, demolition, construction, equipping and furnishing thereof, or to any use, manner of use or condition of the Facility or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction to the Facility or any part thereof, or to the acquisition, construction, equipping and furnishing thereof, or to any use, manner of use or condition of the Facility or any part thereof or to companies or associations insuring the premises.

(b) The Company shall keep or cause the Facility to be kept free of Hazardous Substances, except in compliance with all applicable environmental laws and permits. Without limiting the foregoing, the Company shall not cause or permit the Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any contractor, subcontractor, tenant or subtenant, a release of Hazardous Substances onto the Facility or onto any other property. The Company shall comply with and cause compliance by all contractors, subcontractors, tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and require that all contractors, subcontractors, tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Company shall (i) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Substances on, from or affecting the Facility (A) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, and (B) in accordance with the orders and directives of all federal, state and local governmental authorities; and (ii) defend, indemnify and hold harmless the Agency, and its members, employees, agents, officers and directors from and against any claims,

demands, penalties, fines, liabilities, settlements, damages, reasonable costs or reasonable expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Substances, and/or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of any Lender or the Agency, which are based upon or in any way related to such Hazardous Substances, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. In the event any Mortgage is foreclosed or the Company tenders a deed in lieu of foreclosure, the Company shall deliver the Facility free of any and all Hazardous Substances so that the condition of the Facility shall conform with all applicable federal, state and local laws, ordinances, rules or regulations affecting the Facility. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Company may have to the Agency or any Lender at common law, and shall survive the transactions contemplated herein.

(c) Notwithstanding the provisions of subsections (a) and (b) hereof, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsections (a) and (b) or the payment of any amounts to any utility, governmental authority or other person, by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company that by failure to comply with such requirement or requirements, the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Company shall promptly take such action with respect thereto or provide such security as shall be reasonably satisfactory to the Lender or to the Agency. If at any time the then existing use or occupancy of the Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Company shall use its reasonable best efforts not to cause or permit such use or occupancy to be discontinued without the prior written consent of the Agency.

(d) Notwithstanding the provisions of this Section 8.8, if, because of a breach or violation of the provisions of subsections (a) or (b) hereof (without giving effect to subsection (c) hereof), either the Agency, or its members, directors, officers, agents or employees shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Agency, the Company shall immediately provide legal protection and/or pay amounts necessary, in the opinion of the Agency and its respective members, directors, officers, agents and employees, to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment.

(e) Notwithstanding any provisions of this Section 8.8, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to

such Hazardous Substances as provided in the Environmental Compliance and Indemnification Agreement. In any such defense, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Company.

Section 8.9 Discharge of Liens and Encumbrances.

(a) The Company, throughout the Lease Term, shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) hereof, the Company may in good faith contest any such Lien. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company that by nonpayment of any such item or items, the Facility or any part thereof may be subject to loss or forfeiture, in which event the Company shall promptly secure payment of all such unpaid items by filing a bond, in form and substance satisfactory to the Agency, thereby causing such Lien to be removed, or by taking such other actions as may be satisfactory to the Agency to protect their respective interests. Mechanics' Liens shall be discharged or bonded within thirty (30) days of the Company's or the Agency's receipt of notice of the filing or perfection thereof and the Agency has sent a copy of such notice to the Company.

Section 8.10 Identification of Equipment. All Equipment which is or may become the Property of the Agency pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be reasonably approved by the Agency. All Equipment and other Property of whatever nature affixed or attached to the Land or used or to be used by the Company in connection with the Land or the Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, unless the same were utilized for purposes of construction of the Facility or were installed by the Company and title thereto was retained by the Company as provided in Section 6.2 of this Lease Agreement and such Equipment and other Property were properly identified by such appropriate records as were reasonably approved by the Agency.

Section 8.11 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Facility and to any investment credit with respect to any part of the Facility.

Section 8.12 Employment Opportunities; Notice of Jobs. The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which they are a party, use commercially reasonable efforts to cause any

new employment opportunities created after the Completion Date in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Facility is located (collectively, the "**Referral Agencies**"). The Company also agrees, and shall cause any and all sublessees to agree, that they will, except as otherwise provided by collective bargaining contracts or agreements to which they are parties, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies. The requirements of this section may be satisfied by posting on the New York State Department of Labor website.

Section 8.13 Employment at the Facility. The Company covenants at all times to maintain, or cause its managing member D&F Development XIX, LLC to maintain, at the Facility two (2) full time equivalent employees as of December 31, 2017, and thereafter throughout the Lease Term calculated on the basis of 35 hours per week who are employees of the Company or any subsidiary or affiliates of the Company, or any consultants or subcontractors of the Company, or any subsidiary or affiliates of the Company, whose place of employment or workplace is located at the Facility ("**FTE**") (except as such number may be revised pursuant to an agreement between the Company and the Agency).

Section 8.14 Compliance with the Act. The Company hereby agrees to comply with the NY General Municipal Law Section 875. The Company further agrees that the exemption of sales and use tax provided pursuant to the Act and the appointment of the Company as agent of the Agency is subject to termination and recapture of benefits pursuant to Section 875 and the Recapture Agreement.

ARTICLE IX
RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING; MORTGAGE AND PLEDGE OF INTERESTS

Section 9.1 Restriction on Sale of Facility; Release of Certain Land.

(a) Except as otherwise specifically provided in this Article IX and in Article X hereof, the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof, or any of its rights under this Lease Agreement, without the prior written consent of the Company and any Lender, if required by the Loan Documents.

(b) With the prior written consent of the Lender, if required by the Loan Documents, the Agency and the Company from time to time may release from the provisions of this Lease Agreement and the leasehold estate created hereby any part of, or interest in, the Land which is not necessary, desirable or useful for the Facility. In such event, the Agency, at the Company's sole cost and expense, shall execute and deliver any and all instruments necessary or appropriate so to release such part of, or interest in, the Land and convey such interest thereto, or interest therein, to the Company or such other Person as the Company may designate. As a condition to such conveyance, the Agency shall be provided with a copy of the instrument transferring such interest in such Land, an instrument survey (if the Lender so requests) of the Land to be conveyed, together with a

certificate of an Authorized Representative of the Company stating that there is then no Event of Default under this Lease Agreement and that such part of, or interest in, the Land is not necessary, desirable or useful for the Facility.

(c) No conveyance of any part of, or interest in, the Land effected under the provisions of this Section 9.1 shall entitle the Company to any abatement or diminution of the rents payable by it under this Lease Agreement or any abatement or diminution of the amounts payable by it under the PILOT Agreement.

Section 9.2 Removal of Equipment.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company, with the prior written consent of any Lender, if required by the Mortgage, if any, may remove such items from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, free from the lien of the Mortgage, if any, provided that such removal will not materially impair the operation of the Facility for the purpose for which it is intended or change the nature of the Facility so that it does not constitute a "Project" under the Act.

(b) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment. The Company shall pay any costs (including reasonable counsel fees) incurred in transferring title to any item of Equipment removed pursuant to this Section 9.2.

