Transcript Document No. 3

BROOKE POINTE, LLC

and

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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

Dated as of October 1, 2014

Town of Hempstead, Village of Valley Stream, Woodmere School District, Nassau County

Property Address: 100 Gibson Boulevard, Valley Stream, New York

Tax Map Number: Section: 39 Block: 41 Lot: 7

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of October 1, 2014 (this "**PILOT Agreement**"), is by and between 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**") and 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**").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 529 of the Laws of 1971 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended (collectively, the "**Act**"); 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 acquisition of energy star appliances in each unit, common laundry space for the residents, and (iii) the construction of seventy-eight (78) 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; and

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

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

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

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

WHEREAS, the Agency and the Company have entered into a Recapture Agreement, dated as of October 1, 2014 (the "**Recapture Agreement**"), pursuant to which the Agency

has the right to recapture certain economic benefits and assistance granted to the Company upon the terms and conditions set forth in the Recapture Agreement; and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes and assessments imposed upon real property owned by it, other than special ad valorem levies, special assessments or special district taxes and service charges against real property located in the Village of Valley Stream, Town of Hempstead, New York (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located) which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provision for payments in lieu of taxes and such assessments by the Company to the Town of Hempstead, any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located, Village of Valley Stream, Woodmere School District, Nassau County and appropriate special districts (hereinafter the "**Taxing Authorities**") in which any part of the Facility is or is to be located.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the covenants herein contained, it is mutually agreed as follows:

1. (a) As long as the Lease Agreement is in effect, the Company agrees to make payments in lieu of all real estate taxes and assessments (in addition to paying all special ad valorem levies, special assessments or Special District Taxes and service charges against real property located in the Village of Valley Stream, Town of Hempstead (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located) which are or may be imposed for special improvements or special district improvements) which would be levied upon or with respect to the Facility if the Facility were owned by the Company and not by the Agency (the "**Taxes on the Facility**"). The amounts of such payments and method for calculation are set forth herein.

(b) After the effective date of this PILOT Agreement and until the provisions of paragraph 1(c) become effective, the Company shall pay, as payments in lieu of taxes and assessments, one hundred percent (100%) of the taxes and assessments that would be levied upon the Facility by the respective Taxing Authorities.

(c) **Commencing with the 2015/2016 School Tax Year and the 2016 General Tax Year and the 2016 Village Tax Year, the Company shall pay, as payments in lieu of taxes and assessments, the amounts set forth on <u>Exhibit A</u> attached hereto and made a part hereof, less any amounts payable by the Company in connection with any special ad valorem levies, special assessments, or Special District Taxes and service charges levied against the Facility.**

(d) The Company shall pay, or cause to be paid, the amounts set forth in paragraphs 1(a), (b) and (c) above, as applicable, after receipt of PILOT bills or tax bills from

the Agency or the Taxing Authorities, as the case may be. Failure to receive a tax bill shall not relieve the Company of its obligation to make all payments provided for hereunder. If, for any reason, the Company does not receive an appropriate tax bill, the Company shall have the responsibility and obligation to make all reasonable inquiries to the Taxing Authorities and to have such a bill issued, and thereafter to make payment of the same no later than the due dates provided therein. Payments shall be made directly to the Taxing Authorities. Payments made after the due date(s) as set forth in the applicable tax bills shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Authorities and as further provided in the General Municipal Law, including Section 874(5) thereof, which currently provides for an initial penalty of five percent (5%) of the amount due and an additional penalty of one percent (1%) per month on payments more than one month delinquent.

(e) During the term of this PILOT Agreement, the Company shall continue to pay all special ad valorem levies, special assessments, special district taxes and service charges levied against the Facility for special improvements or special district improvements.

(f) In the event that any structural addition that increases the footprint or height of the Facility or increases the assessed value of the Facility shall be made to the building or buildings included in the Facility subsequent to the Completion Date (as such term is defined in the Lease Agreement), or any additional building or improvement shall be constructed on the real property described on Exhibit B hereto (such structural additions, buildings and improvements being referred to hereinafter as "**Additional Facilities**"), the Company agrees to make additional payments in lieu of taxes to the Taxing Authorities in amounts equal to the product of the then current ad valorem tax rates which would be levied upon or with respect to the Additional Facilities by the Taxing Authorities if the Additional Facilities were owned by the Company and not the Agency times the assessment or assessments established for that tax year by the respective Taxing Authorities having appropriate assessing jurisdiction. All other provisions of this PILOT Agreement shall apply to this obligation for additional payments.

