

RAIL REALTY LLC

and

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(TOWN OF BROOKHAVEN, NEW YORK)

---

COMPANY LEASE AGREEMENT

---

Dated as of February 1, 2015

Town of Brookhaven Industrial Development Agency  
(Rail Realty LLC 2015 Facility)

THIS COMPANY LEASE AGREEMENT, dated as of February 1, 2015 (this “**Company Lease Agreement**”), is by and between RAIL REALTY LLC, a limited liability company, organized and existing under the laws of the State of New York, having an office 414 Main Street, Suite 102, Port Jefferson, New York 11777 (the “**Company**”), and the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (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 358 of the Laws of 1970 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 financing certain costs of an industrial development facility which will occur in two phases over the next three to five years as follows: (A) Phase I will consist of (i) the acquisition of five (5) parcels of land with seven (7) tax lots aggregating approximately 1.643 acres and having the following addresses: 14 and 18 Sheep Pasture Road, 103 Texaco Avenue, 28 Linden Place and a vacant parcel of land located at the corner of Texaco Avenue and Linden Place, all located in the Village of Port Jefferson, Town of Brookhaven, Suffolk County, New York (further identified as Tax Map Nos. Section 021.00 Block 04.00 Lots 11.000, 12.000, 19.100, 20.000, 22.100, 22.200 and 30.000) (collectively, the “**Land**”), together with existing structures located thereon, (ii) the demolition of existing structures located on the Land, and (iii) the construction and equipping of an approximately 54,829 square foot 3-story building over an underground parking garage, containing approximately 38 multi-family apartment units and known as Rail Realty Apartment Complex (the “**Phase I Facility**”), (B) Phase II will consist of the construction and equipping of an approximately 51,687 square foot 3-story building over an underground parking garage, containing approximately 36 multi-family apartment units (collectively, the “**Phase II Facility**”; and, together with the Phase I Facility, the “**Facility**”), all to be leased by the Agency to the Company and used by the Company as a market-rate residential apartment complex for residents of the Town of Brookhaven; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency’s agent, to acquire, 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 February 1, 2015 (the “**Lease Agreement**”), by and between the Agency and the Company.

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 November 30, 2027 (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 the 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, 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 (except the Company) or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. 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.

This Company Lease and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage or Mortgages which may be granted by the Agency and/or the Company on the Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

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 Suffolk 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 a national express delivery service ) to the addresses below

To the Agency:

Town of Brookhaven Industrial Development Agency  
1 Independence Hill, 3rd Floor  
Farmingville, New York 11738  
Attention: Chief Executive Officer

With a copy to:

Town of Brookhaven, Town Attorney's Office  
1 Independence Hill, 3rd Floor  
Farmingville, New York 11738  
Attention: Annette Eaderesto, Esq.

The Company:

Rail Realty LLC  
414 Main Street, Suite 202  
Port Jefferson, New York 11777  
Attention: Anthony J. Gitto, Managing Member

With a copy to:

Vanbrunt, Juzwiak & Russo, P.C.  
140 Main Street  
Sayville, New York 11782  
Attention: Eric Russo, 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, return receipt requested, 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)





EXHIBIT A

Legal Description of Real Property



# Safe Harbor Title Agency, Ltd.

## Schedule A

Title Number **SH156419**  
Underwriter **638-S-12622**

Page 1

ALL that certain plot, piece or parcel of land, situate, lying and being at the Village of Port Jefferson, The Town of Brookhaven, County of Suffolk and State of New York, more particularly bounded and described as follows:

BEGINNING at a point, said point being the intersection of the southerly side Sheep Pasture Road and the easterly side of Texaco Street;

RUNNING THENCE easterly from said point or place of beginning, by and with the southerly side of Sheep Pasture Road, the following two (2) courses and distances to a point:

1. North 50 degrees 29 minutes 20 seconds East 53.25 feet
2. North 54 degrees 23 minutes 33 seconds East 75.68 feet

RUNNING THENCE southerly from said point, the following seven courses and distances to a point on the northerly side of Linden Street:

1. South 33 degrees 18 minutes 20 seconds East 41.92 feet;
2. South 32 degrees 42 minutes 56 seconds East 88.69 feet;
3. South 30 degrees 57 minutes 44 seconds East 65.82 feet;
4. South 63 degrees 51 minutes 40 seconds West 50.41 feet;
5. South 23 degrees 27 minutes 09 seconds East 64.61 feet;
6. South 64 degrees 42 minutes 00 seconds West 18.64 feet;
7. South 13 degrees 36 minutes 00 seconds East 163.93 feet;

RUNNING THENCE westerly from said point, by and with the northerly side of Linden Street, South 76 degrees 50 minutes 00 seconds West 129.69 feet to a point;

RUNNING THENCE along an arc to the right, having a radius of 25.00 feet, a distance of 41.34 feet to a point on the easterly side of Texaco Street;

RUNNING THENCE northerly from said point, by and with the easterly side of Texaco Street, the following two (2) courses and distances:

1. North 08 degrees 25 minutes 00 seconds West 237.48;
2. North 09 degrees 16 minutes 40 seconds West 112.35 feet to the point or place of BEGINNING.

For Conveyancing Only, if intended to be conveyed.

Together with all right, title and interest of, in and to any streets and roads abutting the above described premises, to the center line thereof.