(c) The removal of any item of Equipment pursuant to this Section shall not entitle the Company to any abatement or diminution of the rents payable by it under this Lease Agreement or any abatement or diminution of the amounts payable by it under the PILOT Agreement. The removal of any item of Equipment shall not affect the validity of the PILOT Agreement.

Section 9.3 Assignment and Subleasing.

(a) This Lease Agreement may not be assigned, in whole or in part and the Facility may not be subleased, in whole or in part, by the Company except for leases or subleases in the ordinary course of business and all residential leases, without the prior written consent of the Agency, in each instance, which consent shall not be unreasonably withheld, conditioned or delayed but shall be subject to the dates of the Agency's board meetings. A transfer in excess of 50% of the equity voting interests of the Company, shall be deemed an assignment and require the prior written consent of the Agency which consent shall not be unreasonably withheld, conditioned or delayed, but shall be subject to the dates of the Agency's board meetings. Any transfer of the managing member interest in the Company to Bank of America, N.A., upon foreclosure of its pledge pursuant to the Collateral Assignment and Pledge of Membership Interests, dated October 23, 2014, from D&F Development XIX, LLC to Bank of America, N.A., and any replacement of the

managing member of the Company by its tax credit investor, Banc of America CDC Special Holding Company, Inc., a North Carolina corporation shall not require the prior written consent of the Agency, but shall require five days' prior written notice to the Agency. Further, the exercise by the Lender of its rights pursuant to Section 10.2(a)(iii) hereunder shall not constitute an assignment or a sublease for the purposes of this Section 9.3. Any assignment or commercial sublease (other than leasing or subleasing apartment units in the ordinary course of business) shall be on the following conditions, as of the time of such assignment or commercial sublease:

(i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder, unless the Agency consents thereto which consent shall not be unreasonably withheld or delayed subject to the dates of the Agency's board meetings and which consents shall be conditioned upon the Agency being indemnified and held harmless to its reasonable satisfaction;

(ii) the assignee or sublessee (except in the case of (x) a true sublessee in the ordinary course of business, or (y) residential sublessees) shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;

(iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or commercial (as opposed to residential) sublease and the instrument of assumption;

(iv) neither the validity nor the enforceability of the Lease Agreement or any Mortgage shall be adversely affected thereby;

(v) the Facility shall continue to constitute a "Project" as such quoted term is defined in the Act, and, without limiting the generality of the foregoing, no assignment or sublease shall cause the Facility to be used in violation of the Act and no assignment or sublease shall cause the Facility to be occupied by a sublessee in violation of Section 862(1) of the Act;

(vi) any commercial (as opposed to residential) sublessee will execute and deliver an agency compliance agreement, reasonably satisfactory to the Agency;

(b) If the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 9.3, the Company at its cost shall furnish the Agency with opinions, in form and substance reasonably satisfactory to the Agency, (i) of Transaction Counsel as to item (v) above, and (ii) of Independent Counsel as to items (i), (ii), and (iv) above.

(c) In accordance with Section 862(1) of the Act, the Facility shall not be occupied by a sublessee whose tenancy would result in the removal of a facility or plant of the proposed sublessee from one area of the State to another area of the State or in the

abandonment of one or more plants or facilities of such sublessee located within the State; provided, however, that neither restriction shall apply if the Agency shall determine:

(i) that such occupation of the Facility is reasonably necessary to discourage the proposed sublessee from removing such other plant or facility to a location outside the State, or

(ii) that such occupation of the Facility is reasonably necessary to preserve the competitive position of the proposed sublessee in its respective industry.

Section 9.4 Mortgage and Pledge of Agency's Interests to Lender. The Agency shall at the request of and at the sole cost and expense of the Company (i) mortgage its interest in the Facility, and (ii) pledge and assign its rights to and interest in this Lease Agreement and in all amounts payable by the Company pursuant to Section 5.3 hereof and all other provisions of this Lease Agreement (other than Unassigned Rights), to the Lender as security for the payment of the principal of and interest on the Loan in accordance with the provisions attached hereto as Exhibit D. The Company hereby acknowledges and consents to such mortgage, pledge and assignment by the Agency. Notwithstanding the foregoing, all indemnities herein contained shall, subsequent to such mortgage, pledge and assignment, continue to run to the Agency for its benefit as well as for the benefit of the Lender.

Section 9.5 Pledge of Company's Interest to Lender. The Company shall have the right to pledge and assign its rights to and interest in this Lease Agreement and the Plans and Specifications to any Lender as security for the payment of the principal of and interest on the Loan. The Agency hereby acknowledges and consents to any such pledge and assignment by the Company.

Section 9.6 Merger of Agency.

(a) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or transfer of title to or leasehold interest in the entire Facility to, any other public benefit corporation or political subdivision which has the legal authority to own and lease the Facility and to continue the tax benefits contemplated by the Transaction Documents, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Facility shall be transferred.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title or leasehold interest, the Agency shall give notice thereof in reasonable detail to the Company and any Lender and shall, upon request, furnish to the Company and any Lender, at the sole cost and expense of the Company, a favorable opinion of Independent Counsel as to compliance with the provisions of Section 9.6(a)

hereof. The Agency promptly shall furnish such additional information with respect to any such transaction as the Company or any Lender may reasonably request.

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

(a) The following shall be "Events of Default" under this Lease Agreement:

(i) the failure by the Company to pay or cause to be paid, on the date due, the amount specified to be paid pursuant to Section 5.3 hereof, and such default shall continue for a period of thirty (30) days after receipt by the Company of notice that the same is past due;

(ii) the failure by the Company to observe and perform any covenant contained in Sections 2.2(g) or (h), 4.6, 6.4, 6.5, 8.2, 8.4, 8.6, 8.8, 8.13, 8.14 and 9.3 hereof, which is not cured within thirty (30) days after written notice;

(iii) the failure by the Company to pay or cause to be paid, on the dates due, the amounts specified to be paid pursuant to the PILOT Agreement or the Recapture Agreement beyond any applicable cure period;

(iv) the invalidity, illegality or unenforceability of the PILOT Agreement, or the failure of the Company to observe and perform any covenant contained in the PILOT Agreement or the Recapture Agreement beyond any applicable cure period;

(v) the occurrence and continuation of a Recapture Event under the Recapture Agreement;

(vi) any representation or warranty of the Company herein or in any of the Company Documents shall prove to have been false or misleading when made in any material adverse respect;

(vii) the failure by the Company to observe and perform any covenant, condition or agreement hereunder on its part to be observed or performed (except obligations referred to in 10.1(a)(i), (ii) and (viii)) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, has been given to the Company by the Agency or any Lender provided; however, that in the event such covenant, condition or agreement is not capable of being observed or performed within thirty (30) days after written notice and the Company is diligently attempting to observe or perform such covenant, condition or agreement, failure of the Company to observe such covenant, condition or agreement shall not be deemed an Event of Default hereunder;

(viii) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within forty-five (45) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; or the commencement by the Company (as the debtor) of a case in Bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in Bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor, or such case or proceeding is consented to by the Company or remains undismissed for forty (40) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors;

(ix) an Event of Default under the Mortgage, if any, shall have occurred and be continuing beyond applicable notice and cure periods; or

(x) an Event of Default under the Environmental Compliance and Indemnification Agreement or any agency compliance agreement shall have occurred and be continuing beyond any applicable notice and cure periods.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 4.1, 6.1 and 8.13 of this Lease Agreement, and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuation of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions or officials or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be

required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

(c) Upon an Event of Default under this Lease Agreement, the Company's investor member and/or special member and the Lender shall each have the same notice and cure periods as provided to the Company to cure the default prior to the exercise of any remedies by the Agency. Notwithstanding anything to the contrary contained in this Lease Agreement, the Agency agrees that cure of any default made or tendered by the Company's investor member and/or special member or the Lender shall be deemed to be a cure by the Company and shall be accepted or rejected on the same basis as if such cure were made or tendered by the Company.