2. In the event that the Agency's leasehold interest in the Facility or any part thereof terminates at such time in reference to any taxable status date as to make it impossible to place such Facility or part thereof on the tax rolls of the Town of Hempstead, Village of Valley Stream, Woodmere School District, Nassau County, any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located, or appropriate special districts, as the case may be, by such taxable status date, the Company hereby agrees to pay, at the first time taxes or assessments are due following the taxable status date on which such Facility or part thereof is placed on the tax rolls, an amount equal to the taxes or assessments which would have been levied on such Facility or part thereof had it been on the tax rolls from the time of the termination of the Agency's leasehold interest until the date of the tax rolls following the taxable status date as of which such Facility or part thereof is placed on the tax rolls. There shall be deducted from such amount any amounts previously paid pursuant to this PILOT Agreement by the Agency or the Company to the respective Taxing Authorities relating to any period of time after the date of termination of the Agency's interest. The provisions of

this paragraph 2 shall survive the termination or expiration of the Lease Agreement. Any rights the Company may have against its respective designees are separate and apart from the terms of this paragraph 2, and this paragraph 2 shall survive any transfer from the Agency to the Company.

3. In the event the Facility or any part thereof is declared to be subject to taxation for taxes or assessments by an amendment to the Act or other legislative change or by a final judgment of a court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

4. In the event the Company shall enter into a subsequent payment-in-lieu-of-tax agreement or agreements with respect to the Taxes on the Facility directly with any or all Taxing Authorities in the jurisdiction of which the Facility is located, the obligations of the Company hereunder, which are inconsistent with such future agreement or agreements, shall be superseded and shall, to such extent, be null and void.

5. As long as this PILOT Agreement is in effect, the Agency and the Company agree that (i) the Company shall be deemed to be the owner of the Facility and of the Additional Facilities for purposes of instituting, and shall have the right to institute, administrative or judicial review of an assessment of the real estate with respect to the Facility and of the Additional Facilities pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time, and (ii) the Agency, at the request of the Company, shall request the Assessor of Nassau County, or any other assessor having jurisdiction to assess the Facility, to take into consideration the value of surrounding properties of like character when assessing the Facility. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Facility and the Additional Facilities is reduced as a result of any such administrative or judicial review so that such complaining party would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Authorities, if such complaining party were the owner of the Facility and the Additional Facilities, such complaining party shall not be entitled to receive a refund or refunds of the payments in lieu of taxes and assessments paid pursuant to this PILOT Agreement. In no event shall the Agency be required to remit to the Company, or any Taxing Authority any moneys otherwise due as a result of a reduction in the assessment of the Facility (or any part thereof) due to a certiorari review. If the Company receives a reduction in assessment in the last year of the Lease Agreement after it has made its final payments in lieu of taxes, the Company acknowledges that it shall look solely to the Taxing Authorities for repayment or for a credit against the first payment(s) of Taxes on the Facility which will be due after the Facility is returned to the tax rolls. The Company hereby agrees that it will notify the Agency if the Company shall have requested a reassessment of the Facility or a reduction in the taxes on the Facility or shall have instituted any tax certiorari proceedings with respect to the Facility. The Company shall deliver to the Agency copies of all notices, correspondence, claims, actions and/or proceedings brought by or against the Company in connection with any reassessment of the Facility, reduction of taxes with respect to the Facility or tax certiorari proceedings with respect to the Facility.

6. The Company, in recognition of the benefits provided under the terms of this PILOT Agreement, including, but not limited to, the payments in lieu of taxes set forth in

Exhibit A hereto, and for as long as the Lease Agreement is in effect, expressly waive any rights they may have for any exemption under Section 485-b of the Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Title 1 of Article 18-A of the General Municipal Law) with respect to the Facility. The Company, however, reserves any such rights with respect to all special and valorem levies, special assessments, special district taxes, and service charges levied against the Facility referred to in Paragraph 1(e) hereof and the Additional Facilities as referred to in paragraph 1(f) and with respect to the assessment and/or exemption of the Additional Facilities.

7. The Company recognizes and agrees that if at any time the Company substantially changes, modifies or amends its proposed method of operations or fail to maintain at all times the number of FTEs at the Facility as required by Section 8.13 of the Lease Agreement so as to effect a Recapture Event in accordance with the provisions of the Recapture Agreement, then the Company shall (i) pay to the Agency an amount equal to 100% of the Recaptured Benefits, as defined in the Recapture Agreement, due and owing under the Recapture Agreement, or (ii) if applicable, pay an increased PILOT payment in accordance with Section 1(c)(7) of the Recapture Agreement. The Agency shall notify the Company in writing of the occurrence and continuation of a Recapture Event under the Recapture Agreement and all amounts that are due and owing under the Recapture Agreement. The Company shall remit such additional sums due to the Agency upon demand thereof.

8. Except as otherwise provided herein, any notice required to be given under this PILOT Agreement shall be deemed to have been duly given when delivered 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:

The Agency:

Town of Hempstead Industrial Development Agency
350 Front Street, 2nd Floor
Hempstead, New York 11550-4037
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.

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.

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the third business day after mailing.

