

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(TOWN OF BROOKHAVEN, NEW YORK)

and

RAIL REALTY LLC

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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

Dated as of February 1, 2015

Town of Brookhaven, Village of Port Jefferson, Comsewogue School District,
Suffolk County

Property Address: 23 and 25 Texaco Avenue, Port Jefferson, New York 11777

Tax Map No.: 0206-021.00-04.00-022.006 and 0206-021.00-04.00-030.000

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of February 1, 2015 (this “**PILOT Agreement**”), is by and among 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, the Agency was created by Chapter 47 of the Laws of 1974 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, demolition, construction, equipping and furnishing 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 (collectively, 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 (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 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 the terms of a Company Lease Agreement, dated as of February 1, 2015 (the “**Company Lease**”), by and between the Company, as lessor, and the Agency, as lessee; and

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

WHEREAS, the Agency has agreed to lease and sublease the Facility to the Company pursuant to the Lease Agreement, dated as of February 1, 2015 (the “**Lease Agreement**”), between the Agency, as lessor, and the Company, as lessee, such that a leasehold interest or title to the Facility will remain with the Agency throughout the Lease Term (as such term is defined in the Lease Agreement); and

WHEREAS, the Agency and the Company have agreed to enter into a Recapture Agreement, dated as of February 1, 2015 (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, or under its jurisdiction or control or supervision, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (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 Brookhaven, 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, Comsewogue School District, Suffolk 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 of real estate taxes and 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 Town of Brookhaven, 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) which would be levied upon or with respect to the Facility if the Facility were owned by the Company exclusive of the Agency’s leasehold interest therein (the “**Taxes on the Facility**”). The amounts of such payments 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 2016/2017 tax year, the Company shall pay, as payments in lieu of taxes and assessments, the amounts set forth on Exhibit A attached hereto and made a part hereof.

(d) The Company shall pay, or cause to be paid, the amounts set forth in paragraphs 1(a) through (c) above, as applicable, after receipt of 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 obligations 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. Anything contained in this paragraph (d) to the contrary notwithstanding, the Company shall have the obligation to make all annual payments required by this paragraph (other than payments of penalties, if any) in two equal semi-annual installments on or prior to January 10 and May 31 of each year of the Lease Term or on such other due dates as may be established from time to time during the Lease Term.

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

(f) In the event that any structural addition shall be made to the building or buildings included in the Facility subsequent to the Completion Date, 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 subject to a lease to the Agency times the assessment or assessments for the Additional Facilities established for that tax year by the Town of Brookhaven. 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 is terminated 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 Brookhaven, Comsewogue School District, Suffolk 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 the Agency's leasehold interest in the Facility was terminated 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 Lease Agreement. 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.

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 PILOT 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 PILOT 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, judicial review of an assessment of the real estate with respect to the Facility and 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 shall request the Assessor of the Town of Brookhaven, 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 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 exclusive of the Agency's leasehold interest therein, such complaining party shall not be entitled to receive a refund or refunds of the payments-in-lieu-of-taxes paid pursuant to this PILOT Agreement or a reduction in the amounts payable pursuant to this PILOT Agreement. 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 waives any rights it 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 ad valorem levies, special assessments, or Special District Taxes and service charges levied against the Facility as referred to in paragraph 1(e) 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. Reserved.

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:

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.

To 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.

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, 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 their respective 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 a written instrument duly executed by the parties hereto.

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

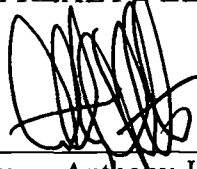
16. Except as provided in paragraphs 3 and 4, if any provision of this PILOT Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such provision so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct 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. All capitalized terms used in this PILOT Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Lease Agreement, which definitions are incorporated herein and made a part hereof.

(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.

RAIL REALTY LLC

By: 
Name: Anthony J. Gitto
Title: Managing Member

**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**


By: 
Name: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT A

Schedule of payments-in-lieu-of-taxes: Town of Brookhaven, (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Comsewogue School District, Suffolk County and Appropriate Special Districts

<u>Year</u>	<u>Tax Year</u>	<u>Payment</u>
1.	2016/2017	\$ 16,530.00
2.	2017/2018	\$ 16,860.00
3.	2018/2019	\$ 17,200.00
4.	2019/2020	\$ 17,540.00
5.	2020/2021	\$ 17,890.00
6.	2021/2022	\$ 18,250.00
7.	2022/2023	\$ 18,620.00
8.	2023/2024	\$ 18,990.00
9.	2024/2025	\$ 19,370.00
10.	2025/2026	\$ 19,760.00
11.	2026/2027 and thereafter	100% of full taxes and assessments on the Facility

EXHIBIT B

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.