Section 10.2 Remedies on Default.

(a) Whenever any Event of Default shall have occurred, (a) the Agency may take, to the extent permitted by law, any one or more of the following remedial steps, provided, however, that the Agency covenants and agrees for the benefit of the Lender to (i) provide notice of such default to the Lender, and (ii) forbear from exercising any such remedies and its remedies set forth in the last sentence of Section 3 of the Recapture Agreement for a period of ninety (90) days the applicable cure period provided herein for each such Event of Default after such notice ("Forbearance Period") and (b) upon an Event of Default pursuant to Section 10.1(a)(ix), the Lender may exercise its rights and remedies under Section 10.2(a)(iii) below at any time prior to the expiration of the Forbearance Period, and upon the exercise of such rights and remedies by the Lender, so long as the Lender shall be diligently proceeding to enter and take possession of the Facility pursuant to such Section 10.2(a)(iii), the Agency shall continue to so forbear during the period the Lender is so exercising such rights with diligence:

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 5.3(a) and (b) hereof, (B) all currently owed or past due payments in lieu of taxes pursuant to the PILOT Agreement, (C) all amounts due and owning under the Recapture Agreement and (D) all other payments due and owing under this Lease Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(viii) hereof shall have occurred, such installments of rent and other payments shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency or the Lender;

(ii) terminate this Lease Agreement, reconvey the Facility to the Company and terminate the PILOT Agreement and the Sales Tax Exemption authorization. The Agency shall have the right to execute an appropriate lease termination with respect to the Facility and to place the same on record in the Nassau County Clerk's office, at the sole cost and expense of the Company and in such event the Company waives delivery and acceptance of such lease termination and the Company hereby appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an

agency coupled with an interest), with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such lease termination documents;

(iii) upon ten (10) days' written notice to the Company, enter and take possession of the Facility, without terminating this Lease Agreement and without being liable for any prosecution or damages therefor, and sublease the Facility on commercially reasonable terms, holding the Company liable for the amount, if any, by which the aggregate of the rents and other amounts payable by the Company hereunder exceeds the aggregate of the rents and other amounts received from the sublessee under such sublease; or

(iii) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder and under the PILOT Agreement and the Recapture Agreement, to secure possession of the Facility and to enforce the obligations, agreements and covenants of the Company under this Lease Agreement and under the PILOT Agreement and the Recapture Agreement.

(b) The Agency agrees to cooperate with the Lender, upon commencement of the exercise of any remedies provided to the Lender pursuant to the terms of this Lease Agreement or the applicable Mortgage. Such cooperation shall include, but not be limited to, to the extent of the Agency's interest in the Facility, consenting to the assignment and assumption of the rights, interests, covenants and obligations of the Company under this Lease Agreement to any successful bidder at the time of settlement upon foreclosure of the Facility. Such consent shall not be unreasonably withheld, delayed or conditioned, but shall be subject to the dates of the Agency's board meetings. Such consent shall be evidenced by an assignment and assumption agreement, whereby the successor entity shall covenant to keep, observe and perform, from and after the date of the assignment and assumption, all of the covenants, agreements, provisions and obligations of the Company pursuant to the Company Documents.

(c) Reserved.

(d) No action taken pursuant to this Section 10.2 (including repossession of the Facility) shall relieve the Company from its obligation to make all payments required by Section 5.3 hereof or under the PILOT Agreement or the Recapture Agreement.

(e) After an Event of Default shall have occurred, the Company shall have the right upon notice to the Agency and to any Lender to enter the Facility with agents or representatives of the Agency and the Lender to remove any equipment or other personalty owned by the Company if such equipment or personalty is not part of the Facility.

Section 10.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency or the Lender is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or

omission to exercise any right or power accruing upon any default shall impair any such right and power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency or the Lender to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Lease Agreement.

Section 10.4 Agreement to Pay Attorneys' Fees and Expense. In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

Section 10.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.6 Certificate of No Default. The Company shall deliver to the Agency each year no later than January 15, a certificate signed by an Authorized Representative of the Company stating that, to its knowledge and belief, the Company is not in default under this Lease Agreement and to its knowledge no Event of Default exists under this Lease Agreement, the PILOT Agreement, any Mortgage, or any other Company Document. Such certificate shall also contain all information required under Section 8.6 hereof.

ARTICLE XI
EARLY TERMINATION OF LEASE AGREEMENT; OPTION IN FAVOR OF COMPANY

Section 11.1 Early Termination of Lease Agreement.

(a) The Company shall have the option to terminate this Lease Agreement at any time (even upon an Event of Default hereunder by the Company) upon filing with the Agency and any Lender a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section and stating the date upon which such payments required by Section 11.2 hereof shall be made (which date shall not be less than 45 nor more than 90 days from the date such certificate is filed), and upon compliance with the requirements set forth in Section 11.2 hereof.

(b) Notwithstanding anything in this Lease Agreement to the contrary, at such time as (i) the Company is required to make payments in lieu of taxes pursuant to the PILOT Agreement in an amount equal to one hundred percent (100%) of the taxes and assessments which would be levied upon the Facility as if the Facility were owned by the Company and not by the Agency, or (ii) the Agency receives a certificate signed by an Authorized Representative of the Company and any Lender stating that the provisions of

this subsection are then effective, this Lease Agreement shall be deemed to have expired pursuant to Section 5.2(b) hereof.

Section 11.2 Conditions to Early Termination of Lease Agreement. In the event of the termination or expiration of this Lease Agreement in accordance with the provisions of Sections 5.2, 10.2 or 11.1 hereof, the Company shall make the following payments:

(a) To the Agency or the Taxing Authorities (as such term is defined in the PILOT Agreement), as appropriate pursuant to the PILOT Agreement: all amounts due and payable under the PILOT Agreement as of the date of the conveyance described in Section 11.3 hereof.

(b) To the Agency: the purchase price with respect to the Equipment of One Dollar ($1.00).

(c) To the Agency: an amount certified by the Agency to be sufficient to pay all reasonable paid or unpaid fees, and reasonable, paid or unpaid, out-of-pocket expenses of the Agency including fees of counsel to the Agency incurred under the Agency Documents.

(d) To the appropriate Person: an amount sufficient to pay all other fees, expenses or charges, if any, due and payable or to become due and payable under the Transaction Documents.