9. Failure by the Agency in any instance to insist upon the strict performance of any one or more of the obligations of the Company under this PILOT Agreement, or to exercise any election herein contained, shall in no manner be or be deemed to be a waiver by the Agency of any of the Company's defaults or breaches hereunder or of any of the rights and remedies of the Agency by reason of such defaults or breaches, or a waiver or relinquishment of any or all of the Company's obligations hereunder. No waiver, amendment, release or modification of this PILOT Agreement shall be established by conduct, custom or course of dealing. Further, no payment by the Company or receipt by the Agency of a lesser amount than or different manner from the correct amount or manner of payment due hereunder shall

be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency may accept any checks or payments as made without prejudice to the right to recover the balance or pursue any other remedy in this PILOT Agreement or otherwise provided at law or in equity.

10. This PILOT Agreement shall become effective immediately as of the date of execution hereof. All taxes, assessments, special assessments, service charges, special ad valorem levies or similar tax equivalents due or to become due based upon prior taxable status dates shall be paid by the Company when due. Upon termination of the Lease Agreement and reconveyance of the Agency's leasehold interest in the Facility to the Company, this PILOT Agreement shall terminate.

11. Whenever the Company fails to comply with any provision of this PILOT Agreement, the Agency may, but shall not be obligated to, take whatever action at law or in equity may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this PILOT Agreement. The Agency agrees to notify the Company in writing of any failure by the Company to comply with any provision of this PILOT Agreement within thirty (30) Business Days after the Agency becomes aware of such failure and shall provide the Company with the opportunity to cure such failure within thirty (30) days after receipt by the Company of such notice.

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

13. The Company agrees to hold the Agency harmless from and against any liability arising from any default by the Company in performing its obligations hereunder or any expense incurred under this PILOT Agreement, including any expenses of the Agency, including without limitation reasonable attorneys' fees.

14. This PILOT Agreement may be modified only by written instrument duly executed by the parties hereto.

15. This PILOT Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, heirs, distributees and assigns.

16. If any provision of this PILOT Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such provision so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this PILOT Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

17. The Agency and the Company acknowledge and agree that the economic benefits granted hereunder by the Agency to the Company have been granted to induce and enable the Company to acquire, demolish, construct and equip the Facility in the Town of Hempstead,

Nassau County, New York to provide services that, but for the Facility, would not otherwise be readily available to the residents of the Town of Hempstead, Nassau County, New York.

18. The failure or breach by the Company to pay amounts due and owing under this PILOT Agreement for a period of thirty (30) days following written notice or to promptly and fully perform any of its obligations hereunder for a period of thirty (30) days after notice shall constitute an Event of Default under this PILOT Agreement, whereupon the Agency may terminate this PILOT Agreement by written notice to the Company. Upon the occurrence and continuation of any Event of Default hereunder, this PILOT Agreement shall terminate and the Agency shall reconvey the Facility to the Company pursuant to Section 10.2 of the Lease Agreement and subject to the provisions of the Recapture Agreement.

19. 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, shareholder or employee of the Company, and that no officer, director, shareholder 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.

20. This PILOT Agreement shall cover the real property located on Exhibit B attached hereto.

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

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

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

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

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY

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

EXHIBIT A

Schedule of In-Lieu-of-Taxes Payment **less any amounts payable by the Company in connection with any special ad valorem levies, special assessments or Special District Taxes and service charges levied against the Facility** to the Town of Hempstead, Village of Valley Stream, Woodmere School District and Appropriate Special Districts:

General Tax Year/School Tax Year/Village Tax Year	Total PILOT Payments
2016 General/2015-2016 School/2016 Village	$36,477.00
2017 General/2016-2017 School/2017 Village	$36,477.00
2018 General/2017-2018 School/2018 Village	$36,477.00
2019 General/2018-2019 School/2019 Village	$36,477.00
2020 General/2019-2020 School/2020 Village	$36,477.00
2021 General/2020-2021 School/2021 Village	$45,000.00
2022 General/2021-2022 School/2022 Village	$46,500.00
2023 General/2022-2023 School/2023 Village	$48,000.00
2024 General/2023-2024 School/2024 Village	$49,500.00
2025 General/2024-2025 School/2025 Village	$51,000.00
2026 General/2025-2026 School/2026 Village	$52,500.00
2027 General/2026-2027 School/2027 Village	$54,000.00
2028 General/2027-2028 School/2028 Village	$55,000.00
2029 General/2028-2029 School/2029 Village	$57,000.00
2030 General/2029-2030 School/2030 Village	$59,000.00
2031 General/2030-2031 School/2031 Village	$61,000.00
2032 General/2031-2032 School/2032 Village	$64,000.00
2033 General/2032-2033 School/2033 Village	$66,000.00
2034 General/2033-2034 School/2034 Village	$69,000.00
2035 General/2034-2035 School/2035 Village	$72,000.00

NOTE: This PILOT Agreement shall expire on December 31, 2035. All payments for the 2034-2035 School Tax Year, the 2035 General Tax Year and the 2035 Village Tax Year must be paid in full prior to the expiration of this PILOT Agreement. Full taxes will go into effect in 2036.

EXHIBIT B

Legal Description of Land

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.