Safe Harbor Title Agency, Ltd.



ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

Elizabeth A. Wood
Paralegal
T 585-263-1391
ewood@nixonpeabody.com

Nixon Peabody LLP
1300 Clinton Square
Rochester, NY 14604-1792
585-263-1000

February 27, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Ryan
Sole Assessor
Town of Brookhaven
One Independence Hill
Farmingville, New York 11738

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

Dear Mr. Ryan:

Enclosed, please find a completed Form RP 412-a Application for Real Property Tax Exemption with respect to the above-referenced transaction, which closed on February 23, 2015.

Also enclosed are copies of (i) the Payment-in-Lieu-of-Tax Agreement (the "**PILOT Agreement**"), (ii) the Recapture Agreement (the "**Recapture Agreement**"), and (iii) the Company Lease (the "**Company Lease**"), each dated as of February 1, 2015 and each between Rail Realty LLC (the "**Company**") and the Town of Brookhaven Industrial Development Agency (the "**Agency**"). The Recapture Agreement and a memorandum of Company Lease have been submitted for recording in the Suffolk County Clerk's office.

Please contact us office should you have any questions. Thank you.

Very truly yours,

Elizabeth A. Wood
Paralegal

Enclosures

cc: Distribution List (w/encl)

Distribution List

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hon. Steven Bellone
Suffolk County Executive
H. Lee Dennison Building
100 Veterans Memorial Highway
P.O. Box 6100
Hauppauge, New York 11788-0099

Hon. Edward R. Romaine
Town Supervisor
Town of Brookhaven
One Independence Hill
Farmingville, New York 11738

Hon. Margot Garant, Mayor
Village of Port Jefferson
121 West Broadway
Port Jefferson, new York 11777

Joseph V. Rella, Ed.D.
Superintendent
Comsewogue School District
290 Norwood
Port Jefferson Station, New York 11776

FIRST CLASS MAIL

Lisa MG Mulligan
Chief Executive Officer
Town of Brookhaven Industrial
Development Agency
One Independence Hill, 3rd Floor
Farmingville, New York 11738

Annette Eaderesto, Esq.
Town Attorney
Town of Brookhaven
One Independence Hill, 3rd Floor
Farmingville, New York 11738

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> 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. 		A. Signature: <u>J. Rella</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee B. Received by (Printed Name): <u>P. Roberto</u> C. Date of Delivery: _____ D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below: _____	
1. Article Addressed to: Joseph V. Rella, Ed.D. Superintendent Comsewogue School District 290 Norwood Port Jefferson Station, New York 11776		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from service label) <u>7008 1830 0001 7087 3733</u>		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004 <u>0420</u> Domestic Return Receipt <u>70236/645</u> 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	\$ <u>2.24</u>
Certified Fee	<u>3.30</u>
Return Receipt Fee (Endorsement Required)	<u>2.70</u>
Restricted Delivery Fee (Endorsement Required)	<u>8.24</u>
Total Postage & Fees	\$ <u>16.48</u>
Postmark Here: <u>8.10.04</u> <u>70236/645</u>	
Sent To: <u>Joseph V. Rella, Ed.D.</u> Superintendent Comsewogue School District 290 Norwood Port Jefferson Station, New York 11776	
Street, Apt. No., or PO Box No. City, State, ZIP+4	
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	\$ <u>2.24</u>
Certified Fee	<u>3.30</u>
Return Receipt Fee (Endorsement Required)	<u>2.70</u>
Restricted Delivery Fee (Endorsement Required)	<u>8.24</u>
Total Postage & Fees	\$ <u>16.48</u>
Postmark Here: <u>FEB 27 2004</u> <u>70236/645</u>	
Sent To: <u>Hon. Margot Garant, Mayor</u> Village of Port Jefferson 121 West Broadway Port Jefferson, New York 11777	
Street, Apt. No., or PO Box No. City, State, ZIP+4	
PS Form 3800, August 2006 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> 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. 		A. Signature: <u>M. Garant</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee B. Received by (Printed Name): <u>Margot Garant</u> C. Date of Delivery: _____ D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below: _____	
1. Article Addressed to: Hon. Margot Garant, Mayor Village of Port Jefferson 121 West Broadway Port Jefferson, New York 11777		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from service label) <u>7008 1830 0001 7087 3726</u>		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004 <u>0420</u> Domestic Return Receipt <u>70236/645</u> 102595-02-M-1540			