Section 11.3 Conveyance on Termination. At the closing of any termination of the Lease Agreement, the Agency shall, upon receipt of the payments required in Section 11.2, deliver to the Company all necessary documents (i) to terminate this Lease Agreement and the Company Lease and to convey the Equipment to the Company, subject only to the following: (A) any Liens to which the leasehold estate or title to such Property was subject when conveyed to the Agency, (B) any Liens created at the request of the Company, to the creation of which the Company consented or in the creation of which the Company acquiesced, (C) any Permitted Encumbrances, and (D) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default hereunder, (ii) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Facility (but not including any Unassigned Rights) and (iii) to release the Agency from any Mortgage and any other Loan Documents to which it is a party. Upon the conveyance of the Facility by the Agency to the Company pursuant to this Article XI, the PILOT Agreement shall terminate.

ARTICLE XII
MISCELLANEOUS

Section 12.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, return receipt requested, or delivered by any national overnight express delivery service (in each case, postage or delivery charges paid by the party giving such communication) addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency

Town of Hempstead Industrial Development Agency
350 Front Street, 2nd Floor
Hempstead, New York 11550
Attention: Executive Director and Chief Executive Officer

With a copy to:

Ryan, Brennan & Donnelly LLP
131 Tulip Avenue
Floral Park, New York 11001
Attention: John E. Ryan, Esq.

To the Company:

Brooke Pointe, LLC
c/o D & F Development Group LLC
100 Schoolhouse Road
Levittown, New York 11756
Attention: Peter G. Florey

With a copy to:

Forchelli, Curto, Deegan, Schwartz, Mineo, Cohn & Terrana, LLP
The Omni
333 Earle Ovington Blvd., Suite 1010
Uniondale, New York 11553
Attention: Frank Davis, Esq.

With a copy to:

Cannon Heyman & Weiss, LLP
54 State Street, 5th Floor
Albany, New York 12207
Attention: Steven S. Heyman, Esq.

With a copy to:

Bank of America, N.A.
MA1-225-02-02
25 Franklin Street
Boston, Massachusetts 02110
Attention: Asset Manager for Brooke Pointe

With a copy to:

Holland & Knight LLP
10 St. James Avenue
Boston, Massachusetts 02116

Attention: James E. McDermott, Esq.

Section 12.2 Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 12.3 Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.4 Amendments, Changes and Modifications. This Lease Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto and without the concurring written consent of the Lender.

Section 12.5 Execution of Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.6 Applicable Law. This Lease Agreement shall be governed exclusively by the applicable laws of the State, without regard or reference to its conflict of laws principles.

Section 12.7 List of Additional Equipment; Further Assurances. Upon the Completion Date with respect to the Facility and the installation of all of the Equipment therein, the Company shall prepare and deliver to the Agency a schedule listing all of the Equipment not previously described in this Lease Agreement. If requested by the Agency, the Company shall thereafter furnish to the Agency, within sixty (60) days after the end of each calendar year, a schedule listing all of the Equipment not theretofore previously described herein or in the aforesaid schedule.

Section 12.8 Survival of Obligations. This Lease Agreement shall survive the making of the Loan and the performance of the obligations of the Company to make payments required by Section 5.3 and all indemnities shall survive the foregoing and any termination or expiration of this Lease Agreement and the payment of the Loan.

Section 12.9 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

Section 12.10 Mortgage Financing. In order to finance or refinance certain costs of the acquisition, construction and equipping of the Facility, the Company may decide to utilize a lender or lenders, as may be determined, to finance or refinance an amount as determined by the Company on the date of delivery of this Lease Agreement and/or upon completion of the Facility after the Closing Date (the "**Loan**"). The Agency and the Company hereby acknowledge that the Lender is a third-party beneficiary hereof, with the right to exercise the rights provided to the Lender pursuant to this Lease Agreement, including, but not limited to the rights granted pursuant to Section 10.2(a) hereof. The Agency agrees to cooperate with the Company in connection with such financing or

refinancing, including without limitation granting one or more mortgages on the Facility, executing such other documents required by the Company's lender(s) and complying with the terms and provisions of such mortgage(s) and other documents, provided that such mortgage and other documents shall meet all the requirements set forth on Exhibit D attached hereto and made a part hereof. The Agency and the Company agree that this Lease Agreement and the Company Lease shall be subject and subordinate to the Loan and the term and provisions of all documents evidencing and securing the Loan (as may be amended, restated, consolidated or replaced, collectively, the "**Loan Documents**", including, without limitation, the "**Mortgage**"). The Company shall perform or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency under and pursuant to the Loan Documents.

Section 12.11 Waiver of Trial By Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Lease Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Lease Agreement.

(Remainder of Page Intentionally Left Blank – Signature Pages Follow)

IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective names by their duly authorized representatives, all as of October 1, 2014.

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Name: Frederick E. Parola
Title: Executive Director and Chief Executive Officer

STATE OF NEW YORK)
: SS.:
COUNTY OF NASSAU)

On the 22nd day of October in the year 2014, before me, the undersigned, personally appeared **Frederick E. Parola**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

_____
Notary Public

MICHAEL LODATO
Notary Public, State of New York
01LO6226099
Qualified in Suffolk County
Commission Expires Aug. 2, 2015

BROOKE POINTE, LLC
a New York limited liability company

By: D&F Development XIX, LLC
a New York limited liability company,
its Managing Member

By: _____
Name: Leonard T. D'Amico
Title: Manager

STATE OF NEW YORK)
: SS.:
COUNTY OF NASSAU)

On the 22nd day of October in the year 2014 before me, the undersigned, personally appeared **Leonard T. D'Amico**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

_____
Notary Public

MICHAEL LODATO
Notary Public, State of New York
01LO6226099
Qualified in Suffolk County
Commission Expires Aug. 2, 2015

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

ALL NEW YORK TITLE AGENCY, INC.

Title Number: ANY2013-8700C

SCHEDULE A

PARCEL 1 (LOTS 7, 8, 109 & 130):

ALL that certain plot, piece or parcel of land, situate, lying and being in the incorporated Village of Valley Stream, County of Nassau and State of New York, known and designated as and by the Lots Nos. 7 and 8 and part of Lot No. 6 and part of Lot No. 9 in Block 1 on a certain map entitled "Section 1, Map No. 10 of Property of the Gibson Corp., Valley Stream, Nassau County, New York, surveyed by Quentin F. Fisher" and filed in the Office of the Clerk of the County of Nassau on May 5, 1928 as Old Map No. 929, New Map No. 2652, and being more particularly bounded and described as follows:

BEGINNING at a point on the westerly side of Gibson Boulevard, distant 432.17 feet southerly from the corner formed by the intersection of the westerly side of Gibson Boulevard and the southeasterly side of DuBois Avenue;

RUNNING THENCE westerly at right angles to the westerly side of Gibson Boulevard and part of the distance through a party wall, 100 feet to the easterly boundary of land now or formerly of Long Island Railroad;

THENCE southerly along said land parallel with the westerly side of Gibson Boulevard, 111.80 feet;

THENCE easterly again at right angles to the westerly side of Gibson Boulevard and part of the distance through a party wall, 100 feet to the westerly side of Gibson Boulevard;

THENCE northerly along the westerly side of Gibson Boulevard, 111.80 feet to the point or place of BEGINNING.