NIXON PEABODY

NIXON PEABODY LLP
ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

Elizabeth A. Wood, Paralegal
Direct Dial: (585) 263-1391
ewood@nixonpeabody.com

1300 Clinton Square
Rochester, New York 14604

October 24, 2014

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Davis, Acting Assessor
Nassau County Department of Assessment
240 Old Country Road
Mineola, New York 11501-8402

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

Dear Mr. Davis and Ms. Lancaster:

Enclosed please find a completed Form RP 412-a Application for Real Property Tax Exemption, together with a copy of the Payment-in-Lieu-of-Tax Agreement, in connection with the above-referenced transaction which closed on October 23, 2014.

Also enclosed are copies of the Company Lease Agreement and the Recapture Agreement, each dated as of October 1, 2014, a Memorandum of Company Lease and the Recapture Agreement have each been presented for recording in the Nassau County Clerk's office.

Please feel free to contact our office should you have any questions. Thank you.

Very truly yours,

Beth Wood

Elizabeth A. Wood
Paralegal

Enclosures

cc: Attached Distribution List (w/encl.)

15195705.1

Distribution List

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Hon. Edward Mangano
County Executive
Nassau County
1 West Street
Mineola, New York 11501

Hon. Kate Murray
Town Supervisor
Town of Hempstead Town Hall
One Washington Street
Hempstead, New York 11550

Dr. Joyce M. Bisso
Hewlitt Woodmere UFSD
One Johnson Place
Woodmere, New York 11598

Hon. Edwin A. Fare
Valley Stream Village Hall
123 S. Central Avenue
Valley Stream, New York 11580

Thomas Albanese, Wholly Exempt Division Head
Department of Assessment
Nassau County
240 Old Country Road
Mineola, New York 11501-8402

Daniel Valentino, Esq.
Deputy County Attorney
Department of Assessment
Nassau County
240 Old Country Road
Mineola, New York 11501

VIA REGULAR MAIL

Frederick E. Parola, Executive Director
Town of Hempstead Industrial Development Agency
350 Front Street, 2nd Floor
Hempstead, New York 11550

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

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

James E. Davis
Acting County Assessor
Nassau County Department
Of Assessment
240 Old Country Road
Mineola, New York 11501-8402

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

OCT 28 2014

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service) 7008 1830 0001 7087 3597

PS Form 3811, February 2004 0420 Domestic Return Receipt 70334|213 102595-02-M-1540

7008 1830 0001 7087 3597

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$ 2.66
Certified Fee	3.30
Return Receipt Fee (Endorsement Required)	2.70
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 8.66

B. Wood

Postmark Here

70334|213

Sent To: James E. Davis
Acting County Assessor
Nassau County Department
Street, Apt. No., or PO Box No.: Of Assessment
240 Old Country Road
City, State, ZIP+4: Mineola, New York 11501-8402

PS Form 3800, August 2006 See Reverse for Instructions

7008 1830 0001 7087 3634

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$ 2.66
Certified Fee	3.30
Return Receipt Fee (Endorsement Required)	2.70
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 8.66

B. Wood

Postmark Here

70334|213

Sent To: Hon. Edward P. Mangano
County Executive
Nassau County

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hon. Edward P. Mangano
County Executive
Nassau County
One West Street
Mineola, New York 11501

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery
OCT 7 14

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Daniel Valentino, Esq.
Deputy County Attorney
Department of Assessment
Nassau County
240 Old Country Road
Mineola, New York 11501

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

OCT 28 2014

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7008 1830 0001 7087 3603

PS Form 3811, February 2004 0420 Domestic Return Receipt 70334/213 102595-02-M-1540

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$ 2.66
Certified Fee	3.30
Return Receipt Fee (Endorsement Required)	2.70
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 8.66

B. Wood
Postmark Here
70334/213

7008 1830 0001 7087 3603

Sent To: ~~Daniel Valentino, Esq.~~ Deputy County Attorney
Street, Apt. No.; or PO Box No.: ~~Department of Assessment~~ Nassau County
City, State, ZIP+4: ~~240 Old Country Road~~ Mineola, New York 11501

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$ 2.66
Certified Fee	3.30
Return Receipt Fee (Endorsement Required)	2.70
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 8.66

B. Wood
Postmark Here
70334/213

7008 1830 0001 7087 3610

Sent To: ~~Thomas Albanese, Wholly Exempt Division Head~~ Department of Assessment
Street, Apt. No.; ~~Nassau County~~ 240 Old Country Road

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Thomas Albanese, Wholly Exempt Division Head
Department of Assessment
Nassau County
240 Old Country Road
Mineola, New York 11501-8402

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

OCT 28 2014

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dr. Joyce M. Bisso
Hewlitt Woodmere UFSD
One Johnson Place
Woodmere, New York 11598

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Joyce Davis ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 10/27/14

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7008 1830 0001 7087 3641

PS Form 3811, February 2004 0420 Domestic Return Receipt 70334|213 102595-02-M-1540