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> 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. 		<p>A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee <i>Paul Romaine</i></p> <p>B. Received by (Printed Name) <i>Paul Romaine</i></p> <p>C. Date of Delivery <i>2/27/04</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to:</p> <p>James Ryan Sole Assessor Town of Brookhaven One Independence Hill Farmingville, New York 11738</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7012 3050 0000 9316 6614</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>PS Form 3811, February 2004 0420 Domestic Return Receipt 70236/645 102595-02-M-1540</p>			

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	\$ 2.24
Certified Fee	3.30
Return Receipt Fee (Endorsement Required)	2.70
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 8.24
Postmark Here <i>B. Wood</i> <i>70236/645</i>	
Sent To James Ryan Sole Assessor Town of Brookhaven One Independence Hill Farmingville, New York 11738	
Street, Apt. No., or PO Box No. City, State, ZIP+4	
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	\$ 2.24
Certified Fee	3.30
Return Receipt Fee (Endorsement Required)	2.70
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 8.24
Postmark Here <i>B. Wood</i> <i>FEB 27 2004</i> <i>70236/645</i>	
Sent To Hon. Edward R. Romaine Town Supervisor Town of Brookhaven One Independence Hill Farmingville, New York 11738	
Street, Apt. No., or PO Box No. City, State, ZIP+4	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> 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. 		<p>A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee <i>Paul Romaine</i></p> <p>B. Received by (Printed Name) <i>Paul Romaine</i></p> <p>C. Date of Delivery <i>2/27/04</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to:</p> <p>Hon. Edward R. Romaine Town Supervisor Town of Brookhaven One Independence Hill Farmingville, New York 11738</p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	

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. Steven Bellone
 Suffolk County Executive
 H. Lee Dennison Building
 100 Veterans Memorial Highway
 P.O. Box 6100
 Hauppauge, New York 11788-0099

2. Article Number
 (Transfer from service label) **7012 3050 0000 9316 6621**

PS Form 3811, February 2004 **0420** Domestic Return Receipt **70236/645** 102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *[Signature]* 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

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

4. Restricted Delivery? (Extra Fee) Yes

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	\$	2.29	
Certified Fee		3.30	
Return Receipt Fee (Endorsement Required)		2.76	
Restricted Delivery Fee (Endorsement Required)			
Total Postage & Fees	\$	8.24	

8.20.00
 FEB 27 2004
 Postmark Here

70236/645

Sent To	Hon. Steven Bellone
Street, Apt. No., or PO Box No.	Suffolk County Executive H. Lee Dennison Building
City, State, ZIP+4	100 Veterans Memorial Highway P.O. Box 6100 Hauppauge, New York 11788-0099

PS Form 3800, August 2006 See Reverse for Instructions

7012 3050 0000 9316 6621



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

Name Town of Brookhaven Industrial Development Agency
Street 1 Independence Hill, 3rd Floor
City Farmingville
Telephone no. Day (631) 451-6563
Evening ()
Contact Lisa MG Mulligan
Title Chief Executive Officer

Name Rail Realty LLC
Street 414 Main Street, Suite 102
City Port Jefferson 11777
Telephone no. Day (631) 474-0946
Evening ()
Contact Anthony J. Gitto
Title Managing Member

3. DESCRIPTION OF PARCEL

- a. Assessment roll description (tax map no./roll year) 0206-021.00-04.00-022.006 abnd 030.000
b. Street address 23 and 25 Texaco Avenue
c. City, Town or Village Port Jefferson 11777
d. School District Comsewogue School District
e. County Suffolk
f. Current assessment unavailable
g. Deed to IDA (date recorded; liber and page) N/A See #5e

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

- a. Brief description (include property use) Phase I - 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
b. Type of construction N/A
c. Square footage app. 54,829
d. Total cost app \$16,200,000 (total project)
e. Date construction commenced unknown
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) 11-30-2027

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 November 30, 2027

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Suffolk</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Town/City _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village <u>Port Jefferson 11777</u>		
School District <u>Comsewogue</u>	<input checked="" type="checkbox"/>	

d. Person or entity responsible for payment

Name Anthony J. Gitto
 Title Managing Member
 Address 414 Main St Ste 202
Port Jefferson 11788

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. Telephone 631-474-0946
The Agency acquired a leasehold interest in the property from a Company Lease, dated as of February 1, 2015.