PARCEL 2 (LOTS 5, 112 & 129):

ALL that certain plot, piece or parcel of land, situate, lying and being in the incorporated Village of Valley Stream, County of Nassau and State of New York, bounded and described as follows:

ALL NEW YORK TITLE AGENCY, INC.

Title Number: ANY2013-8700C

SCHEDULE A (continued)

BEGINNING at a point on the westerly side of Gibson Boulevard, 129.33 feet northerly from the corner formed by the intersection of the said westerly side of Gibson Boulevard with the northerly side of Muller Place;

RUNNING THENCE westerly at right angles to Gibson Boulevard and part of the distance through a party wall, 100 feet to land of the Long Island Railroad;

THENCE northerly along land of the Long Island Railroad parallel with Gibson Boulevard, 95.87 feet;

THENCE easterly at right angles to land of the Long Island Railroad and part of the distance through a party wall, 100 feet to the westerly side of Gibson Boulevard;

THENCE southerly along the westerly side of Gibson Boulevard, 95.87 feet to the point or place of BEGINNING.

PARCEL 3 (LOT 111):

ALL that certain plot, piece or parcel of land, situate, lying and being in the incorporated Village of Valley Stream, County of Nassau and State of New York, known and designated as Lots No. 1, 2, 3 and part of Lot No. 4 in Block 1 on a certain map entitled "Section 1 Map No. 10 of Property of the Gibson Corp., Valley Stream, New York, surveyed by Quentin F. Fisher" and filed in the Nassau County Clerk's Office on May 5, 1928 as Old Map No. 929, New Map No. 2652, being more particularly bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Muller Place with the westerly side of Gibson Boulevard;

RUNNING THENCE westerly along the northerly side of Muller Place, 100 feet to the land now or formerly of Long Island Railroad;

THENCE northerly along the last mentioned land parallel with the westerly side of Gibson Boulevard, 129.33 feet;

ALL NEW YORK TITLE AGENCY, INC.

Title Number: ANY2013-8700C

SCHEDULE A (continued)

THENCE easterly parallel with the northerly side of Muller Place, 100 feet to the westerly side of Gibson Boulevard;

THENCE southerly along the westerly side of Gibson Boulevard, 129.33 feet to the corner first mentioned, at the point or place of BEGINNING.

PERIMETER DESCRIPTION:

ALL that certain plot, piece or parcel of land, situate, lying and being in the incorporated Village of Valley Street, County of Nassau and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Muller Place with the westerly side of Gibson Boulevard;

RUNNING THENCE north 87 degrees 46 minutes 30 seconds west along the northerly side of Muller Place 100.00 feet;

THENCE north 2 degrees 13 minutes 30 seconds east 337.66 feet; (337 feet per deed);

THENCE south 87 degrees 46 minutes 30 seconds east 100.00 feet to the westerly side of Gibson Boulevard;

THENCE south 2 degrees 13 minutes 30 seconds west along the westerly side of Gibson Boulevard 337.66 feet (337 feet per deed) to the corner, at the point or place of BEGINNING.

FOR CONVEYANCING ONLY

The policy to be issued under this report will insure the title to such buildings and improvements erected on the premises which by law constitute real property.

TOGETHER with all the right, title and interest of the party in the first part, or, in and to the land lying in the street in front of and adjoining said premises.

EXHIBIT B

EQUIPMENT

All Eligible Items acquired, constructed or installed and/or to be acquired, constructed or installed in connection with the completion of the Brooke Pointe, LLC 2014 Facility located at 100 Gibson Boulevard, Valley Stream, New York.

EXHIBIT C

COMPLIANCE WITH LABOR LAW, EXECUTIVE LAW AND CIVIL RIGHTS LAW

The purpose of the Town of Hempstead Industrial Development Agency (the "**Agency**") is to provide benefits that reduce costs and financial barriers to the creation and to the expansion of business and enhance the number of jobs in the Town of Hempstead.

The Agency has consistently sought to ensure that skilled and fair paying construction jobs be encouraged in straight-lease transactions with the Agency.

Now therefor, the parties to the attached Lease Agreement (the "**Agreement**") further agree to be bound by the following, which are hereby made a part of the Agreement.

I. The Company agrees to use reasonable efforts to ensure that:

(a) no laborer, workman or mechanic, in the employ of the Company or any contractor, subcontractor or other person doing or contracting to construct and equip the Facility shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except as set forth in the Labor Law of the State of New York (the "**Labor Law**");

(b) to the extent applicable and required by law, the Company shall comply with the provisions of the Labor Law, including Section 220 thereof. While such Labor Law does not presently require or obligate the Company to pay the prevailing rate of wages as such term is defined in Section 220-d thereof, the Company acknowledges that it has been advised that it is the policy of the Agency to strongly encourage the Company to voluntarily comply with such provisions.

II. To the extent required by law, the Company agrees that:

(a) in the hiring of employees for the performance of work in acquiring, constructing and equipping the Facility, or for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, construction and equipping of the Facility, neither the Company nor any contractor, subcontractor nor any person acting on behalf of the Company shall by reason of race, creed, color, disability, sex, or national origin, marital status or Vietnam veteran era status discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

(b) neither the Company nor any contractor, subcontractor, nor any person on their behalf shall, in connection with the acquisition, construction and equipping of the Facility, discriminate against or intimidate any employee hired for the performance of work involved in acquiring, constructing and

equipping the Facility on account of race, creed, color, disability, sex, national origin, marital status or Vietnam era veteran status; and

(c) the aforesaid provisions of this section covering every contract for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, construction and equipping of the Facility shall be limited to operations performed within the territorial limits of the State of New York.

III. To the extent required by law, the Company will comply with the applicable provisions of Sections 291-299 of the Executive Law, and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights, and will permit access to its books, records and accounts by the State Division of Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with the non-discrimination clauses, the Executive Law and the Civil Rights Law.

EXHIBIT D

MORTGAGE PROVISIONS

Any Mortgage entered into by the Agency and the Company pursuant to Section 9.4 of the Lease Agreement shall substantially include the following provisions:

(a) Such Mortgage shall be a fee and leasehold mortgage whereby the Agency and the Company shall mortgage all of their respective rights, titles and interests in and to the Facility and the Lease Agreement excluding the Agency's Unassigned Rights.

(i) Any assignment of leases and rents in the Mortgage or in a separate Assignment of Lease and Rents shall reserve onto the Agency all of the Agency's Unassigned Rights.

(ii) The standard covenants and obligations of a mortgagor contained in the Mortgage shall be the obligations of the Company and not the Agency.

(iii) Upon the occurrence and continuation of an Event of Default under the Lease Agreement, the PILOT Agreement, the Recapture Agreement, the Environmental Compliance and Indemnification Agreement or any Agency Compliance Agreement, the Agency shall have the right to terminate the Lease Agreement and the PILOT Agreement and reconvey the Facility back to the Company subject to the lien of the Mortgage and any separate Assignment of Leases and Rents.