7008 1830 0001 7087 3641

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$ 2.66
Certified Fee	3.30
Return Receipt Fee (Endorsement Required)	2.70
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 8.66

70334|213

Postmark Here

B. Wood

Sent To DR. Joyce M. Bisso
Street, Apt. No.; or PO Box No. HEWLITT WOODMERE UFSD One Johnson Place
City, State, ZIP+4 Woodmere, New York 11598

PS Form 3800, August 2006 See Reverse for Instructions

7008 1830 0001 7087 3641

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$ 2.66
Certified Fee	3.30
Return Receipt Fee (Endorsement Required)	2.70
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 8.66

B. Wood

Postmark Here

70334|213

Sent To Hon. Kate Murray
Town Supervisor
Town of Hempstead
Street, Apt. No.; or PO Box No. One Washington Street

7008 1830 0001 7087 3627

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hon. Kate Murray
Town Supervisor
Town of Hempstead
One Washington Street
Hempstead, New York 11550

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X TOWN OF HEMPSTEAD 350 FRONT STREET HEMPSTEAD NY 11550 ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 10/29/14

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

ENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hon. Edwin A. Fare
Valley Stream Village Hall
123 S. Central Avenue
Valley Stream, New York 11580

COMPLETE THIS SECTION ON DELIVERY

A. Signature: Connie Curry ☐ Agent ☐ Addressee

B. Received by (Printed Name): CONNIE CURRY C. Date of Delivery: 10/27/14

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service) 7008 1830 0001 7087 3658

PS Form 3811, February 2004 0420 Domestic Return Receipt 70334/213 102595-02-M-1540

7008 1830 0001 7087 3658

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	$ 2.66
Certified Fee	3.30
Return Receipt Fee (Endorsement Required)	2.70
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 8.66

Postmark Here: B. Wood 70334/213

Sent To	Hon. Edwin A. Fare
Street, Apt. No.; or PO Box No.	Valley Stream Village Hall 123 S. Central Avenue
City, State, ZIP+4	Valley Stream, New York 11580

PS Form 3800, August 2006 See Reverse for Instructions

NYS BOARD OF REAL PROPERTY SERVICES RP-412-a (1/95)

INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

Name Town of Hempstead Industria Development Agency
Street 350 Front Street, 2nd Floor
City Hempstead
Telephone no. Day (516) 812-3122
Evening (___)
Contact Frederick E. Parola
Title Executive Director and Chief Executive Officer

2. OCCUPANT (IF OTHER THAN IDA)
(If more than one occupant attach separate listing)

Name Brooke Pointe, LLC ~~c/o D&F Development Group LLC~~
Street 100 Schoolhouse Rd
City Levittown 11756
Telephone no. Day ____(516)437-0900 Ext 11
Evening _(___)
Contact Leonard T. D'Amico
Title Manager

3. DESCRIPTION OF PARCEL

a. Assessment roll description (tax map no.,/roll year) Section 39 Block 41 Lot 7
b. Street address 100 Gibson Boulevard
c. City, Town or Village Valley Stream/Hempstead
d. School District Woodmere
e. County Nassau
f. Current assessment
g. Deed to IDA (date recorded; liber and page) N/A - see 5f

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

a. Brief description (include property use)
construct app 39 multifamily units consisting of 19-1 bedroom units and 20-2 bedroom units, (ii) acquisition of energy star appliances in each unit, common laundry space for the residents, and (iii) the construct of seventy-eight (78) onsite parking spaces
b. Type of construction unavailable
c. Square footage app. 58,000 sq ft
d. Total cost app $16,000,000
e. Date construction commenced unavailable
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) 12/31/2035

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION
(Attach copy of the agreement or extract of the terms relating to the project).

a. Formula for payment see attached "PILOT Agreement"

b. Projected expiration date of agreement 12/31/2035

c. Municipal corporations to which payments will be made

		Yes	No
County	Nassau	✔	☐
Town/City	Hempstead	✔	☐
Village			
School District	Woodmere	✔	

d. Person or entity responsible for payment

Name Leonard T D'Amico
Title Manager
c/o D&F Development Group LLC
Address 100 Schoolhouse Rd
Levittown, 11756

e. Is the IDA the owner of the property? Yes/No (circle one)
If "No" identify owner and explain IDA rights or interest in an attached statement. The IDA has acquired a leasehold interest in the real property pursuant to a Company Lease Agreement (copy of agreement attached)

Telephone 516-437-0900 Ext 11

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one) ✔ Yes No

If yes, list the statutory exemption reference and assessment roll year on which granted:
exemption _____ assessment roll year _____

7. A copy of this application, including all attachments, has been mailed or delivered on 10/____/14 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Frederick E. Parola (Name), Executive Director and Chief Executive Officer (Title) of Town of Hempstead Industrial Development Agency (Organization) hereby certify that the information on this application and accompanying papers constitutes a true statement of facts.