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 02/___/15 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Lisa MG Mulligan, Chief Executive Officer of _____
 Name Title
Town of Brookhaven Industrial Development Agency hereby certify that the information
 Organization

on this application and accompanying papers constitutes a true statement of facts.

February 23, 2015
Date

Lisa MG Mulligan
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

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**”).

R E C I T A L S:

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)

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


RAIL REALTY LLC



By: _____
Name: Anthony J. Gitto
Title: Managing Member

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

On the 23rd day of February in the year 2015 before me, the undersigned, personally appeared **Anthony J. Gitto**, 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

DIANE E. EDGAR
Notary Public, State of New York
No. 01ED5026642
Qualified in Suffolk County
Commission Expires April 25, 2018

Company Lease Agreement
Signature Page 1 of 2

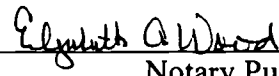
**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Lisa MG Mulligan
Title: Chief Executive Officer

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

On the 23rd day of February in the year 2015, before me, the undersigned, personally appeared **Lisa MG Mulligan**, 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 she executed the same in her capacity, and that by her signature on the within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

ELIZABETH A. WOOD
Notary Public, State of New York
Registration # 01W06103025
Qualified in Monroe County
Certificate Filed in Monroe County
Commission Expires: 12/15/2015


Notary Public

Company Lease Agreement
Signature Page 2 of 2

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.



Safe Harbor Title Agency, Ltd.

RAIL REALTY LLC

To

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

RECAPTURE AGREEMENT

Dated as of February 1, 2015

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

Property Address: 23 and 25 Texaco Avenue, Port Jefferson, New York 11777
Tax Map No.: 0206-021.00-04.00-022.006 and 0206-021.00-04.00-030.000

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 February 1, 2015 (this “**Recapture Agreement**”), is from 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**”), to 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, 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; and

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act, as amended, together with Chapter 358 of the Laws of 1970 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; and

WHEREAS, the Agency has agreed to assist in the acquisition, demolition, construction, equipping and furnishing 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 (collectively,

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 (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 to lease the Land and the Improvements to the Agency pursuant to and in accordance with a certain Company Lease Agreement, dated as of February 1, 2015 (the “**Company Lease**”), by and between the Company and the Agency; and

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 February 1, 2015 (the “**Lease Agreement**”), by and between the Agency and the Company; and

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 February 1, 2015 (the “**PILOT Agreement**”), by and between the Agency and the Company; and

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, 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 February 23, 2015, but on or before December 31, 2018, 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, 2019 but on or before December 31, 2020, 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, 2021 but on or before December 31, 2022, 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, 2023 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.

(b) The term “Recaptured Benefits” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance received by the Company, 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**”); and
- (iii) real property tax abatements granted under the PILOT Agreement (the “**Real Property Tax Abatements**”);

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 Brookhaven, 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 Brookhaven, Suffolk 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 such excess 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 of the occurrence of a Recapture Event hereunder, which written 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 within 10 days’ written notice 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 ninety (90) 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.

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.

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 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.

To 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.

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.


RAIL REALTY LLC



By: _____
Name: Anthony J. Gitto
Title: Managing Member

ACCEPTED:

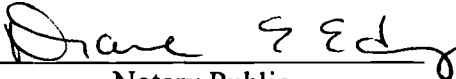
**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Lisa MG Mulligan
Title: Chief Executive Officer

Recapture Agreement
Signature Page 1 of 2

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

On the 23rd day of February in the year 2015 before me, the undersigned, personally appeared **Anthony J. Gitto**, 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.

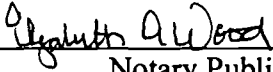


Notary Public

DIANE E. EDGAR
Notary Public, State of New York
No. 01ED5026642
Qualified in Suffolk County **2018**
Commission Expires April 25.

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

On the 23rd day of February in the year 2015, before me, the undersigned, personally appeared **Lisa MG Mulligan**, 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 she executed the same in her capacity, and that by her signature on the within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Notary Public

ELIZABETH A. WOOD
Notary Public, State of New York
Registration # 01WO6103025
Qualified in Monroe County
Certificate Filed in Monroe County
Commission Expires: 12/15/2015

Recapture Agreement
Signature page 2 of 2

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.



Safe Harbor Title Agency, Ltd.