(iv) Upon the occurrence and continuation of an Event of Default under the Mortgage the Agency shall, if so requested by the Lender, deliver a termination of lease with respect to the Facility to the Lender.

(v) The following provisions shall be included in any Mortgage:

Section ___. No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of this Mortgage. The Lender will not look to the Agency or any principal, member, director, officer or employee of the Agency with respect to the indebtedness evidenced by this Mortgage or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this Mortgage, the Lender will look solely to the mortgaged premises and/or the Company for the payment of the indebtedness secured by this Mortgage and for the performance of the provisions hereof. The Lender will not seek a deficiency or other money judgment against the Agency or any principal, member, director, officer or employee of the Agency and will not institute any separate action against the Agency by reason of any default that may occur in the performance of any of the terms and conditions of this Mortgage or the Loan Documentation. This agreement on the part of the Lender shall not be construed in any way so as to affect or impair the lien of this Mortgage of the Lender's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Lender in any foreclosure proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants,

stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Company) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent (except the Company) of the Agency or any natural person executing this Mortgage on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York nor the Town of Hempstead and neither the State of New York nor the Town of Hempstead shall be liable on any covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Agency.

Section ___. Hold Harmless Provisions. (a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its director, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the use thereof or under this Mortgage, or (ii) liability arising from or expense incurred by the Agency's acquisition, construction, equipping, installation, owning and leasing of the Facility, including, without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of the Mortgage (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees. Except as otherwise set forth above, the foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its members, directors, officers, agents, or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Mortgage, the obligations of the Company pursuant to this Section ___ shall remain in full force and effect after the termination of this Mortgage until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents (except the Company) and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its members, directors, officers, agents (except the Company) or employees by any employee or contractor of the

Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section ___. Recordation of Mortgage. The Agency covenants that it will record or cause this Mortgage to be duly recorded in all offices where recordation thereof is necessary.

Section __. Termination of Lease Agreement. Upon the termination of the Lease Agreement for any reason whatsoever and at the sole cost and expense of the Company, the Lender shall prepare and deliver to the Agency and the Company, and the Agency and the Company shall execute, any documents necessary to amend and restate this Mortgage, in order to remove the Agency as a party hereto.

EXHIBIT E

FORM OF SALES TAX AGENT AUTHORIZATION LETTER

SALES TAX AGENT AUTHORIZATION LETTER

EXPIRATION DATE: _____ 1, 201_

ELIGIBLE LOCATION:
_____ Street, _____, New York

_____ __, 201_

TO WHOM IT MAY CONCERN

Re: Town of Hempstead Industrial Development Agency
(201__ *[Name of Company]* Facility)

Ladies and Gentlemen:

The Town of Hempstead Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. Pursuant to a certain Lease Agreement, dated as of _____ 1, 201_ (the "Lease Agreement"), between the Agency and _____, a _____ organized and existing under the laws of the State of _____ (the "Company"), the Agency has authorized the Company to act as its agent for the in connection with the Facility described therein located at the Eligible Location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the Lease Agreement.

2. Upon the Company's request, the Agency has appointed **[insert name of Agent]** (the "Agent"), pursuant to this Sales Tax Agent Authorization Letter (the "Sales Tax Agent Authorization Letter") to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax in accordance with the terms, provisions of this Sales Tax Agent Authorization Letter and the Lease Agreement. **The Agent should review the definitions of Eligible Items and Ineligible Items in Exhibit A hereto with respect to the scope of Sales Tax Exemption provided under the Lease Agreement and hereunder.**

3. The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which to be completed by Agent and the Company). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in connection with the Facility and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

4. The Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of

the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

5. As agent for the Agency, the Agent agrees that it will present to each seller or vendor a completed and signed **NYSDTF Form ST-123 "IDA Agent or Project Operator Exempt Purchase Certificate"** or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes ("Form ST-123") for each contract, agreement, invoice, bill or purchase order entered into by the Agent, as agent for the Agency, for the construction, repair and equipping of the Facility. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. The Agent shall complete Form ST-123 as follows: (i) the "Project Information" section of Form ST-123 should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

6. The Agent agrees to comply with the terms and conditions of the Lease Agreement. The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) its contract with the Company to provide services in connection with the Facility, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency, and shall make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

7. In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file semi-annually with the Company and the Agency (no later than January 15th and July 15th of each calendar year in which it has claimed sales and use tax exemptions in connection with the Facility) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding six-month period (ending on June 30th or December 31st, as applicable) in connection with the Facility by completing and submitting to the Company and the Agency the **Sales Tax Registry** attached hereto as **Exhibit B**. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Facility (such agency relationship being deemed to be immediately revoked) without any further action of the parties,

the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity.

8. The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in this Sales Tax Agent Authorization Letter, it shall pay any and all applicable Sales Tax Savings and any interest and penalties thereon. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

9. **Special Provisions Relating to State Sales Tax Savings.**

(a) The Agent covenants and agrees to comply, and to cause each of its contractors, subcontractors, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3) (the "Special Provisions"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Sales Tax Agent Authorization Letter or the Agreement and the Special Provisions, the Special Provisions shall control.

(b) The Agent acknowledges and agrees that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Agent State Sales Tax Savings taken or purported to be taken by the Agent or any other person or entity acting on behalf of the Agent to which Agent or the Company is not entitled or which are in excess of the Maximum Sales Tax Exemption Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company or the Agent failed to comply with a material term or condition to use property or services in the manner required by this Sales Tax Agent Authorization Letter or the Lease Agreement. The Company shall, and shall require each Agent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner") to assess and determine State Sales and Use Taxes due from the Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

10. Subject to the provisions of Section 9 hereof, in the event that the Agent shall utilize the Sales Tax Exemption in violation of the provisions of the Lease Agreement or this Sales Tax Agent Authorization Letter, the Agent shall promptly deliver notice of same to the Company and the Agency, and the Agent shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Agent.

11. Upon request by the Agency with reasonable notice to the Agent, the Agent shall make available at reasonable times to the Agency all such books, records, contracts, agreements, invoices, bills or purchase orders of the Agent, and require all appropriate officers and employees of the Agent to respond to reasonable inquiries by the Agency as shall be necessary (y) to indicate in reasonable detail those costs for which the Agent shall have utilized the Sales

Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Agent under Section 10.

12. By execution of this Sales Tax Agent Authorization Letter, the Agent agrees to accept the terms hereof and represent and warrant to the Agency that the use of this Sales Tax Agent Authorization Letter by the Agent is strictly for the purposes stated herein.

13. The Agent acknowledges that this Sales Tax Agent Authorization Letter will terminate on the date (the "Termination Date") that is the earlier of (i) the Expiration Date referred to above, and (ii) the expiration or termination of the Lease Agreement. Upon the Termination Date, the agency relationship between the Agency and the Agent shall terminate.

(Remainder of Page Intentionally left Blank -Signature Page Follows)

The signature of a representative of the Agent where indicated below will indicate that the Agent accepted the terms hereof.