October 23, 2014
Date

Signature

FOR USE BY ASSESSOR

1. Date application filed _____
2. Applicable taxable status date _____
3a. Agreement (or extract) date _____
3b. Projected exemption expiration (year) _____
4. Assessed valuation of parcel in first year of exemption $ _____
5. Special assessments and special as valorem levies for which the parcel is liable:

_____

_____

Date

Assessor's signature

Transcript Document No. 1

COMPANY LEASE AGREEMENT

between

BROOKE POINTE, LLC

and

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY

Dated as of October 1, 2014

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

THIS COMPANY LEASE AGREEMENT, dated as of October 1, 2014 (this "**Company Lease** "), is by and between 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**") and 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**").

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; and

WHEREAS, the aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State of New York (the "**State**"); and

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act, as amended, and Chapter 529 of the Laws of 1971 of the State, as amended (collectively, the "**Act**"), the Agency was created and is empowered to undertake the acquisition, construction, equipping 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-eight (78) 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; and

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

WHEREAS, the Company has agreed to lease the Land and the Improvements to the Agency pursuant to and in accordance with this Company Lease, and the Company has agreed to transfer to the Agency title to the Equipment 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 pursuant to a certain Lease Agreement, dated as of October 1, 2014 (the "**Lease Agreement**"), by and between the Agency and the Company; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties mutually agree as follows:

The Company hereby leases the Land (described in Exhibit A attached hereto) and the Improvements to the Agency for the annual rent of $1.00 for a term commencing on the Closing Date and terminating at 11:59 p.m. on December 31, 2035 (the "**Lease Term**").

This Company Lease shall terminate on the earliest of (i) the expiration of the Lease Term, (ii) the termination of the Lease Agreement pursuant to Article X or Article XI thereof, (iii) any other termination of the Lease Agreement, and (iv) the date upon which the benefits afforded under that certain PILOT Agreement (as defined in the Lease Agreement) shall no longer be effective or the same shall be terminated.

The Company agrees to keep, perform and observe, from and after the date hereof, all of the terms, covenants, conditions, obligations and other provisions contained in the Lease Agreement. The Company agrees further that it shall indemnify, defend and hold harmless the Agency from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings and attorneys' fees arising out of or in connection with the Lease Agreement or this Company Lease and shall defend the Agency in any suit, action or proceeding, including appeals, for personal injury to, or death of, any person or persons, or for any loss of or damage to property of persons, or for other claims arising out of the acts or omissions of the Company or any of its officers, directors, agents or employees. The foregoing indemnitees shall include all expenses incurred by the Agency, including, without limitation, reasonable attorneys' fees to enforce this Company Lease, the Lease Agreement or any other document to which the Company and the Agency are parties, and with respect to third party claims.

The Agency, for itself and its successors and assigns, hereby agrees to lease the Land and the Improvements from the Company on the terms and conditions contained herein.

The Company and the Agency acknowledge that the Agency will lease or sublease the Facility, as applicable, to the Company pursuant to the Lease Agreement. The Company and the Agency agree that while this Company Lease and the Lease Agreement remain in full force and effect, (i) there shall be no merger of the Company's fee estate in the Land and the Improvements and the Company's subleasehold estate in the Land and Improvements created under the Lease Agreement; and (ii) the Agency shall continue to have, use and enjoy the leasehold estate in the Land and the Improvements created under this Company Lease.

The Agency agrees that this Company Lease shall be subordinate to any Mortgage or deed of trust now or hereafter granted by the Company in favor of any Lender (as defined in the Lease Agreement) or for any other purpose and further Mortgages hereafter placed on the Facility and any supplements, modifications, assignments, amendments or splitter thereof with the consent of the Agency and any such Mortgage, and any related assignment of its interest under this Company Lease at the sole cost and expense of the Company, provided that under no circumstances shall the Agency be required to Mortgage, grant a security interest in, or assign its Unassigned Rights (as defined in the Lease Agreement). Any such Mortgage shall be a limited, non-recourse obligation of the Agency and shall in no even

require the payment by the Agency to any party of any amount including, but not limited to, principal, interest or other amount secured by any such Mortgage.

This Company Lease shall not be recorded by either party hereto. The Agency shall cause a memorandum of lease with respect hereto to be recorded in the Nassau County Clerk's office. The parties hereto shall take such additional actions and execute such additional documents as may be required by any lender providing financing for the Facility to record evidence of this Company Lease.

All notices, requests or consents provided for or permitted to be given under this Company Lease must be in writing and shall be effective on actual receipt by the addressee if personally delivered (including delivery against a written receipt by an internationally recognized courier) to the addresses below

To the Agency:

Town of Hempstead Industrial Development Agency
350 Front Street, 2nd Floor
Hempstead, New York 11550-4037
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.

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.

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the third Business Day after mailing with respect to certified mail and one Business Day after mailing with respect to overnight mail.

If a party hereto determines in its reasonable discretion that any further instruments or other actions are necessary or desirable to carry out the terms of this Company Lease, the other party shall, at the Company's sole cost and expense, execute and deliver all such instruments and take all such actions, without additional consideration.