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY

By:_____
Name:
Title:

ACCEPTED AND AGREED TO BY:

_____[*AGENT*]_____

By: _____
Name:
Title:

Exhibit A

To
Sales Tax Agent Authorization Letter

Set forth below is a description of items that are eligible for the Sales Tax Exemption

Eligible Items shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Agent shall be entitled to claim a Sales Tax Exemption in connection with the Facility:

(i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility;

(ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year of more;

(iii) with respect to the eligible items identified in (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;

(iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and

(v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility.

Ineligible Items shall mean the following items of personal property and services with respect to which the Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Facility:

(i) vehicles of any sort, including watercraft and rolling stock;

(ii) personalty having a useful life of one year or less;

(iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;

(iv) fine art and other similar decorative items;

(v) plants, whether potted or landscaped;

(vi) ordinary office supplies such as pencils, paper clips and paper;

(vii) any materials or substances that are consumed in the operation of machinery;

(viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and

(ix) maintenance of the type as shall constitute janitorial services.

Exhibit B

To

Sales Tax Agent Authorization Letter

SALES TAX REGISTRY

Please Complete: **REPORTED PERIOD**: SEMI-ANNUAL PERIOD FROM [JANUARY 1][JULY 1], 201__ to [JUNE 30][DECEMBER 31], 201__

Description of Item (incl. Serial #,if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings

TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL REPORTED PERIOD:	

Certification: I, the undersigned, an authorized officer or principal owner of the company identified below, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sales Tax Savings realized by the company identified below and its principals, affiliates, tenants, subtenants, contractors and subcontractors. This form and information provided pursuant hereto may be disclosed to the Town of Hempstead Industrial Development Agency ("TOHIDA"), and may be disclosed by TOHIDA in connection with the administration of the programs by TOHIDA ; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Name of Agent: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

EXHIBIT F

SALES TAX REGISTRY

Please Complete: **REPORTED PERIOD**: ANNUAL PERIOD FROM JULY 1, 201__ to JUNE 30, 201__

Description of Item (incl. Serial #,if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings
SEMI-ANNUAL PERIOD FROM JULY 1, [____] to DECEMBER 31, [____]						
TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM JULY 1, [____] to DECEMBER 31, [____]:						
SEMI-ANNUAL PERIOD FROM JANUARY 1, [____] to JUNE 30, [____]						
TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM JANUARY 1, [____] to JUNE 30, [____]:						

TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL REPORTED PERIOD:	

Certification: I, the undersigned, an authorized officer or principal owner of the Company, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sales Tax Savings realized by the Company below and its principals, affiliates, tenants, subtenants, contractors, subcontractors and any other person or entity pursuant to the LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Company, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Company, by the Town of Hempstead Industrial Development Agency ("TOHIDA"). This form and information provided pursuant hereto may be disclosed by TOHIDA in connection with the administration of the programs by TOHIDA; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Lessee Name: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

SCHEDULE A

SCHEDULE OF DEFINITIONS

"Act" means, collectively, Title 1 of Article 18-A of the General Municipal Law of the State, enacted into law as Chapter 1030 of the Laws of 1969 of the State, as amended, together with Chapter 529 of the Laws of 1971 of the State, as amended.

"Agency" means (i) the Town of Hempstead Industrial Development Agency, its successors and assigns, and (ii) any local governmental body resulting from or surviving any consolidation or merger to which the Agency or its successors may be a party.

"Agency Documents" means the Company Lease, the Lease Agreement, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement and the Recapture Agreement.

"Agent" shall have the meaning set forth in Section 4.6(c).

"Approving Resolution" means the resolution adopted by the Agency on September 17, 2014, authorizing the execution and delivery of the Agency Documents as such resolution may be amended and supplemented from time to time.

"Authorized Representative" means, in the case of the Agency, the Chairman, the Vice Chairman, the Executive Director and Chief Executive Officer, the Deputy Executive Director and Chief Financial Officer, or the Secretary, of the Agency; in the case of the Company, the manager or any member; and, in the case of any of them, such additional persons as, at the time, are designated to act on behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Lender and to the Agency or Company, as the case may be, containing the specimen signature of each such person and signed on behalf of (i) the Agency by the Chairman, the Vice Chairman, the Executive Director and Chief Executive Officer, the Deputy Executive Director and Chief Financial Officer, or the Secretary, of the Agency, or (ii) the Company by the manager or any member.

"Bill of Sale" means the Bill of Sale, dated the Closing Date, given by the Company to the Agency with respect to the Equipment, as the same may be amended from time to time.

"Business Day" means any day other than a Saturday, a Sunday, a legal holiday or a day on which banking institutions in New York, New York or any city in which the principal office of the Lender is located are authorized by law or executive order to remain closed.

"Closing Date" means October 23, 2014.

"Company" shall mean Brooke Pointe, LLC, formerly known as Hewlett Harbor Point, LLC, a limited liability company, organized and existing under the laws of the State of New York, its successor and/or assigns.

"Company Documents" means the Bill of Sale, the Company Lease Agreement, the Lease Agreement, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement and the Recapture Agreement.

"Company Lease" means the Company Lease Agreement, dated as of October 1, 2014, between the Company, as lessor and the Agency as lessee, with respect to the Land and the Improvements, as the same may be amended from time to time.

"Completion Date" means the date of completion of the Facility as certified pursuant to Section 4.2 of the Lease Agreement.

"Condemnation" means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

"Construction Period" means the period beginning on the date of commencement of any demolition, constructing and equipping of the Facility, which date shall not be prior to the Closing Date, and ending on the Completion Date.

"Eligible Items" shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Company and any Agent shall be entitled to claim a Sales Tax Exemption in connection with the Facility: (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility; (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more; (iii) with respect to the eligible items identified in (ii) above; purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs; (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility.

"Environmental Compliance and Indemnification Agreement" means the Environmental Compliance and Indemnification Agreement, dated as of October 1, 2014, between the Agency and the Company.

"Equipment" means all machinery, equipment and other personal property used and to be used in connection with the Facility, as described in Exhibit B to the Lease Agreement.

"Event of Default" (a) when used with respect to the Lease Agreement, means any of the events defined as Events of Default by Section 10.1 of the Lease Agreement, and (b) when used with respect to any Mortgage, means any of the events defined as Events of Default in such Mortgage

"Facility" means collectively, the Land, the Improvements and the Equipment leased and subleased to the Company under the Lease Agreement.

"Facility Services" means all services necessary for the acquisition, construction and equipping of the Facility.

"Form ST-123" shall mean NYSDTF Form ST-123 "IDA Agent or Project Operator Exempt Purchase Certificate" or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt for Sales and Use Taxes with respect to industrial development agency transactions.

"Form ST-340" shall mean NYSDTF Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" or such additional or substitute form as is adopted by NYSDTF to report Sales Tax Savings with respect to industrial development agency transactions.

"Form ST-60" shall mean NYSDTF Form ST-60 "IDA Appointment of Project Operator or Agent" or such additional or substitute form as is adopted by NYSDTF to report the appointment of project operators or agents with respect to industrial development agency transactions.

"FTE" shall have the meaning set forth in Section 8.13 of the Lease Agreement.