Capitalized terms used in this Company Lease and not otherwise defined in this Company Lease shall have the meanings assigned thereto in Schedule A to the Lease Agreement.

This Company Lease 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.

This Company Lease shall be governed exclusively by the applicable laws of the State of New York, without regard or reference to its conflict of laws principles.

This Company Lease and the conveyance made hereby shall be subject to the trust fund provisions of Section 13 of the Lien Law of the State.

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

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

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

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, 2018

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.

Transcript Document No. 4

BROOKE POINTE, LLC

to

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY
(TOWN OF HEMPSTEAD, NEW YORK)

RECAPTURE AGREEMENT

Dated as of October 1, 2014

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

Property Address: 100 Gibson Boulevard, Valley Stream, New York

Tax Map Nos.: Section: 39 Block: 41 Lot: 7

Record and return to:
Nixon Peabody LLP
1300 Clinton Square
Rochester, New York 14604
Attention: Jessica L. Paulin, Esq.

RECAPTURE AGREEMENT

THIS RECAPTURE AGREEMENT, made and entered into as of October 1, 2014 (this "**Recapture Agreement**"), is from 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**") to the TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY, an industrial development agency and 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**").

WITNESSETH:

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;

WHEREAS, the aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State of New York (the "**State**");

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, reconstruct, construct, 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;

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

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-eight (78) 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; and

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

WHEREAS, the Company has agreed to transfer to the Agency title to the Equipment 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 pursuant to a certain Lease Agreement, dated as of October 1, 2014 (the "**Lease Agreement**"), by and between the Agency and the Company;

WHEREAS, in order to define the Company's obligations regarding payments-in-lieu-of taxes with respect to the Facility, the Agency and the Company have agreed to 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;

WHEREAS, the Agency has conferred on the Company in connection with the acquisition, construction, equipping, furnishing, financing and leasing of the Facility certain benefits, tax exemptions and other financial assistance more particularly described in Section 1(c) hereof, consisting of, among other things, sales and use tax exemptions on the acquisition, demolition, construction, equipping and furnishing of the Facility and real property tax abatements (pursuant to the PILOT Agreement), and, if requested, mortgage recording tax exemptions; and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the PILOT Agreement and the Lease Agreement, that the Company provide assurances with respect to the recapture of certain benefits granted under the PILOT Agreement, the Lease Agreement and the other Agency agreements on the terms herein set forth.

AGREEMENT

1. Recapture of Agency Benefits (a) It is understood and agreed by the parties hereto that the Agency is entering into the Lease Agreement and the PILOT Agreement in order to provide financial assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

(i) If there shall occur a Recapture Event after October 23, 2014, but on or before December 31, 2019, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);

(ii) If there shall occur a Recapture Event on or after January 1, 2020 but on or before December 31, 2021, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise

specified below) as a return of public benefits conferred by the Agency, seventy-five percent (75%) of the Recaptured Benefits;

(iii) If there shall occur a Recapture Event on or after January 1, 2022 but on or before December 31, 2023, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, fifty percent (50%) of the Recaptured Benefits;

(iv) If there shall occur a Recapture Event on or after January 1, 2024 but on or before December 31, 2024, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, twenty-five percent (25%) of the Recaptured Benefits; and

(v) If there shall occur a Recapture Event on or after January 1, 2025, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits; and

(b) The term "Recaptured Benefits" shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency's participation in the transaction contemplated by the PILOT Agreement and the Lease Agreement including, but not limited to, the amount equal to 100% of:

(i) any exemption from any applicable mortgage recording tax with respect to the Facility on mortgages granted by the Agency on the Facility at the request of the Company (the "**Mortgage Recording Tax Exemption**"); and

(ii) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent pursuant to the Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility (the "**Sales Tax Savings**");

(iii) real property tax abatements granted under the PILOT Agreement (the "**Real Property Tax Abatements**"); and

(iv) any amounts currently due and owing under the PILOT Agreement which have not been paid ("**Current PILOT Payments**");

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of Section 1(c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency.

(c) The term "**Recapture Event**" shall mean any of the following events:

(1) A material default by the Company under the PILOT Agreement (other than as described in clauses (d) or (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or

(2) The occurrence and continuation of an Event of Default under the Lease Agreement (other than as described in clause (d) or (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or

(3) The Facility shall cease to be a "Project" within the meaning of the Act, as in effect on the Closing Date through the act or omission of the Company; or

(4) The sale of the Facility (excluding any sale, assignment or subletting provided for in Section 9.3 of the Lease Agreement) or closure of the Facility and/or departure of the Company from the Town of Hempstead, except as due to casualty, condemnation or force majeure as provided below; or

(5) Failure of the Company to create or cause to be maintained the number of full time equivalent ("**FTE**") jobs at the Facility as defined in Section 8.13 of the Lease Agreement, which failure is not reflective of the business conditions of the Company or the subtenants of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions; or

(6) Any significant and adverse deviations from the material information and data provided to the Agency in the Company's application for assistance which would constitute a significant diminution of the Company's activities in, or commitment to, the Town of Hempstead, Nassau County, New York; or

(7) The Company receives Sales Tax Savings in connection with the acquisition, demolition, construction and equipping of the Facility in excess of the Maximum Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to the Sales Tax Savings in excess of the Maximum Sales Tax Savings Amount only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recapture Benefits.