"Hazardous Substance" means, without limitation, any flammable, explosive, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum constituents, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, pollutants, or toxic pollutants, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Sections 1251 et seq.), Articles 17 and 27 of the New York State Environmental Conservation Law, or any other applicable Environmental Law and the regulations promulgated thereunder.

"Improvements" means all those buildings, improvements, structures and other related facilities affixed or attached to the Land, and not part of the Equipment, all as they may exist from time to time.

"Independent Counsel" means an attorney or attorneys or firm or firms of attorneys duly admitted to practice law before the highest court of any state of the United States of America or in the District of Columbia and not a full time employee of the Agency, the Company, or the Lender.

"Ineligible Items" shall mean the following items of personal property and services with respect to which the Company and any Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Facility:

(i) vehicles of any sort, including watercraft and rolling stock;

(ii) personalty having a useful life of one year or less;

(iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;

(iv) fine art and other similar decorative items;

(v) plants, whether potted or landscaped;

(vi) ordinary office supplies such as pencils, paper clips and paper;

(vii) any materials or substances that are consumed in the operation of machinery;

(viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and

(ix) maintenance of the type as shall constitute janitorial services.

"Land" means the real property leased by the Agency to the Company pursuant to the Lease Agreement, having an address of 100 Gibson Boulevard, Valley Stream, New York, and more particularly described in Exhibit A attached thereto.

"Lease Agreement" means the Lease Agreement, dated as of October 1, 2014, between the Agency, as sublessor, and the Company, as sublessee, with respect to the Facility, as the same may be amended from time to time.

"Lease Term" means the duration of the leasehold estate created by the Lease Agreement as specified in Section 5.2 of the Lease Agreement.

"Lender" means (i) Bank of America, N.A. (ii) State of New York Mortgage Agency, (iii) PENY & Co., L.L.C. and (iv) any lender making a Loan to the Company secured by a Mortgage on the Facility.

"Lien" means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to the security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics', materialmen's, warehousemen's, carriers' and other similar encumbrances, affecting real property. For the purposes of this definition, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

"Loan" means any loan made by a Lender to the Company to pay for the costs of acquisition, demolition, construction, equipping and/or developing the Facility, or any portion thereof, or a refinance of any such loan, which Loan is secured by a Mortgage on the Facility.

"Maximum Sales Tax Savings Amount" shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Company and all Agents acting on behalf the Company are permitted to receive under this Lease Agreement, which shall equal $860,000, or such maximum dollar amount as increased by the Agency pursuant a certificate of determination and any additional documents as may be required by the Agency for such increase.

"Mortgage" means any mortgage and security agreement granted by the Agency and/or the Company to a Lender which grants a mortgage lien on and security interest in the Facility in favor of the Lender as security for such Lender's Loan to the Company, in connection with the financing or refinancing of the acquisition, demolition, construction and equipping of the Facility.

"Note" means any and all promissory note(s) given by the Company to the Lender evidencing the Loan for the Facility.

"Net Proceeds" means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys' fees) incurred in obtaining such gross proceeds.

"NYSDTF" shall mean the New York State Department of Taxation and Finance.

"Permitted Encumbrances" means, with respect to the Facility, (i) exceptions to title set forth in the Title Report, or the Owner's Title Insurance Policy issued in favor of the Company of even date herewith, (ii) the Company Lease, (iii) the Lease Agreement, (iv) utility, access and other easements and rights-of-way, restrictions and exceptions that do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (v) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens which are approved in writing by the Lender, if any, or its counsel and, if no Lender, then by the Agency or its counsel, (vi) Liens for taxes not yet delinquent, (vii) any Mortgage granted to a Lender or related documents in favor of a Lender, (viii) mechanics' materialmen's, warehousemen's, carrier's and other similar liens which are approved in writing by the Agency or it's counsel, (ix) Liens for taxes not yet delinquent, (x) purchase money security interests and blanket liens, and (xi) the Recapture Agreement.

"Person" or "Persons" means an individual, partnership, limited liability company, corporation, trust or unincorporated organization, and a government or agency or political subdivision or branch thereof.

"PILOT Agreement" means the Payment-in-Lieu-of-Tax Agreement, dated as of October 1, 2014, between the Company and the Agency, as amended from time to time.

"Plans and Specifications" means the plans and specifications for the Improvements, prepared for the Company and approved by the Lender and the Agency, as revised from time to time in accordance with the Lease Agreement.

"Prime Rate" means the rate designated by the Lender from time to time as its "prime rate."

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Public Purposes" means the State's objective to create industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and to empower such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living.

"Recapture Agreement" means the Recapture Agreement, dated as of October 1, 2014, by and between the Company and the Agency, as amended from time to time.

"Sales Tax Agent Authorization Letter" shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit E – "Form of Sales Tax Agent Authorization Letter" and to be delivered in accordance with Section 4.6(c) of the Lease Agreement.

"Sales Tax Exemption" shall mean an exemption from Sales and Use Taxes resulting from the Agency's participation in the Facility.

"Sales Tax Registry" shall mean the Sales Tax Registry in the form set forth in Exhibit F.

"Sales Tax Savings" means all Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent, pursuant to this Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility.

"Sales and Use Taxes" shall mean local and State sales and compensating use taxes and fees imposed pursuant to Article 28 or 28-A of the New York State Tax Law, as the same may be amended from time to time.

"Schedule of Definitions" means the words and terms set forth in this Schedule of Definitions attached to the Lease Agreement, as the same may be amended from time to time.

"SEQR Act" means the State Environmental Quality Review Act and the regulations thereunder.

"State" means the State of New York.

"State Sales and Use Taxes" shall mean sales and compensating use taxes and fees imposed by Article 28 or 28-A of the New York State Tax Law but excluding such taxes imposed in a city by Section 1107 or 1108 of such Article 28, as the same may be amended from time to time.

"State Sales Tax Savings" shall mean all Sales Tax Exemption savings relating to State Sales and Use Taxes realized by or for the benefit of the Company, including any savings realized by any Agent, pursuant to this Lease Agreement and the Sales Tax Agent Authorization Letter issued in connection with the Facility.

"Substitute Facilities" means facilities of substantially the same nature as the proposed Facility.

"Termination Date" shall mean such date on which this Lease Agreement may terminate pursuant to its terms and conditions prior to the expiration date in Section 5.2(b).

"Title Report" means Certificate for Title Insurance, Title No. ANY2013-8700C issued by All New York Title Agency, Inc. as agent for First American Title Insurance Company to the Agency on June 16, 2014, re-dated and re-certified on the Closing Date.

"Transaction Counsel" means the law firm of Nixon Peabody LLP.

"Transaction Documents" means the Agency Documents and the Company Documents.

"Unassigned Rights" " means the rights of the Agency and moneys payable pursuant to and under Sections 5.3(b), 6.4(b) and (c), 6.7, 8.1, 8.2, 8.8, 8.9, 8.12, 8.13, 10.2(a)(i), 10.2(a)(ii), 10.2(a)(iii), 10.4, 11.2, 11.3 and 12.8 of the Lease Agreement and all payments under the PILOT Agreement and the Recapture Agreement.