(d) Provided, however, if a Recapture Event has occurred due solely to the failure of the Company to create or cause to be maintained the number of FTEs at the Facility as provided in Section 8.13 of the Lease Agreement in any Tax Year but the Company has created or caused to be maintained at least 90% of such required number of FTEs for such Tax Year, then in lieu of recovering the Recaptured Benefits provided above, the Agency may, in its sole discretion, adjust the payments due under the PILOT Agreement on a pro rata basis so that the amount payable under the PILOT Agreement will be adjusted upward retroactively for such Tax Year by the same percentage as the percentage of FTEs that are below the required FTE level for such Tax Year. Such adjustments to the payments due under the PILOT Agreement may be made each Tax Year until such time as the Company

has complied with the required number of FTEs pursuant to Section 8.13 of the Lease Agreement; or

(e) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a "force majeure" event (as more particularly defined in the Lease Agreement), (ii) a taking or condemnation by governmental authority of all or part of the Facility, (iii) the inability or failure of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a "**Loss Event**") to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in good faith on the part of the Company or any of its affiliates so long as the Company or any of its affiliates have diligently and in good faith using commercially reasonable efforts and after prudent decision making, pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof or (iv) the period of any rebuilding, restoration or replacement after the occurrence of a Loss Event.

(f) The Company covenants and agrees to furnish the Agency with written notification (i) within sixty (60) days of the end of each Tax Year the number of FTEs located at the Facility for such Tax Year, and (ii) within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company within thirty (30) days of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(g) In the event any payment owing by the Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(h) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Recapture Agreement, from amounts received by the Agency pursuant to this Recapture Agreement.

2. Obligations Unconditional.

(a) The obligations of the Company under this Recapture Agreement shall be absolute and unconditional and shall remain in full force and effect until the PILOT Agreement and the Lease Agreement have expired or been terminated or the Lease Agreement has been assigned with the consent of the Agency, and such obligations shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event, whether or not with notice to or the consent of the Company.

(b) It is hereby expressly agreed that the Company's obligations under this Recapture Agreement are not limited in any manner, and the Company shall be liable for the payment of all recapture amounts with respect to the entire Facility.

(c) Reserved.

(d) 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.

3. Condition to Reconveyance of Facility. The parties hereto agree that the Agency shall have no obligations to surrender its leasehold interest in the Facility to the Company pursuant to the Lease Agreement until all payments to the Agency and the Taxing Jurisdictions under Sections 5.3, 11.2 and 11.3 of the Lease Agreement, under the PILOT Agreement and hereunder have been paid in full. If such payments are not paid in full by the Company within one hundred twenty (120) days of the date when due and owing, then the Agency shall offer its interest in the Facility for sale pursuant to the Agency's Real Property Disposition Policy adopted pursuant to the Public Authorities Accountability Act, as amended; provided however, any such sale shall be subject to the lien of any Mortgages.

4. Recordation of Recapture Agreement. The parties hereto agree that this Recapture Agreement shall be recorded as a lien against the Facility and as a covenant and restriction running with the Land until this Recapture Agreement has been discharged by the Agency upon termination or expiration of the Lease Agreement, as provided therein. The lien of this Recapture Agreement shall be subordinate to the lien of any Mortgage to be placed against the Facility, and to all modifications, amendments, renewals, and extensions thereof, with respect to all amounts due to the Agency under this Recapture Agreement except for Current PILOT Payments.

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

6. Directly or Indirectly. Where any provision in this Recapture Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

7. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Recapture Agreement to the Agency regardless of any investigation made by the Agency.

8. Binding Effect. This Recapture Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties.

9. Notices. All notices, certificates and other communications under this Recapture Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, 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 11550-4037
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.

10. Entire Understanding; Counterparts. This Recapture Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. Amendments. No amendment, change, modification, alteration or termination of this Recapture Agreement shall be made except in writing upon the written consent of the Company and the Agency.

12. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Recapture Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Recapture Agreement or any part thereof.

13. Governing Law. This Recapture Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard or reference to its conflict of laws principles.

14. Section Headings. The headings of the several Sections in this Recapture Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Recapture Agreement.

15. 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 the Recapture Agreement or any matters whatsoever arising out of or in any way connected with the Recapture Agreement.

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Recapture Agreement to be duly executed and delivered as of the day and year first above written.

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

ACCEPTED:

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 **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, 2018

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, 2018

15145525

EXHIBIT A

LAND DESCRIPTION

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.